

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: November 26, 2013

CAO File No. 0220-04874-0000

Council File No. 13-1196

Council District:

To: The City Council

From: Miguel A. Santana, City Administrative Officer



Subject: **COMPREHENSIVE REVIEW OF THE CITY'S COMPLIANCE WITH THE CALIFORNIA IRAN CONTRACTING ACT OF 2010 (AB 1650)**

SUMMARY

On July 1, 2010, the President of the United States signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Divestment Act). This law authorizes state or local governments to adopt and enforce measures that meet certain requirements, or prohibit the investment of assets, with any entity that is determined to be engaged in investment activities with Iran. This includes contracts or amendments for the sale of goods and services.

On September 30, 2010, the State of California (State) adopted Assembly Bill No. 1650 (AB 1650) utilizing the provisions set forth in the Divestment Act. In accordance with AB 1650, any person providing goods or services in excess of \$20 million in the activities to develop petroleum or natural gas resources or nuclear power in Iran, or any financial institution that extends \$20 million or more in credit to such person, will be prohibited from bidding on or entering into or renewing any contract for goods or services of \$1 million or more with a public entity. The State Department of General Services (DGS) has prepared a list identifying those entities prohibited from contracting with public entities. The DGS list is updated every 180 days and can be found at www.dgs.ca.gov. This report provides information relative to the City's compliance with the State mandate and the plan for implementation.

At its meeting of October 9, 2013, the City Council adopted a motion (C.F. 13-1196) that instructs this office, with the assistance of the Bureau of Contract Administration (CONAD), the Board of Public Works, the Department of General Services (GSD), the City Controller, Office of Finance, Department of Water and Power, Department of Airports, Harbor Department, Los Angeles City Employees' Retirement System (LACERS), Fire and Police Pensions (Pensions) and the City Attorney to prepare and present a comprehensive review of the City's compliance with AB 1650. This review includes procurement policies and procedures of proprietary departments, the inclusion of AB 1650 into the City's Standard Provisions for City Contracts, and the establishment of a bidder certification process for those seeking to enter into contracts with the City for the provision of goods and services.

In a letter dated November 7, 2013, herein included as Attachment 1, the City Attorney opined that the Divestment Act requires prospective City bidders to certify that it is not identified on the DGS list and is not a financial institution that extends \$20 million or more in credit for the purpose of investing in the energy sector of Iran. Every awarding authority in the City must comply with the State law and determine whether a bidder is eligible based on the submitted certification. The City Attorney reports that the certification requirement applies regardless of the procurement method, to include, but not be limited to, Request for Proposals, Invitation to Bids, and non-competitive awards. The City Attorney has revised the State certification form, included as the "Iran Contracting Act of 2010 Compliance Affidavit" as part of their correspondence. Bidders must submit the compliance affidavit at the time of bid or a department may deem them as non-responsive. The City Attorney also recommends that the following language be adopted and added into written contracts by City departments to ensure uniform compliance:

"Iran Contracting Act of 2010: *In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit".*

Our Office contacted each department listed in the Council motion to ascertain compliance with AB 1650. These departments did not report having any existing contract or financial investment with the companies specified on the DGS list. Further, departments were asked to review AB 1650 and make changes to their existing procurement policies and request for proposal/qualification procedures if needed to comply with AB 1650.

As noted in AB 1650, there are exemptions to the Divestment Act, whereas the awarding body, such as the department, board, agency or other authorized representative of the public entity, on a case-by-case basis, may exempt a person or financial institution engaged in investment activities in Iran from submitting contract in excess of \$1 million under the following conditions:

1. The investment activities in Iran were made before July 1, 2010, and the investment activities in Iran have not been expanded or renewed after July 1, 2010. The awarding body must also determine that it is in the best interest of the state or local public entity to contract with the person. Further, the person must adopt and implement a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments; or,
2. The City must make a public finding that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered.

The City Attorney reports that LACERS' or Pensions would be exempt from AB 1650 for any investment activities, actuarial services, or administration of the retirement system pursuant to Article 16 Public Finance, Section 17 of the California State Constitution. Although LACERS' and Pensions may be exempt from AB 1650 for investment activities or actuarial services, these departments must comply with AB 1650 for contracts outside their plenary authority.

