




OFFICE OF THE CITY ADMINISTRATOR



Mark E. Farrell, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: Department Heads
City Financial Officers
Contracting Officers

FROM: Naomi M. Kelly, City Administrator 

CC: Jaci Fong, Purchaser and Director of Office of Contract Administration
Clair Farley, Executive Director, Office of Transgender Initiatives

SUBJECT: Ban on City Contracts and Travel to States with Anti-LGBT Laws -
Oklahoma added to list of Covered States.

DATE: June 4, 2018

On October 14, 2016, the Board of Supervisors passed Ordinance No. 189-16 (file No. 160425) ("Ordinance") which places a ban on city-funded travel and City contracts involving States with anti-LGBT laws. The Ordinance under Administrative Code Section 12X.5(a) declares that the City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List.

Generally:

The Ordinance bans all travel to states on the list of Covered States below. Furthermore, the City shall not enter into any Contract with a Contractor that has its headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State list. Unless otherwise exempted, this contracting ban applies to all contracts entered into by the City (See Administrative Code Sec. 12X.5(b) for specific circumstances where the Ordinance is not applicable, exempted, or eligible for a waiver). However, please note that the contracting ban only applies to the prime contractor and does not extend to lower tier subcontractors, suppliers, or vendors. In addition, the Ordinance only applies to contracts that were first advertised, solicited, or initiated on or after February 11, 2017 and therefore does not apply to amendments to pre-existing contracts.

The following state will be added to the Covered State List based on recent legislative action meeting the definition above:

- Oklahoma:
 - SB 1140 allows private adoption and foster agencies to reject qualified LGBTQ adoptive or foster parents based on the agency's religious beliefs. SB 1140 also prohibits the Oklahoma Department of Human Services from denying or revoking an

agency's license, and prohibits a state or local government entity from denying a grant or contract to an agency, based on its refusal to participate in the placement of a child that violates its policies SB 1140 was signed into law on May 11, 2018, and becomes effective November 1, 2018.

- The addition of Oklahoma to the Covered State List will be effective on November 1, 2018.

The list below indicates all the states currently on the Covered State List:

- Alabama (effective 6/30/2017)
- Kansas (effective 2/11/2017)
- Kentucky (effective 6/30/2017)
- Mississippi (effective 2/11/2017)
- North Carolina (effective 2/11/2017)
- **Oklahoma (effective 11/1/2018)**
- South Dakota (effective 3/14/2017)
- Tennessee (effective 2/ 11/2017)
- Texas (effective 9/1/2017)

Ensuring Compliance with the Section 12X.5(a) Prohibition:

Any department initiating a contract should be aware of the ban, and should not submit contracts for review that violate Section 12X.5(a). If the contract is subject to approval from the Office of Contract Administration (OCA), OCA will review all new purchases and Professional Services Contracts (PSC) under Chapter 21 to ensure they comply with the Section 12X.5(a) prohibition. Likewise, departments with Chapter 6 contracting authority or other independent contracting authority (e.g. Prop Q) should establish procedures to review/ensure compliance with the Section 12X.5(a) prohibition. As previously advised, Departments are expected to notify vendors of the Chapter 12X ban in Request for Proposals, Request for Qualifications, or other related bid documents.

The following language should be included with your solicitations/contract documents:

"This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or where any or all of the work on the contract will be performed in any of those states. Bidders are hereby advised that Bidders, which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List may not enter into contracts with the City. A list of states on the Covered State List is available at the website of the City Administrator. I certify that my company is headquartered at the following address _____ . I will notify the City if my company's headquarters moves."

Non-applicability, Exceptions, and Waivers:

If a department wishes to enter into a contract otherwise prohibited by Chapter 12X, a department may make a determination of non-applicability, exception, or waiver as authorized by Section 12X.5(b). If a department makes a determination under Section 12X.5(b), they must record the

determination, summarizing the Contract and the basis for inapplicability. The form is available on the intranet as the Form P-12X.5. Below are the exceptions listed within the ordinance which allows business headquartered in states on the banned list to enter into new contracts with the City:

- Needed services are available only from one source.
- Contract is necessary to respond to an emergency which endangers public health or safety and no compliant company is immediately able to perform required services.
- There are no compliant/qualified responsive bidders and the Contract is for a service, project or property that is essential to the City or public.
- Public interest warrants the granting of a waiver because application would have an adverse impact on services or a substantial adverse financial impact on the City.
- Services to be purchased are available under a bulk purchasing agreement with a federal, state or local government entity or a group purchasing organization, which will substantially reduce the City's cost.
- Violates or inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided that the contracting officer has made a good faith attempt to change the terms or conditions.

For purchases submitted for review to OCA that require a determination in order to contract with a company banned by Chapter 12X, a copy of the Form P-12X.5 must be included in the routing packet. There is an additional set of exceptions which refer to travel. If there are questions related to travel, please reach out to the Office of the Controller.

For purchases not reviewed by OCA that require a determination in order to contract with a company banned by Chapter 12X, departments must make a determination, and retain a copy of the Form P-12X.5 as part of the contract file.

Further, in accordance with Section 12X.5(c), each Contracting Department shall maintain any determinations made under Section 12.X.5(b) and submit a report (within 30 days of the end of the fiscal year) to the City Administrator of those records.

The Covered State List is reviewed on a semiannual basis. When a state is removed or added the Office of the City Administrator will make that information public and post the updated list on its website, available at <http://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list>.

Should you have any questions on these policies or the legislation, please do not hesitate to contact my office or Clair Farley at the Office of Transgender Initiatives at transcitysf@sfgov.org. Routine requests about contracting should be directed to Jaci Fong, Purchaser at (415) 554-6743 or oca@sfgov.org for Chapter 21 contracts.