



## MEMORANDUM

TO: Mayor and Council

FROM: Rolando Fernandez, Capital Contracting Officer

DATE: September 28, 2018

SUBJECT: Response to City Council Resolution 20180201-067 regarding Border Wall Construction

---

The purpose of this memorandum is to respond to Resolution No. 20180201-067 (Resolution) that was passed on February 1, 2018.

In opposition to the Executive Order 13767, related to the construction of a wall on the U.S.-Mexico border, the Resolution directed the City Manager to initiate the following actions:

1. Study and review the economic and other effects any physical border wall may have on the city of Austin;
2. Consult in the development of the policy options with other localities that are exploring or have established similar financial policies related to the proposed border wall, including, but not limited to Tucson, Arizona, and San Diego, California; and,
3. Develop a policy requiring every entity that seeks to do business with the City of Austin to disclose itself, any parent company and subsidiaries, any bids submitted or contract awarded, related to the design, construction, or financing of the proposed border wall, with consideration to legally permissible options and all relevant operational impact to City departments.

The Capital Contracting Office (CCO) led the effort to respond to Council's directive. CCO established a project team including staff from the Purchasing Office, Small and Minority Business Resources and Economic Development Departments. This response has been prepared in collaboration with these departments.

## **1. Economic and Other Impact**

In consideration of the scope and potentially far-reaching impact of the proposed border wall on the Central Texas area, and the need to analyze the information through the lens of the "Austin Region" and/or the Austin-San Antonio "Super-Region", the Economic Development Department in partnership with CCO will engage a third party consultant to assist with conducting an impact study to assist with informing policy direction on this issue. A solicitation to procure specific expertise is being explored to address Council's direction.

## **2. Consultation with Other Localities**

Localities within Texas, California, Arizona and New Mexico were consulted regarding policy options for similar financial policies related to the proposed border wall. To date, California is the only state bordering Mexico whose cities have passed relevant ordinances. The State of New York has also taken pertinent action, and that information has also been included with the results provided below. Detailed research information is provided in the supporting presentation (Attachment A).

**Texas:** Seventeen cities in the Rio Grande area passed resolutions stating non-support of Executive Order 13767; however, none seek disclosure or to restrict doing business with firms performing work on the Border Wall. Rio Grande Cities with applicable resolutions include: Alamo, Alton, Brownsville, Edinburg, El Paso, La Joya, Laguna Vista, Los Fresnos, McAllen, Mercedes, Mission, Palmview, Pharr, Port Isabel, San Juan, Sullivan City and Weslaco.

**California:** The cities of Oakland and Los Angeles have passed ordinances regarding contracting with entities performing work on the Border Wall, the remainder of the cities consulted with have passed related resolutions. Summaries of actions taken in each city are noted below.

- **Oakland** passed an ordinance that prohibits the City from contracting with companies that contract with the federal government to provide services or goods to construct the border wall as referenced in Executive Order No. 13767. The ordinance requires disclosure and requires monitoring for compliance.
- **Los Angeles** passed an ordinance that requires firms to disclose whether they are performing work on the border wall; however, it is not monitoring for compliance and does not restrict doing business with firms.
- **San Francisco** developed a draft ordinance prohibiting work with entities performing border wall work, requiring disclosure, and monitoring for compliance; however, the ordinance was not finalized and is now considered inactive.

- **Berkeley** passed a resolution expressing its intent to divest from companies involved with designing, building, or financing the border wall, and is currently in the process of drafting an ordinance. Following the resolution, the City Council revised their investment policy to prohibit investment with companies performing work or financing the border wall.
- **San Diego** passed a resolution seeking to require disclosure of all companies who submit a bid or are awarded a contract related to designing, constructing, or financing the proposed border wall opposing the Border Wall. The City currently has no ordinance.

**California Legislature:** introduced legislation, Assembly Bill (AB) 2355 and Senate Bill (SB) 30, prohibiting contracting with border wall entities.

- AB 2355 will become effective January 1, 2019. AB 2355 prohibits companies doing business related to the border wall from receiving certain tax breaks related to energy, manufacturing, and income tax for expanding or relocating businesses in California.
- SB 30, would have prohibited the State from executing or renewing contracts with companies or individuals that accept a federal contract to either provide goods or services related to a wall project along California's southern border with Mexico. The bill was amended in May of 2018 and does not currently require a disclosure of work or prohibit work from companies performing work on the border wall.

**Arizona:** Resolutions were passed by the cities of Flagstaff and Tucson.

- Flagstaff passed a resolution seeking to prohibit doing business with any company involved in the design, construction or maintenance of the border wall.
- Tucson passed a resolution seeking disclosure by companies of their involvement with the border wall prior to City investments in those companies, as well as divestiture from all firms involved with the design, construction, or financing of the border wall prior to the City's investment.

**New Mexico:** The City of Las Cruces passed a resolution opposing the border wall. The resolution did not seek disclosure or to restrict contracting with firms who perform work related to the border wall.

**New York State Legislature** introduced legislation that would require firms to disclose participation in contracting activity related to the border wall, would prohibit investments of certain public funds in entities that contract to perform border wall work, and would require monitoring for compliance at the state agency level.

Staff will continue to monitor border wall actions and legislative occurrences in order to provide Council updates as needed.

### **3. Disclosure policy recommendation**

The City's need for quality construction-related services is at an all-time high, and the ability to meet the need is currently challenging. There is an abundance of construction work going on in Austin and surrounding cities, counties and in the state. Contractors have many choices with regard to whom they choose to do business. As a result, the City is experiencing low responses to solicitations, causing some projects to be re-solicited.

With fewer responses and less competition, there is the potential for the cost and quality of the services to be negatively impacted. Additionally, re-soliciting projects impacts project schedules and increases the amount of time and staff resources necessary to get the project initiated.

CCO is making every effort to increase the response rate for City solicitations, and decrease the number of projects that must be re-solicited. Given the unknown impact a disclosure policy may have on the procurement of construction services needed to implement the City's Capital Improvement Program, it is imperative that CCO engage with key stakeholders prior to making a disclosure policy recommendation.

CCO's engagement plan includes communication with trade associations, professional contracting and consulting organizations, local chambers of commerce, and registered and certified firms with the City, as well as other local businesses. Following engagement efforts, stakeholder feedback will be considered in CCO's development of a disclosure policy recommendation.

#### **Next Steps:**

1. Perform a comprehensive financial impact study with a target completion date of March 2019.
2. Launch an external stakeholder engagement effort to assess the contracting and consulting community's concerns and to collect feedback for consideration in drafting a disclosure policy. It is anticipated that this study will be completed by December 2018.
3. Continue tracking what other localities are doing regarding similar financial policies related to the proposed border wall

If you have further questions, or need additional information, please contact me at (512) 974-7749.

Encl.: Research Information

cc: Spencer Cronk, City Manager  
Elaine Hart, Chief Financial Officer  
Greg Canally, Deputy Financial Officer  
James Scarboro, Purchasing Officer  
Veronica Briseño, Director, Small & Minority Business Resources Department  
Rebecca Giello, Interim Director, Economic Development Department