Notwithstanding the City Attorney's opinion, Pensions has taken steps to implement compliance with the State law. In April 2010, Pensions adopted a policy for investment managers within the public equity asset class to refrain from purchasing securities with companies involved in Iran's energy sector as identified on a list developed by the Florida State Board of Administration (Attachment 2). The current policy is up for review by the Pensions Board as required every three years. LACERS' reports that existing procurement procedures are currently being amended to comply with AB 1650.

To the best of our knowledge, the City does not have any current agreements with the entities listed on the DGS list. The City's compliance with AB 1650 will be implemented through a Compliance Affidavit as amended by the City Attorney.

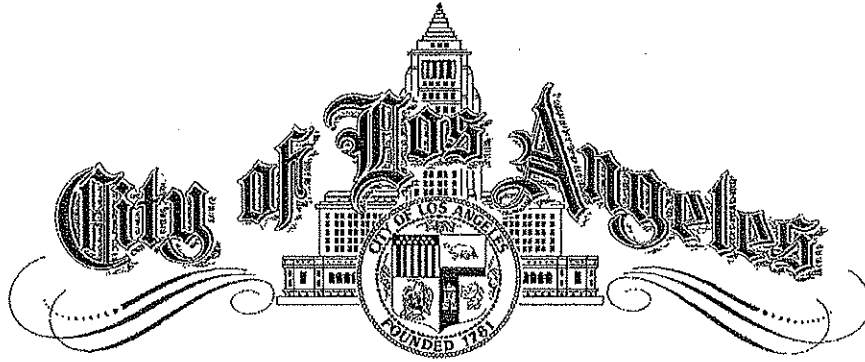
RECOMMENDATIONS

That the City Council:


1. Instruct the Bureau of Contract Administration to upload both the certification form, as amended by the City Attorney entitled Iran Contracting Act of 2010 Compliance Affidavit, and the list of the State Department of General Services Entities Prohibited from Contracting with Public Entities in California, on the Bureau's website and the Los Angeles Business Assistance Virtual Network and continue to monitor for an updated listing to ensure that the City does not conduct business with any of the prohibited firms;
2. Instruct all City departments to comply with the Iran Contracting Act of 2010 and require each bidder to complete and submit the compliance affidavit;
3. Instruct all City awarding authorities to implement the language provided by the City Attorney as part of their procurement disclosure provisions; and,
4. Request that the Office of the City Attorney include language as it relates to the mandate required by Assembly Bill 1650 in the next amended version of the City's Standard Provisions for City Contracts.

FISCAL IMPACT STATEMENT

There is no fiscal impact on the City's General Fund as a result of the adoption of this report.



MICHAEL N. FEUER
CITY ATTORNEY

To: General Managers and Executive Directors of All City Departments
From: Michael N. Feuer, City Attorney 
Date: November 7, 2013
Re: California Iran Contracting Act of 2010 – Compliance Mandate

This letter will explain the requirements of the State's Iran Contracting Act of 2010 ("Act") and remind all City departments of the need to comply with the Act's provisions. Also provided with this letter is a list of vendors which are prohibited from conducting business with the City, a compliance certification affidavit to be completed by all bidders when responding to City solicitations, and an informational document designed to explain the Act's compliance requirements to City contract administrators.

As you might be aware, City Council recently took action asking the City Administrative Officer and this Office to review the City's compliance with the Act and to report to Council with a status report.

Background:

In order to address concerns over the Government of Iran seeking to achieve nuclear weapons capability, Congress passed H.R. 2194, the "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010," (Public Law 111-195), which expressly authorizes states and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran's energy sector.

Pursuant to this authority, the California Legislature soon thereafter passed AB 1650, the "California Iran Contracting Act of 2010," thereby becoming the leading state in the nation on this issue. The Legislature deemed this bill to be of statewide concern, thereby requiring all local public entities to immediately implement the law. The Act was codified in the California Public Code at Sections 2200-2208.

The Act:

The Act prohibits a contractor or vendor from bidding on or entering into or renewing a contract for goods or services of \$1,000,000 or more with a public entity if that contractor or vendor provides goods or services of \$20,000,000 or more in the energy sector of Iran, or a financial institution that extends \$20,000,000 or more in credit for such purpose.

