

## EXECUTIVE ORDER

### No 6: ENSURING THE COST-EFFECTIVENESS OF CONTRACTS FOR PERSONAL SERVICES

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WHEREAS, the State of New York has a talented and experienced work force of public employees; and

WHEREAS, state agencies must nonetheless sometimes enter into contracts with private entities to perform work on behalf of the State; and

WHEREAS, agencies should enter into private contracts only after consideration of whether state employees can practicably meet the same need by providing services of the same or better quality for equivalent cost; and

WHEREAS, the state should encourage transparency and openness in contractual relationships between state agencies and private parties, to allow for appropriate public scrutiny.

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

#### A. Definitions

1. "State agency" shall mean any state agency, department, office, board, bureau, division, committee, council or office.
2. "Qualified Personal Services Contract" ("QPSC") shall mean any contract entered into by a state agency with any private party pursuant to State Finance Law § 163, under which: (a) the agency believes that a majority of the costs of the contract are attributable to compensation of the contractor's personnel; and (b) the agency can reasonably anticipate it will incur costs for the compensation of personnel of \$1 million or more over any twelve-month period. QPSCs shall include contracts whose primary purpose is evaluation, research and analysis, data processing, computer programming, engineering, environmental assessment, health and mental health services, accounting, auditing, or similar services. A QPSC shall not include any contract for the provision of legal services or any other services used in or in preparation for the conduct of litigation, including any contract with any consultant or expert witness.

#### B. Establishment of Task Force

1. There is hereby established the Governor's Task Force on Personal Services Contracting ("Task Force").
2. The Task Force shall include the following individuals or their designees: the Director of the Budget, the Deputy Secretary for Labor and Finance, the Deputy Secretary for Economic Development and Infrastructure, the Commissioner of the Department of Taxation and Finance, the Director of the Governor's Office of Employee Relations, the Commissioner of the Department of Civil Service, and the Chief Information Officer. The Director of the Budget shall serve as the chair of the Task Force.

#### C. Contracting Criteria

1. A state agency shall not enter into a QPSC unless the agency has first determined that: (a) the contractor can carry out the task more efficiently or effectively than state employees; (b) the contractor can carry out the task for lower cost than such state employees; or (c) the contract is necessary to protect public health or safety, or for some other compelling reason.
2. A QPSC shall presumptively satisfy the determination required by Section C(1) of this order if:
  - a. a QPSC would result in an improvement in services that cannot be provided by such state employees;
  - b. the services at issue are incidental to a contract for real or personal property, including agreements to service owned, leased or rented equipment;
  - c. a QPSC is necessary to avoid a conflict of interest or to obtain an outside or independent perspective;
  - d. the services at issue cannot feasibly be performed by public employees in the location where they are to be performed;
  - e. use of state employees of the agency conducting the procurement will result in delay that will impair the purposes of the contract;
  - f. the contract will result in cost savings;
  - g. state employees who can perform the contract are not readily available, and budget restrictions or legal constraints on hiring do not allow for the hiring of sufficient public employees as would be necessary to carry out the work; or
  - h. for any other reason the Task Force shall identify and make available for public disclosure.
3. For any QPSC, the relevant agency shall provide the Task Force with a brief description of the contract, and the reason for not using state employees to carry out the task. The agency shall provide a full copy of the contract to the Task Force upon request.
4. If the reason for entering into a QPSC is cost savings, the agency shall provide information that reasonably supports its conclusion, including any data or analysis relied on by the agency.
5. If the QPSC is for information technology consultants, the agency shall state that it has fully complied with the procurement review processes of the Office for Technology.
6. If the reason for the QPSC is not among those set forth in Section C(2) of this order, it shall be reviewed by the Task Force, which may subsequently, through communications with the agency at issue, or with all agencies entering into QPSCs: (a) add the reason to those presumptively permissible; or (b) indicate that the Task Force does not deem the reason given an appropriate basis for entering into this kind of contract in the future.
7. If the agency is unable to submit the information required by Sections C(3) or C(4) of this order, as applicable, within ten business days after the contract was entered into, it shall do so as soon as practicable, along with an explanation of the reason for the delay.

#### D. Operation of the Task Force

1. The Task Force shall meet at least quarterly to review the information provided under this order. It may, in its discretion and in furtherance of the purposes of this order:
  - a. ask for additional information from the relevant agency;
  - b. request such assistance from other state agencies or personnel as may be necessary to carrying out its tasks under this order, which assistance shall be provided;
  - c. solicit information from third parties, including the contracting party, which may be useful in evaluating the agency's decision to enter into a QPSC; or
  - d. provide recommendations to agencies for changes in their contracting procedures, including recommendations that agencies no longer enter into QPSCs for the services at issue, or not do so under certain circumstances.
2. Members of the Task Force shall recuse themselves in discussions regarding contracts entered into by the agency they represent.
3. The Task Force may, by specific written request to the relevant agency, ask for any information relevant to this order regarding any QPSC the agency has entered into in the past that is relevant to any present QPSC, which information shall be provided. The Task Force may also take any of the actions provided for in Section D(1) of this order in regard to any such prior contract.
4. All agencies that enter into QPSCs covered by this order shall make available on their websites a list of such contracts, and any amendments to such contracts, along with the estimated amount of the contract and a brief description of the reason for entering into the contract. The agency shall make available such contracts to the public either by: (a) posting the contract in an accessible location on the agency website; or (b) indicating on the web page containing the list of contracts that it will send a copy of the contract to anyone who requests it, for which such agency may charge the reasonable cost of copying. The agency shall redact from any publicly disclosed contract the name or social security number of any employee that is included in such document, and any information that would not be required to be disclosed under the Freedom of Information Law.
5. On October 1, 2009 and every year thereafter, the Task Force shall report to the Governor on QPSCs. That report shall be made available to the public and shall contain:
  - a. a summary of the information obtained by the Task Force under this order;
  - b. a listing of all QPSCs that the Task Force has reviewed;
  - c. an evaluation, as to all QPSCs, of the reason given for contracting out, and other potential means of addressing that reason;
  - d. any conclusions by the Task Force as to whether any QPSCs did not meet the criteria set forth in this order, and as to whether any of the contracts require further review; and
  - e. any additional recommendations, relevant to the Task Force's responsibilities.
6. In its initial report on October 1, 2009, the Task Force shall specifically examine contracting out in two areas: (a) transportation engineering; and (b) information technology. Its report shall include

recommendations as to whether and how such contracting may be limited, including regulatory, legislative and/or budgetary proposals.

7. The reports shall indicate the progress the State has made towards the goal of limiting the number of QPSCs to those that comply with the criteria set forth in Section C of this order.

8. The report shall be available for public inspection and copying, provided that the Task Force shall redact the name and social security number of any employee that is included in such document, any other confidential personnel information, and any reference to any confidential information redacted pursuant to Section D(4) or pursuant to the Freedom of Information Law.

E. Miscellaneous Provisions

1. Nothing in this order shall:

- a. affect the validity of any contract entered into by any agency in a manner permissible by law;
- b. relieve any agency of any competitive bidding or other procurement requirements set forth in law or regulation;
- c. require the Task Force to respond to any third party submission, or to report on any contract except as set forth in this order;
- d. provide any legal right to any third party to enforce the terms of this order;
- e. apply to any contracts with another public entity, including a public authority, affiliated not-for-profit organization or subdivision of the state;
- f. affect, in any manner, the process by which the Office of the State Comptroller or Department of Law reviews state contracts; or
- g. supersede any requirement of state or federal statute requiring that services be provided under contract.

2. Unless otherwise stated, this order shall cover only contracts for personal services entered into 60 days after the date of this order, and for which a request for proposal or other solicitation was not issued prior to the effective date of this order. For purposes of this order, a contract is “entered into” on such date that it has been signed by all parties, and has received any approvals required before the contract can go into effect.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of June in the year two thousand eight.

David A. Paterson  
Governor

Charles O'Byrne  
Secretary to the Governor