



**Department of General Services  
Procurement Division**

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**TO: Department Directors  
Procurement & Contracting Officers (PCOs)  
Purchasing Authority Contacts (PACs)**

**RE: Contracting & Procurement Implications of Governor's Executive Order  
S-09-09**

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This Broadcast Bulletin is to provide guidance on implementing certain contract related provisions contained in Governor's Executive Order (EO) S-09-09. The two main provisions in the EO relate to the expenditure of funds for the remainder of Fiscal Year 2008-2009, and a minimum 15% reduction in a department's appropriation for contracts for 2009-2010.

Fiscal Year 2008-2009

The EO provides that:

“ except for projects funded by the American Recovery and Reinvestment Act, or projects funded by bonds, grants or projects specifically mandated by court orders, or public-private partnerships that require no direct state expenditures, any funds encumbered on or after March 1, 2009, for contracts entered into for which goods or services have not been provided or for contracts proposed to be entered into during the 2008-2009 fiscal year by State agencies and departments, regardless of funding source, are hereby disencumbered and the funds will revert to their original funding source if no legal liability will be incurred by the State. If a legal liability will be incurred by the State, approval to continue encumbering the funds must be obtained from the Agency Secretary and the Director of the Department of Finance.”

For purposes of this bulletin, “contract” means any contract document, including, but not limited to, the Standard 65, Standard 213 and Standard 20 used exclusively for CALNET services. Below is general guidance on how to address procurements and contracts that are not exempt from the EO and may require modification.

1. Procurement activities have begun, but a contract has not been executed:  
Your department should not award the contract; this includes amendments to

existing contracts.

2. A contract has been executed, but the goods have not been delivered or the services have not been rendered:

If your department has executed a contract but not received the goods or services, you should cancel the order and/or suspend performance under the contract until your department determines an exemption is appropriate and obtains it. The exception to this is in cases where the State would incur a legal liability for a cancellation or suspension; in cases where the State would incur a legal liability, you must obtain approval from the Agency Secretary and the Director of the Department of Finance. Your department should review individual contract language, communicate with the Contractor and engage Legal Counsel to determine potential liabilities to the State.

3. A contract has been executed and the goods, services, or both have been accepted, but not paid for:

These invoices should be paid.

The EO mandates the Department of Finance (DOF) to establish an exemption process for emergent situations to preserve and protect human life and safety; avoiding significant revenue loss; achieve significant net-cost savings; maintaining multi-year IT system and service contracts approved by the Office of the Chief Information Officer; or providing critical services and functions. The exemption process will establish the basis for Agency Secretaries and Cabinet-level Directors to use to determine if an exemption is justified. The DOF will be releasing additional information related to the EO, which will include information on the exemption process.

#### Fiscal Year 2009-2010

The EO mandates that by 30 days after the passage of a revised budget for FY 2009-2010, departments submit a plan to their Agency Secretary that provides for a 15% reduction in the department's appropriation for contracts, whether by cancellation, suspension, renegotiation or otherwise.

#### Communication with Contractors

In communication with contractors, the following language, or similar, is recommended for contracts that are modified due to the EO.

*Dear Contractor,*

*Governor Schwarzenegger has declared that the State of California is in a financial crisis and suffering a \$24 billion deficit due to developments in the financial markets and weak performance in the California economy. The projected budget deficit requires the State to make critical cuts to programs and services.*

*Per Governor Schwarzenegger's Executive (EO) Order S-09-09*

*(<http://gov.ca.gov/executive-order/12460/>), we hereby notify you that, we are: (Department – enter contextual information here, such as amending, suspending, or cancelling Contract #; as well as the authority for cancelling or modifying the*

*contract, such as the Termination for Convenience clause in the General Provisions).*

*The State of California recognizes the value that the business community plays in providing goods and services to the State and appreciates your cooperation through this financial crisis.*

*Thank you.*

Procurement and Contract Documents at DGS

Procurement and contract documents currently at the DGS for review, approval, or execution will be returned to departments. DGS will not return documents that can be readily identified as exempt from the EO. For documents that are returned, departments may resubmit them specifically identifying how the procurement is exempt from the EO, or by submitting an approved exemption.

The Department of General Services recommends that departmental procurement and contracting staff work closely with their Executive and Budget staff, as well as Legal Counsel to determine appropriate action is taken to fulfill the requirements of the EO.

If you have any questions regarding this notification, please contact:

Office of Policies, Procedures and Legislation

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