As mandated by the Act, the California Department of General Services ("DGS") developed a list of companies currently prohibited from doing business with State agencies and local governments entitled, "*Entities Prohibited from Contracting with Public Entities in California per the Iranian Contracting Act, 2010*" ("List"). Any company identified on the DGS List is notified of its inclusion prior to publication. The List is updated every 180 days, and is available on the DGS website¹. A current copy of the List is enclosed with this letter (Enclosure A).

The Act requires a prospective bidder to certify that it is not identified on the DGS List and is not a financial institution that extends \$20,000,000 or more for the purpose of investing in the energy sector of Iran. It is the awarding authority's responsibility to determine whether a bidder, based on the submitted certification, is in fact eligible to contract with the public entity.

The certification requirement applies regardless of the procurement approach, method, or solicitation format used, including, but not limited to: Requests for Proposals, Invitation for Bids and non-competitive awards. Bidders must complete and submit the compliance certification affidavit at the time of bid submission or, in the event of a non-competitive contract award, the prospective contractor or vendor must fulfill the certification requirement prior to execution of the contract.

In accordance with California Public Contract Code Section 2205, penalties for false certification, enforceable by the Office of the City Attorney, may result in civil penalties in an amount equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made, termination of an existing contract, and ineligibility to bid on a contract for a period of three years from the date of the determination that the certification was false.

Proposed Procurement Language and Certification Form:

Every awarding authority in the City must comply with the Act. To effectuate uniform compliance with the Act, we recommend every awarding authority adopt the following language into its procurement disclosure provisions:

¹ The "*Entities Prohibited from Contracting with Public Entities in California per the Iranian Contracting Act, 2010*" link is: <http://www.documents.dgs.ca.gov/PD/pollproc/Iran%20Contracting%20Act%20List.pdf>

"Iran Contracting Act of 2010: In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit"

DGS developed a bidder certification form template for use by public entities. We have adapted the DGS form for use by the City, entitled "Iran Contracting Act of 2010 – Compliance Affidavit" (Enclosure B). Every bidder must submit a completed and signed compliance certification affidavit. The Act provides limited exceptions to the certification requirement. See Public Contract Code Sections 2203(c) and (d) for additional information regarding the exceptions.

The bidder certification form, as well as supporting instructive language, should additionally be placed on both the Bureau of Contract Administration website and Los Angeles Business Assistance Virtual Network (BAVN), in order to facilitate accessibility for contractors and vendors seeking to conduct business with the City of Los Angeles

In order to facilitate incorporation of the Act's certification requirement into routine procurement procedures, we have additionally enclosed a sample document entitled "The Iran Contracting Act – Implementation and Processing Procedures" (Enclosure C). This document provides contract administrators with an overview of the law, as well as suggested implementation and processing guidelines to ensure proper management of vendor compliance certification affidavits.

Conclusion:

As the largest city in the State, compliance by Los Angeles is essential to effectuate this important piece of legislation. We encourage all awarding authorities in the City to fully comply with the spirit and intent of the Act.

For additional information on the Iran Contracting Act of 2010, please contact Deputy City Attorney Daniel Kreinbring of the City Attorney's Office at (213) 978-8188. You can also get information about the Act from the State of California Department of General Services, Procurement Division at (916) 375-4400 or (800) 559-5529.

MF:dk
Enclosures



**Department of General Services
Procurement Division**

707 Third Street, Second Floor, West Sacramento, CA 95605
(916) 375-4400 (800) 559-5529

List Date: June 3, 2013

**Entities Prohibited from Contracting with Public Entities in California per the
Iranian Contracting Act, 2010**

- | | |
|---|--|
| 1. Ak Makina | 16. Panyu Chu Kong Steel Pipe
Company, Ltd. |
| 2. Amona | 17. Petroleos de Venezuela |
| 3. Belaz | 18. Schwing America Inc. |
| 4. Belneftkhim | 19. Shandong FIN CNC Machine Co.,
Ltd. |
| 5. ChinaOil | 20. Sinohydro |
| 6. CNPC (China National Petroleum
Corporation) | 21. Sinopec Corp |
| 7. DK Tech Corporation | 22. SK Energy |
| 8. Grimley Smith Associates | 23. Snam Rete Gas |
| 9. Hyundai Heavy Industries | 24. Sonangol |
| 10. Indian Oil Corporation | 25. Unipet |
| 11. Kingdream PLC | |
| 12. Liquefied Natural Gas Limited | |
| 13. Naftiran | |
| 14. Oil and Natural Gas Corp (ONGC) | |
| 15. Oil India Limited | |

If you have any questions regarding this list, please contact:

Office of Policies, Procedures and Legislation
charles.deyoe@dgs.ca.gov

ENCLOSURE A

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits bidders engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A bidder who "engages in investment activities in Iran" is defined as either:

1. A bidder providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; **or**
2. A bidder that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The bidder shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the bidder is **not** identified on the DGS list of ineligible businesses or persons and that the bidder is **not** engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the bidder shall provide its vendor or financial institution name, and City Business Tax Registration Certificate (BRTC) if available, in completing **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the bidder or financial institution identified below, and that the bidder or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DGS list of persons engaged in investment activities in Iran.

<i>Vendor Name/Financial Institution (printed)</i>		<i>BRTC (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Print Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>City Approval (Signature)</i>	<i>(Print Name)</i>

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a bidder or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the bidder or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the bidder or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (printed)</i>		<i>BRTC (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Print Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>City Approval (Signature)</i>	<i>(Print Name)</i>

ENCLOSURE B

Iran Contracting Act of 2010 - Implementation and Processing Procedures

Overview:

The Iran Contracting Act of 2010 prohibits bidders engaged in investment activities in Iran, from bidding, submitting proposal for, entering into or renewing contracts with the City for goods and services of \$1,000,000 or more.

A bidder or proposer who engages in investment activities in Iran is defined as either:

1. A bidder or proposer providing goods or services of \$20,000,000 or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector or Iran; OR
2. A bidder that is a financial institution that extends twenty million dollars \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on the list created by the State of California, Department of General Services (DGS) as a person engaging in the investment activities in Iran.

All bidders or proposers for department contracts of \$1,000,000 or more shall certify that they are not identified on the DGS list of ineligible businesses or persons, and that they are **not** engaged in investment activities in Iran by signing and submitting the *Iran Contracting Act of 2010 Compliance Affidavit*.

Implementation & Processing:

- All bidders or proposers for a Department contract valued at \$1,000,000 or more must sign and submit the *Iran Contracting Act of 2010 Compliance Affidavit* with their bid or proposal.
- Upon receiving the bid or proposal, the awarding authority contract administrator must review the submitted affidavit for completion and signature and check the DGS list of businesses that are prohibited from contracting with public entities in California. The link for the DGS list is: <http://www.documents.dgs.ca.gov/PD/poliproc/Iran%20Contracting%20Act%20List.pdf>
 - Once the review is complete, the contract administrator will place the affidavit in the awarding authority's official file associated with the proposal, or such other place as is designated by the awarding authority's general manager for safe recordkeeping.
- In the event that the awarding authority intends to award a contract valued at \$1,000,000 or more, outside of the competitive process, the awarding authority must complete the evaluation process described above prior to executing the contract.

Any questions regarding the Iran Contracting Act of 2010 may be directed to the State of California, Department of General Services, Office of Policies, Procedures, and Legislation (OPPL) at PPO@dgs.ca.gov. For more information, the webpage for the OPPL is located at www.dgs.ca.gov/pd/Resources/PDLegislation.aspx.

ENCLOSURE C

Los Angeles Fire & Police Pension System

14.0 – IRAN POLICY

GENERAL POLICY

- 14.1 Investment managers should refrain from purchasing securities where the company has been identified as doing business in Iran's energy sector or with the government of Iran, when the same investment goals concerning risk, return and diversification can be achieved through the purchase of another security.

The list of scrutinized companies identified by the Florida State Board of Administration as having activities in the Iran petroleum energy sector will constitute the Board's list of companies subject to its Iran Policy.

INVESTMENTS SUBJECT TO DIVESTMENT

- 14.2 The Iran Policy shall apply only to actively managed separate accounts in the public equity asset classes. The Iran Policy shall not apply to index funds, commingled funds, hedge funds or assets held in the real estate or alternative investment program.

HISTORY

- 14.3 Adopted: April 15, 2010

REVIEW

- 14.4 This Policy shall be reviewed by the Board every three years in April.