



STATE OF NEW YORK  
**EXECUTIVE DEPARTMENT**  
DIVISION OF THE BUDGET  
STATE CAPITOL  
ALBANY, NEW YORK 12224

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<b>BUDGET BULLETIN</b>	<b>B-1187</b>	<b>May 8, 2009</b>
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**TO: ALL DEPARTMENT AND AGENCY HEADS**

**FROM: Laura L. Anglin** 

**SUBJECT: Executive Order No. 6 of 2008: Ensuring the Cost-Effectiveness of Contracts for Personal Services**

This Bulletin addresses the provisions of Governor Paterson's [Executive Order No. 6](#) which establishes procedural and reporting requirements regarding certain State agency contracts for personal services.

Executive Order No. 6, issued on June 4, 2008, creates the Governor's Task Force on Personal Services Contracting ("Task Force"), and requires agencies provide certain reports on personal services contracts to the Task Force. This Bulletin summarizes the requirements of the order; further clarifies parameters of the order's requirements; and details agencies' compliance obligations under the order, while also providing a new electronic standardized method for reporting.

## **SECTION I: EXECUTIVE ORDER NO. 6**

### **A. GENERAL PURPOSE**

Executive Order No. 6 recognizes that State agencies must sometimes enter into contracts with private entities to perform needed work and augment the efforts of the qualified and experienced State employee-workforce. The Executive Order aims to ensure that agencies enter into such contracts only after considering whether State employees can practicably meet the same needs by providing services of the same or better quality at an equivalent or lower cost.

To that end, and to ensure transparency, the Executive Order establishes criteria and reporting requirements for such contracts and creates the Governor's Task Force on Personal Services Contracting (Task Force) charged with: receiving the agency reports; obtaining additional information as necessary; and issuing an annual report on State agencies' use of contractual personal services including Task Force evaluations and recommendations.

Under Executive Order No. 6, agencies are required to submit to the Task Force a brief description of each Qualified Personal Service Contract (QPSC), and the reason for not using State employees to carry out the work at issue. If the reason is cost savings, the agency must provide information that reasonably supports such conclusion, including data or analysis relied upon by the agency. This information must be provided within ten days of the contract, or if the agency is unable to do so, as soon as practicable.

## **B. SCOPE**

### **Overview:**

This Bulletin and Executive Order No. 6 apply to all State agencies and to all QPSCs as defined below. This Bulletin covers only QPSCs entered into on or after August 4, 2008. For this purpose, a contract is "entered into" on such date that it has been signed by all parties; has received all approvals required before the contract can go into effect; and has met the pre-approval requirements of Budget Bulletin B-1184 Revised, if applicable.

### **Definitions:**

For purposes of this Bulletin, and reflecting the intent of Executive Order No. 6:

- 1) **"State agency"** shall mean any state department, board, bureau, division, commission, committee, council, office, the State University of New York, the City University of New York or other governmental entity performing a governmental or proprietary function for the State. Public authorities and public benefit corporations are excluded.
- 2) **"Qualified Personal Services Contract"** ("QPSC") shall mean any new, renewed, or amended State agency contract with any non-state entity pursuant to State Finance Law §163 or §136-A, 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 personnel service component of **\$1 million or more over any twelve-month period.**

QPSC includes any contract whose primary purpose is:

- evaluation;
- research and analysis;
- data processing;
- computer programming;
- engineering;
- environmental assessment;
- health and mental health services;
- accounting;
- auditing; or
- services that are similar to those described above.

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.

**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 above 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.

**C. TASK FORCE**

**Members:**

The Governor's Task Force on Personal Service Contracting includes the following individuals or their designees:

- Director of the Budget (Chair of the Task Force);
- Deputy Secretary for Labor and Finance;
- Deputy Secretary for Economic Development and Infrastructure;
- Commissioner of the Department of Taxation and Finance;
- Director of the Governor's Office of Employee Relations;
- Commissioner of the Department of Civil Service; and the
- Chief Information Officer.

