



Annual Report

TO: Privacy Advisory Commission

**FROM: Joe DeVries,
Chief Privacy Officer**

**SUBJECT: Impact of Implementing, Tracking
and Reporting Ordinance
N.O. 13540 C.M.S. - Sanctuary
City Contracting and Investment
Ordinance**

DATE: September 3, 2020

Executive Summary

The Sanctuary City Contracting and Investment Ordinance (Ordinance N.O. 13540 CMS) was adopted by the City Council in June 2019 and requires that by April 1 of each year, the City Administrator shall certify compliance with this ordinance by preparing a written report. By May 1 of each year, the City Administrator shall submit to the Privacy Advisory Commission a written, public report regarding compliance with Sections 2.23.030 and 2.23.040 over the previous calendar year.

At minimum, this report must (1) specify the steps taken to ensure implementation and compliance with Sections 2.23.030 and 2.23.040, (2) disclose process issues, and (3) detail actions taken to cure any process deficiencies. After receiving the recommendation of the Privacy Advisory Commission, if any, the City Administrator shall schedule and submit the written report to the City Council for review and adoption.

Background

The Sanctuary City Contracting and Investment Ordinance prohibits the City from contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE), United States Customs and Border Protection (CBP), or Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) with any “Data Broker”, “Extreme Vetting”, or “Detention Facilities” services unless the City Council makes a specific determination that no reasonable alternative exists. The ordinance also prohibits the City from investing in any of these companies and requires the City to include notice of these prohibitions in any Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and any construction or other contracting bids.

As is the case in many government entities, the City uses its existing competitive (non-construction services) procurement processes to require compliance with federal, state and local mandates relative to the use of public funds in the purchase of goods and service. For example, in the late 1980’s the City adopted a policy to prohibit doing business with entities that also contract with companies involved in nuclear arms proliferation. In 2013, the City took a stand against contractors doing business with the State of Arizona due to its adoption of legislation that unfairly targeted persons of Hispanic decent in routine traffic stops.

The Sanctuary City Contracting and Investment Ordinance is a response to the recent ICE activity, including its efforts to target Sanctuary Cities with stepped up enforcement efforts and the impact those efforts have had on the Oakland community. There has been strong local interest in these types of ICE raids and deportations both politically and in the media, however, ICE has taken much more drastic steps to gather data on individuals that could ultimately be far more impactful.

Ensuring Compliance

“Schedule I” - The Sanctuary City Contracting and Investment Ordinance (Ordinance N.O. 13540 CMS) is promulgated through “Schedule I” as attached. The Schedule I allows the CCPO to review each Schedule for compliance. The Department of Workplace and Employment Standards to conduct a preliminary scan to identify immediate errors. All Schedule I’s meeting preliminary scans for completeness are forwarded to the Chief Privacy Officer (CPO), Office of the City Administrator. Subsequent tracking monitoring and enforcement fall under the purview of the CPO.

Applying the new schedule to the City’s existing Contracting Process

After final adoption of the ordinance in June, staff developed a mechanism to ensure compliance. The Chief Privacy Officer (CPO) met with the Department of Workplace and Employment Standards (DWES) Director. It was agreed that the Schedule I would be submitted during the competitive process for all potential service agreements conducted by the DWES. Therefore, it was agreed that DWES would add “Schedule I” (**See Attachment A**) to its list of schedules that all potential service contractors must submit in order to move to the next phase of contracting with the City; and as originator, the CPO will track, monitor, and report compliance with the new law.

CPO Compliance monitoring and enforcement

If a contractor self-Certifies that they have no contracts with ICE, CBP, or HHS/ORR on Schedule I, then they may continue with the contracting process. If they attest that they *do* have a contract with ICE or CBP, the Schedule I is forwarded to CPO and the process is stopped by the CPO and determine with the individual department seeking to use the contractor if they believe there is any reason to seek a waiver.

Clarifying Memo

A notice was provided by the CPO to the Contract and Compliance Staff (**Attachment B**) and was posted on the department’s website along with Schedule I to allow for greater public awareness of the new law. Also, included on the website was the list of known contractors that already are prohibited from contracting with the City of Oakland (**Attachment C**).

Disclosure of Compliance/Violations

By advertising the prohibition proactively to all potential contractors on the website and with Schedule I embedded in the standard contract packet, staff believe most enforcement will take place pre-emptively; contractors who are prohibited will self-select to not do business with the City. If they or the department that is seeking their services believes they deserve a waiver, it requires a review and recommendation by the PAC to be forwarded to the City Council.

Actions Taken to Cure Deficiencies

Although the Implementation Plan was underway by the late fall of 2019, the CPO and DWES Leadership met in the Summer of 2020 to further develop the process. *This is not due to any known compliance issue.* Starting in September 2020, the DCES will provide all Schedule I’s to the CPO on a monthly basis for a further verification.

This will address any concern that a contractor may misrepresent themselves on Schedule I and especially if the contractor recently entered into an agreement with ICE/CBP/or DDS/ORR. An additional compliance piece that needs to be better developed is routine updating of the list of known prohibited contractors. There is not a built-in mechanism to update the list, but CPO staff are committed to developing an effective one.

The Department of Workplace and Employment Standards (DWES) pledges to forward all Schedule I documents received by way of the competitive process for which it is responsible. DEWS does not track and monitor compliance, investigate or address non-compliances. .

Investment Prohibitions

The CPO provided the same list of prohibited contractors to the Department of Finance to ensure no new investments are made in any of these firms moving forward. As noted during the development of the ordinance, most of the City's investments are in bonds and there are strict guidelines on how a municipality can invest its dollars. Department of Finance agreed to check the list of prohibited entities on a semi-annual basis and as of the end of 2019, no investments in the prohibited entities were noted. As noted above, a current compliance item that needs more development is the updating of the list of prohibited entities.

