

MEMORANDUM

TO: All Cabinet Agency Directors, Executive Directors, Agency Procurement Officers (APOs), Chief Information Officers (CIOs), Chief Financial Officers (CFOs), Chief Legal Counsels (CLCs)

FROM: Robert Blair, Director, Ohio Department of Administrative Services

DATE: July 11, 2011

RE: Procedures for Implementation of Executive Order 2011-12K:
"Governing the Expenditure of Public Funds for Offshore Services"

Executive Order 2011-12K "Governing the Expenditure of Public Funds for Offshore Services" prohibits the use of any public funds within the control of an executive agency to purchase services which will be performed outside of the United States. Under previous Executive Order 2010-09S, the Department of Administrative Services had established standard affirmation and disclosure forms as well as standard terms and conditions for all service contracts. In addition to reaffirming the prohibition on the use of public funds for offshore services, Executive Order 2011-12K requires the Department of Administrative Services to put in place procedures to ensure implementation of the new Executive Order.

Therefore, until further notice, all agencies should do the following:

1. Continue to utilize the current Standard Affirmation and Disclosure Form.

The Standard Affirmation and Disclosure Form currently in place should continue to be used by all agencies for NEW contracts. THE ONLY MODIFICATION TO THE CURRENT FORM SHALL BE TO CHANGE THE TITLE OF THE EXECUTIVE ORDER, THE EXECUTIVE ORDER NUMBER, AND FIRST PARAGRAPH AS DEMONSTRATED IN ATTACHMENT A. No other modifications to the Standard Affirmation and Disclosure form shall be made unless prior approval is given by DAS.

- If a contract was executed prior to August 6, 2010 (the effective date of the Executive Order 2010-09S) and the contract is being renewed or extended for the fiscal year 2012 or the new biennium, use of this form is not required.
- If the contract was executed between August 6, 2010 and July 1, 2011, an affirmation and disclosure form should have been completed for the contract and a new form is not needed.

DAS will notify each agency when any modifications or changes have been made to the Standard Affirmation and Disclosure Form. Modifications or changes should be available no later than October 1, 2011.

2. Continue to Utilize the Standard Terms and Conditions Language.

The Standard Terms and Conditions language currently in place should continue to be used by all agencies for NEW contracts and is still required to be placed into solicitation documents. THE ONLY MODIFICATION TO THE CURRENT FORM SHALL BE TO CHANGE THE TITLE OF THE EXECUTIVE ORDER, THE EXECUTIVE ORDER NUMBER, AND FIRST PARAGRAPH AS DEMONSTRATED IN ATTACHMENT B. No other modifications to the Standard Terms and Conditions shall be made unless prior approval is given by DAS.

- If a contract was executed prior to August 6, 2010 (the effective date of the Executive Order 2010-09S) and the contract is being renewed or extended for the fiscal year 2012 or the new biennium, this form is not required.
- If the contract was executed between August 6, 2010 and July 1, 2011, the Standard Terms and Conditions should have been included and a new form is not needed.

DAS will notify each agency when any modifications or changes have been made to the Standard Terms and Conditions. Modifications or changes should be available no later than October 1, 2011.

3. Have Agency Procurement Officers (APOs) affirm their compliance with the Order.

APOs are required to complete the Agency Affirmation Statement included as Attachment C, and submit to their director or chief executive officer by September 1, 2011.

4. Continue to follow current procedures found in Procurement Manuals, Directives, Policies and Procedures until further notice.

All procurement manuals, policies and procedures should have been updated to reflect the procedures and language modifications required under Executive Order 2010-09S. DAS will notify each agency when any modifications or changes have been made to the Standard Affirmation and Disclosure Form and Standard Terms and Conditions so manuals, directives, policies, and procedures can be updated accordingly. Modifications or changes should be available no later than November 1, 2011.

5. Procedure for Requesting Waivers.

We will have a formalized procedure for waiver requests for contracts effective in FY 2012 and the FY 2012-13 biennium by September 1, 2011. Any agency needing to request a waiver before that date should contact the DAS Office of Legal Services at 614-644-1773.

6. Check the following sources for more information.

- Revised Frequently Asked Questions (FAQs). The FAQs document applicable is available to answer many of the questions that have arisen in the past and may arise with the new Executive Order. This document will be updated as necessary.
- Previously, DAS hosted training sessions to cover frequently asked questions. Because most agencies have already had training and the changes in the new Executive Order are fairly minor, DAS has not planned to schedule more sessions.
- Please check the State Procurement website at www.ohio.gov/procure for any updates.
- For questions, please contact the DAS Office of Procurement Services at 614-466-5090.

We know that each agency is committed to ensuring that the requirements of the Executive Order are fully carried out. It is in this spirit that DAS welcomes any questions or concerns you may have regarding the implementation of the Executive Order. Thank you in advance for your prompt attention to this issue.

ATTACHMENT A

DEPARTMENT OF ADMINISTRATIVE SERVICES
STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

CONTRACTOR/SUBCONTRACTOR AFFIRMATION AND DISCLOSURE:

By the signature affixed to this response, the Bidder/Offeror affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, the Bidder/Offeror becomes the Contractor and affirms that both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

ATTACHMENT B
DEPARTMENT OF ADMINISTRATIVE SERVICES
STANDARD TERMS AND CONDITIONS
EXECUTIVE ORDER 2011-12K
Governing the Expenditure of Public Funds on Offshore Services
July 2011

I. EXECUTIVE ORDER REQUIREMENTS:

The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.

ATTACHMENT C
DEPARTMENT OF ADMINISTRATIVE SERVICES
AGENCY AFFIRMATION STATEMENT
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds for Offshore Services

- I. I acknowledge receipt of Executive Order 2011-12K issued by Governor John R. Kasich, effective on June 21, 2011, which prohibits the use of any funds within the executive agency's control to purchase services which will be provided outside of the United States.

- II. Under my direction, our agency has incorporated the Standard Terms and Conditions developed by the Department of Administrative Services into all agency contracts which:
 - a. Reflect the Order's prohibition on the purchase of offshore services
 - b. Require service providers or prospective services providers to:
 - i. Affirm that they understand and will abide by the requirements of the Order.
 - ii. Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - iii. Disclose any location(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 - iv. Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - v. Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contract.

- III. Under my direction, our agency has incorporated the Standard Affirmation and Disclosure Form developed by the Department of Administrative Services into all quotations, statements of work, and other such proposals for services, which affirms this Order's prohibition on the purchase of offshore services and includes all of this Order's disclosure requirements.
 - a. Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - b. Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any subcontractor will not be considered.

- IV. Under my direction, all procurement manuals, policies and procedures are being reviewed and updated to reflect the Executive Order and procedures and language modifications required under the Executive Order.

Agency Name

Agency Procurement Officer's Name

Date

Agency Procurement Officer's Signature