### **Responsibilities and Reporting Requirements:**

- 1) The Task Force shall meet at least quarterly to review the information provided under the Executive Order. It may, in its discretion and in furtherance of the purposes of the Executive Order:
  - a) Request additional information from the relevant agency;
  - b) Request assistance from other State agencies or personnel as may be necessary to carrying out its tasks under the Executive 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; and
  - 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 only 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) On October 1, 2009 and every year thereafter, the Task Force shall issue a public report to the Governor on QPSCs that contains:
  - a) A summary of the information obtained by the Task Force from State agencies pursuant to the Order;
  - b) A listing of all QPSCs reviewed by the Task Force;
  - c) An evaluation of all QPSCs, of the reasons for contracting out, and other potential means of addressing that reason;
  - d) Any conclusions by the Task Force as to whether certain QPSCs did not meet the criteria of the Executive Order, and as to whether any of the contracts require further review; and
  - e) Any additional recommendations relevant to the Task Force's responsibilities.
- 4) In its initial October 1, 2009 report, the Task Force shall specifically examine contracting out in two areas: (a) transportation engineering; and (b) information technology. The report shall include recommendations as to whether and how such contracting may be limited, including regulatory, legislative and/or budgetary proposals.
- 5) The report shall indicate the progress the State has made toward the goal of limiting the number of QPSCs to those that comply with the criteria set forth in this Bulletin.
- 6) 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) of Executive Order No. 6 or pursuant to the Freedom of Information Law.

## SECTION II: INSTRUCTIONS FOR AGENCY REPORTING

To facilitate such reporting, the Task Force has developed an electronic *QPSC Agency Reporting Form*, which is attached to this Bulletin. Future compliance with the reporting requirements of Executive Order No. 6 must be carried out by completing this form and then emailing it to the Task Force at [dob.sm.EO6TaskForce@budget.state.ny.us](mailto:dob.sm.EO6TaskForce@budget.state.ny.us).

### Agency QPSC Reporting Form:

Please complete the following *QPSC Agency Reporting Form* steps:

- 1) Enter basic State agency and contract information.
- 2) Complete the table in order to confirm that the contract is indeed a QPSC and must be reported to the Task Force.
- 3) Identify the reason for contracting out.
- 4) Elaborate on the reason(s) identified in Step #3 and respond to the "Plan to Procure" box for information technology contracts.
- 5) Identify an appropriate agency contact and submit the *QPSC Agency Reporting Form* electronically to the Task Force.

### Effective Dates:

**Agencies must submit the required report of any QPSCs entered into between August 4, 2008 and April 30, 2009 as soon as possible, but no later than June 1, 2009. If you have previously submitted a QPSC report in a different format, please resubmit such report using the new electronic QPSC Agency Reporting Form. All subsequent QPSC reports need to be submitted to the Task Force within ten days of entering into the contract.**

### Agency Website Responsibilities:

All agencies that enter into QPSCs 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. If agencies have not already made the requisite postings for existing contracts, please do so as soon as possible, however no later than June 1, 2009. The agency shall make such contracts available 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 the agency may charge the reasonable cost of copying.

The agency shall redact from any publicly disclosed contract the name and 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.

**Questions:**

Any questions regarding this Bulletin, the *QPSC Agency Reporting Form*, or Executive Order No. 6 may be directed to the Division of the Budget's Budget Services Unit at (518)-474-9046 or [dob.sm.EO6TaskForce@budget.state.ny.us](mailto:dob.sm.EO6TaskForce@budget.state.ny.us).

