



Office of the City Manager

INFORMATION CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Sanctuary City Contracting Compliance Report for FY 2020

INTRODUCTION

City Council adopted Ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Report Requirements

(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). Following adoption of the SCCO, Solicitation documents were amended to include a Sanctuary City Compliance Certificate for all bidders to attest that they have reviewed and comply with the SCCO. IFB, RFP, and RFQ public postings likewise each contain the SCCO language. Signed certificates are submitted with proposals and bid responses.

Also following adoption of the SCCO, contract and amendment boilerplates were revised to include the SCCO language. New and amended contracts and agreements include the Compliance Certificate attesting review of and

compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:

City Council issued a waiver of ordinance 7,650-N.S. related to Berkeley Tuolumne Camp Projects. The waiver was issued on 12/10/2019 in order to ensure compliance with FEMA contracting provisions as required for the City to receive a federal reimbursement grant for the construction project.

(3) detail actions taken to cure any deficiencies with compliance:

There were no complaints of non-compliance brought forth for investigation.

BACKGROUND

The City received notification in December 2020 that the required report was not submitted to City Council by November 1 as required in the ordinance. The report should have been drafted by General Services staff. The General Services division had a new manager in 2020, and had been an active part of the City's Covid-19 response program during the year, thus experiencing significant disruption to normal and typical tasks. The division was also in the process of recruiting for vacant positions in late 2020 and early 2021. Inadvertently, due to those circumstances, the report was not drafted and submitted.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental/climate impacts from this report.

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. City Council waiver of SCCO (12/10/2019)

Sanctuary City
waiver

RESOLUTION NO. 69,218-N.S.

WAIVER OF ORDINANCE NO. 7,650-N.S. FOR BERKELEY TUOLUMNE CAMP
CONTRACTS

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, in December, 2013, the City received a Federal Emergency Management Agency (FEMA) Public Assistance Grant for the reconstruction of Berkeley Tuolumne Camp; and

WHEREAS, rejection of a qualified contractor or vendor based solely on their inability to comply with Ordinance No. 7,650-N.S. would be in violation of federal guidelines that require maximum free and open competition, and prohibit the placement of unreasonable requirements on firms in order to qualify them to do business (Code of Federal Regulations §200.319); and

WHEREAS, if the waiver of Ordinance No. 7,650-N.S. is not granted, FEMA may rescind up to \$35 Million in grant funding for the Berkeley Tuolumne Camp Reconstruction Project; and

WHEREAS, if the waiver is granted, Berkeley Tuolumne Camp contracts would not include notice of the prohibition in qualification, proposal, or bid solicitations. Once the preferred contractor is selected, however, they will be asked to voluntarily complete the "Sanctuary City Compliance Statement". As such, the intent and purpose of the ordinance will be applied to the maximum extent feasible while still complying with federal procurement guidelines. Through this voluntary process, it is possible that all contracts for the Berkeley Tuolumne Camp Project will be in full compliance with Ordinance No. 7650-N.S.; and

WHEREAS, the City does not have sufficient funds allocated to complete the Berkeley Tuolumne Camp Project without federal funding.




NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Ordinance No. 7,650-N.S. is waived for Berkeley Tuolumne Camp Project contracts.

The foregoing Resolution was adopted by the Berkeley City Council on December 10, 2019 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk