

No. 10

EXECUTIVE ORDER

**REDUCING COSTS FOR PERSONAL SERVICES CONTRACTS**

**WHEREAS**, the State is in a fiscal crisis, and must take all feasible measures to control its expenditures and achieve cost savings;

**WHEREAS**, the 2011-12 Executive Budget sets forth a program to address this crisis, premised on the principle of shared sacrifice and reducing expenditures, through which the burden of putting the State's fiscal house in order is spread across a wide spectrum of interests;

**WHEREAS**, the 2011-12 Executive Budget requires particularly significant cost reductions from state agencies, for whom the proposed budget would bring about a ten percent reduction in operating expenses;

**WHEREAS**, the State is continually reviewing personal services contracts to reduce the number and cost of such contracts;

**WHEREAS**, the State must do all it can to ensure that it is getting the best possible price of contracts paid for with taxpayer dollars, and cannot merely follow the contracting practices of the past;

**NOW, THEREFORE**, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. The following definitions will apply for purposes of this order:
  - a. "Closely Affiliated Not for Profit Organization" shall mean corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors
  - b. "Personal Services Contract" shall mean any contract entered into by a state agency with any private party, under which the agency believes that a majority of the costs of the contract are attributable to compensation of the contractor's personnel. Personnel services contracts 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, legal or similar services, with a

total value of over two hundred thousand dollars. A “personal services contract,” for purposes of this order, shall not include any contract:

- i. whose price is governed by federal or state law;
  - ii. for the purchase of commodities;
  - iii. whose renewal must be subject to a competitive bid;
  - iv. with a preferred source, as that term is defined by State Finance Law § 162; or
  - v. necessary for compliance with Article 15-A of the Executive Law and any regulations issued thereunder.
- c. “State agency” shall mean any state agency, department, office, board, bureau, division, committee, council or office.
  - d. “Single source” shall have the meaning set forth in State Finance Law § 163.
  - e. “Renewal” shall mean the negotiation of a new contract with an entity already providing services to the State of a kind equivalent to that to be provided for in such new contract, but which shall not include a contract extension whose price is specifically provided for in the existing contract.
2. Each state agency shall, upon the expiration of a personal services Single source contract, agree to a renewal of such contract only if the contractor agrees to a reduction in the State’s annual costs of no less than ten per cent off the annual cost of the prior contract (the “mandatory reduction target”), except as provided for in paragraph 4. Such reduction may be reached by adjustment of the price, or by such other measures whose combined value to the State totals at least ten per cent of the annual cost of the prior contract.
  3. Any state agency that determines that it cannot secure the reduction in contract price provided for by section 2 of this Order shall, in writing to the Director of State Operations prior to any signing of or agreement to such contract renewal:
    - a. State the reduction that was achieved; and
    - b. (1) Describe all efforts that the agency has made to secure such a reduction, including any efforts to seek an alternative contractor at a lower price, and set forth the reasons for the agency’s determination that such a reduction cannot be achieved; or (2) set forth any reasons as to why such efforts cannot be made, including any legal restrictions not set forth in section 1 of this Order, provided that past practice shall not by itself be a sufficient reason not to comply with this Order.

An agency submitting the statement provided for by this paragraph shall not proceed with the contract renewal without the approval of the Director of State Operations or his or her designee.

4. In addition to contracts covered by paragraph 2, each state agency shall, prior to the expiration of a Personal Services Contract that provides the agency the option to continue the contract at an equal or higher cost, take all reasonable measures to ensure that the same services may not be acquired at a lower price. Such measures shall include: (a) discussions with the contractor regarding its acceptance of lower price terms; (b) evaluation of whether re-bidding the contract will produce greater cost savings; and (c) consultation with the Director of State Agency Redesign and Efficiency to determine if savings can be achieved by aggregating such the contract with other contracts with the same contractor. Prior to any such renewal, the state agency shall advise the Director of State Operations of such steps, and the basis for its decision to seek renewal.
5. The Director of State Operations may from time to time review the application of the mandatory reduction target to particular classes of contracts or contracts by particular agencies, and may in writing to affected agencies reduce or increase such target for such contracts.
6. All state agencies are directed to seek reductions in contracting expenses in addition to those set forth in this order, including through reductions in the costs of contract renewals that exceed those of the mandatory reduction targets.
7. Agencies are encouraged to seek all other reasonable and lawful means to reduce the costs of their personal services contracts. Agencies should provide whatever assistance and support may be warranted to assist contractors in reducing their costs, including the costs of subcontracts, so that they may achieve the savings provided for in this Order.

8. The Spending and Government Efficiency Commission (“Commission”), created by Executive Order No. 4, shall review the State’s practices regarding contracts for personal services, to examine ways to reduce their number and cost.
9. 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. provide any legal right to any third party to enforce the terms of this order;
  - d. apply to any contracts with another public entity, including a public authority, closely affiliated not-for-profit organization, or subdivision of the state; or
  - e. affect, in any manner, the process by which the Office of the State Comptroller or Department of Law reviews state contracts.

G I V E N under my hand and the Privy Seal of the  
State in the City of Albany this second  
day of March in the year two thousand  
eleven.

BY THE GOVERNOR

Secretary to the Governor