ATTACHMENT BELOW

**QPSC Agency Reporting Form**  
(Qualified Personal Service Contract)

**STEP #1**

<b>Agency Name:</b>			
<b>Agency Code:</b>		<b><u>Contract Period</u></b>	
<b>Contract No.:</b>		<b>Initial Start Date:</b>	
<b>B-1184 Control No.:</b>		<b>Renewal/Amendment Date:</b>	
<b>Total Contract Value:</b>		<b>End Date:</b>	
<b>Contractor:</b>			

**STEP #2**

*Governor Paterson's Executive Order No. 6 establishes standards governing the use of consultant contracts by State agencies. As a result, the Governor's Executive Order No. 6 Task Force was created to review reports on agencies use of consultants. This step will help you determine whether or not you are required to complete this report and send it to the Task Force for review.*

**Check "Yes" or "No" to the following:**

1. The contract was entered into pursuant to State Finance Law, Section 163 (Purchasing services & commodities) <b>OR</b> State Finance Law Section 136-A (Engineering contracts).	
<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
2. The last required approval (Comptroller) was received <b>ON OR AFTER</b> August 4 <sup>th</sup> 2008.	
<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
3. The agency believes that a majority of the contract is attributable to personnel <b>AND</b> it will incur costs for the personnel service component of <b>\$1 million or more over any 12 month period.</b>	
<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
4. The contract <b>IS NOT</b> for the provision of legal services nor is it for any other service used in the preparation for the conduct of litigation, including any consultant or expert witness services.	
<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>

**If you checked "NO" to ANY of the above questions:**

You **DO NOT** have to complete this report. The contract does not fall under the scope of Executive Order No. 6.

**If you checked "YES" to ALL of the above questions:**

You must complete Steps 3 through 5 of this reporting form and send it electronically (see Page 3 for details) to the Governor's Task Force on Personal Service Contracting.

**STEP #3**

Please provide the following information about the QPSC contract.

CATEGORY	Check all applicable categories
Evaluation	<input type="checkbox"/>
Research and Analysis	<input type="checkbox"/>
Data Processing	<input type="checkbox"/>
Computer Programming	<input type="checkbox"/>
Engineering	<input type="checkbox"/>
Environmental Assessment	<input type="checkbox"/>
Health Services	<input type="checkbox"/>
Mental Health Services	<input type="checkbox"/>
Accounting	<input type="checkbox"/>
Auditing	<input type="checkbox"/>
Other (Specify below)	<input type="checkbox"/>

REASONS FOR CONTRACTING OUT	Check all applicable reasons
1. The contract is necessary to protect public health or safety.	<input type="checkbox"/>
2. The contract would result in an improvement of services that cannot be provided by State employees.	<input type="checkbox"/>
3. The services are incidental to a contract for real or personal property, including agreements to service owned, leased or rented equipment.	<input type="checkbox"/>
4. The contract is necessary to avoid a conflict of interest or to obtain an outside or independent perspective.	<input type="checkbox"/>
5. The services at issue cannot feasibly be performed by State employees in the location where they are to be performed.	<input type="checkbox"/>
6. Use of State employees to perform services contracted for will result in a delay that will impair the purposes of the contract.	<input type="checkbox"/>
7. The contract will result in cost savings.	<input type="checkbox"/>
8. 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 State employees as would be necessary to carry out the work.	<input type="checkbox"/>
9. A QPSC that meets none of the criteria specified in items 1 through 9 above. (Explain in the space below)	<input type="checkbox"/>

**STEP #4**

*In the space below, briefly describe the QPSC contract. Please provide information that reasonably supports your conclusion from Step #3. If reason #7 (cost savings) is checked, provide the estimated savings amount for the life of the contract by State fiscal year. If necessary, attach/enclose any data or analysis used by the agency in arriving at said finding:*

*(Do not exceed 500 characters)*

Does the QPSC involve information technology consultants?	
<input type="checkbox"/> <b>Yes</b>	<input type="checkbox"/> <b>No</b>
If the answer is "Yes", please provide a "Plan to Procure" number if applicable. <b>Plan to Procure # _____</b>	

**STEP #5**

*Please have the **Agency Contract Specialist** provide the following contact information. Next, submit this report electronically to [dob.sm.EO6TaskForce@budget.state.ny.us](mailto:dob.sm.EO6TaskForce@budget.state.ny.us) and retain a copy for your records.*

Name: \_\_\_\_\_

Phone: (    )    -