



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 25 2004

Ms. Jessica F. Heinz
Assistant City Attorney
City of Los Angeles
222 South Hill Street, 7th Floor
Los Angeles, CA 90012

RE: City of Los Angeles Ordinance No.175346

Dear Ms. Heinz:

This is in response to your letter, received by several offices within the Department of Transportation (DOT or the Department), asking that we review the City of Los Angeles Ordinance, No.175346 (the Ordinance), and advise whether the Ordinance is compatible with Federal procurement requirements governing third-party contracts funded by DOT financial assistance programs.

After a careful review of the Ordinance under the Department's relevant financial assistance programs, we must conclude that the Ordinance is inconsistent with the Federal policy of full and open competition in procurement. This policy is found in several statutory and regulatory provisions applicable to DOT-assisted procurements. Consistent with this policy, it has been the long-standing position of the Department that requirements like those imposed by the Ordinance have the effect of limiting competition because they are unrelated to cost efficiency and to the purposes of the funded projects and are not necessary to assure the responsibility of a contractor. Moreover, in our opinion, the requirement that a company search corporate records more than 140 years old would have a chilling effect on competition.

The relevant full and open competition requirements may be found in 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, applicable to all third party contracts funded by DOT financial assistance awarded directly to a local government. See 49 CFR 18.36(c). These requirements may also be found in 23 USC 112, applicable to all Federal Highway Administration (FHWA) assisted construction contracts and in Federal Transit laws, 49 USC 5307(d) and 5323(o), applicable to Federal Transit Administration (FTA) assisted contracts. Thus, under Sec. 10.41.3 of the Ordinance, it is by its own terms inapplicable to DOT-assisted contracts governed by any of these requirements. This determination does not apply to a small category of DOT-assisted contracts, funded by grants to States, that are governed solely by State procurement requirements. See 49 CFR 18.36(a);18.37(a).

Should you have any further questions on this matter, please feel free to call Debra Rosen, on my staff at (202) 366-9165.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Rosen". The signature is written in a cursive style with some stylized flourishes.

Jeffrey A. Rosen