As of the end of 2019, no potential contractor has submitted a Schedule I indicating they have an active contract with ICE, CBP, or HHS/ORR, therefore the trigger of review and recommendation by the PAC has not been pulled.

Respectfully submitted,



Joe DeVries,
Chief Privacy Officer

For questions, please contact Joe DeVries, Chief Privacy Officer, at (510) 238-3083.

Attachment A: City of Oakland Schedule I.

Attachment B: Memo from the CPO to Contracts and Compliance Staff

Attachment C: List of known prohibited entities.



Schedule I

“Sanctuary City Contracting and Investment Ordinance”

United States Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) Prohibition.

This Schedule must be submitted with all proposals or bids by all contractors/Consultants and their sub-contractors/subconsultants, and all vendors seeking to do business with the City of Oakland. Compliance must be established prior to full contract execution.

I, (name) _____, the undersigned, _____ of _____ (Position/Title)

(Business Entity) - hereinafter referred to as Business Entity and duly authorized to attest on behalf of the business Entity), declare the following:

- 1. Neither this Business Entity nor any of its subsidiaries, affiliates or agents are under contract with the United States Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), or the Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) to provide services or goods for data collection or immigration detention facilities. The term “data collection” includes the collection of information (such as personal information about consumers) for another purpose from that which it is ultimately used, datamining in large data bases for trends and information, threat-modeling to identify probable attackers to computer systems, predictive risk analysis to predict future events, and similar services. Additionally, this business entity does not anticipate a contract with ICE, CBP, or HHS/ORR for such work for the duration of a contract/contracts with the City of Oakland.
2. The appropriate individuals of authority are cognizant of their responsibility to notify the City’s Project Manager and invoice reviewer or the City Administrator’s Office, Chief Privacy Officer if any of this Business Entity’s subsidiaries, affiliates, or agents are under contract with ICE, CBP, or HHS/ORR for the purposes listed above.
3. To maintain compliance, upon review and approval of invoices, the contractors/vendors hereby agree to submit a declaration on company stationery attached to each invoice that the company remains in compliance with the ICE, CBP, and HHS/ORR Prohibition and will not seek or secure a contract with ICE, CBP, or HHS/ORR.
4. Upon close out or completion of deliverables and prior to issuance of final payment (while honoring the Prompt Payment Ordinance), this business entity agrees to submit a statement attached to the final invoice, under penalty of perjury, declaring full compliance with the ICE, CBP, and HHS/ORR Prohibition. I understand that an invoice is not declared fully complete and accepted unless and until the declaration of compliance is accepted.
5. If this business entity fails to disclose a contract with ICE, CBP, or HHS/ORR to provide services for data collection or immigration detention facilities, the relevant persons may be guilty of a misdemeanor and up to a \$1,000 fine. Additionally, the City Administrator may to the extent permissible by law, remedy any such violations and may use all legal measures available to rescind, terminate, or void contracts in violation.
6. I declare under penalty of perjury that the above will not, have not, and do not plan to contract with ICE, CBP, or HHS/ORR to provide services or goods for data collection or immigration detention facilities.



PLEASE COMPLETE AND SIGN

I declare that I understand Ordinance #13540 C.MS. Based on my understanding the above is true and correct to the best of my knowledge.

or

I declare that I understand Ordinance # 13540 C.MS. Based on my understanding all or a portion of the above is not true and correct to the best of my knowledge.

(Printed Name and Signature of Business Owner)

(Date)

(Name of Business Entity)

(Street Address, City, State, and Zip Code)

(Name of Parent Company) (If applicable)

Contacts:

Office Phone: _____ Cell Phone: _____ email: _____

For Office Use Only:

Approved/Denied/Waived

(signed) _____
Authorized Representative

Date

SCHEDULE I DB/DM 2019



CITY OF OAKLAND
Office of the City Administrator

(510) 238-3301

• 1 Frank H. Ogawa Plaza, 11th Floor

• Oakland, CA 94612

Memorandum

To: Contracts and Compliance Division Staff Members

From: Joe DeVries, Chief Privacy Officer

Re: The Sanctuary City Contracting and Investment Ordinance

Date: October 7, 2019

Ordinance N.O. 13540 CMS was adopted by the Oakland City Council on June 4th, 2019 and prohibits the City from contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE) services or goods for data collection or with the United States Customs and Border Protection (CBP) Customs and Border Protection (CBP), or the Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) to support immigration detention facilities. These contractors are not to be used unless the City Council makes a specific determination that no reasonable alternative exists. The ordinance also prohibits the City from investing in any of these companies and requires the City to include notice of these prohibitions in any Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and any construction or other contracting bids. The ordinance also requires that the City provide an annual report to the Privacy Advisory Commission on its enforcement.

Because this ordinance was sponsored by the Privacy Advisory Commission and is specifically related to protecting the privacy of people's personal data, I will provide oversight of this ordinance as the Chief Privacy Officer for the City. The goal is to prevent anyone from applying for an RFP, RFQ, or other contract before they get too far in the process so it will be important to let potential contractors know about this requirement as early in the process as possible. In most instances that should be enough, however, in the circumstance that a contractor (and the City Department they would be working with) feels that they can argue successfully for a waiver, they can continue in the process and I would have the Privacy Advisory Commission review this claim to make a recommendation to the City Council.

Attached is a list of known businesses that already do business with ICE or CBP for these services that would be excluded under the law. As this list is updated periodically, I will share it with you but will also review any ongoing requests your office receives. If you have any questions about the ordinance, please do not hesitate to contact me at 510-238-3083 or jdevries@oaklandca.gov