

THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7]

[EXECUTIVE ORDER NO. 2006-08]

Contractor Social Responsibility and Offshore Services

September 14, 2006

Whereas, the Commonwealth spends more than 100 million dollars in public funds each year for the procurement of various necessary services that could potentially be outsourced offshore and bears a responsibility to the taxpayers to ensure that these funds are spent reasonably and appropriately; and

Whereas, increasingly many of the companies with whom the Commonwealth contracts with for services provide key elements of these services outside of the geographical boundaries of the United States; and

Whereas, in many cases sending these services off-shore raise significant concerns about contract compliance, the treatment of sensitive and confidential information and other security concerns; and

Whereas, offshore outsourcing can result in the partial or full elimination of domestic jobs and has the potential to weaken the economy of the Commonwealth and the United States; and

Whereas, the U.S. Department of Labor has certified that, since January 2000 to the present, there have been 1,391 Pennsylvania businesses, with a total of 268,672 workers in Pennsylvania, negatively impacted by trade/foreign imports typically resulting in the elimination of jobs; and

Whereas, according to *The Economist Magazine* (February 2005) data from Forrester Research estimates that 3.3 million service industry jobs will have moved overseas by 2015 to take advantage of cheaper labor markets; and

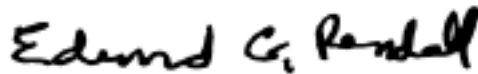
Whereas, the Commonwealth recognizes that it operates in a global economy and that prohibitions against contracting for services performed abroad may implicate agreements negotiated by the United States government and may increase the costs paid by taxpayers for goods and services; and

Whereas, the Commonwealth must balance the interest of ensuring efficient and effective use of taxpayer funds in serving the public interest with the need of ensuring the security of sensitive information and monitoring contract compliance, and therefore has an interest in understanding the extent to which contractors and potential bidders provide contracted services outside of the geographical boundaries of the United States; and

Whereas, therefore, it can be appropriate under certain circumstances to use the competitive bidding process to create incentives for companies to utilize domestic labor when performing services under a contract with the

Commonwealth by giving additional consideration in the contractor selection process to those companies that certify that they will perform contracted services within the geographical boundaries of the United States.

Now, Therefore, to the extent permitted by the laws and agreements of the United States and the Commonwealth of Pennsylvania, it shall be the policy of the Commonwealth that, when Commonwealth executive agencies procure services using the competitive sealed proposals method or the multiple award best value selection method, additional consideration will be given to those companies that certify that they will perform contracted services within the geographical boundaries of the United States.



Governor

Fiscal Note: GOV 06-11. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7. MISCELLANEOUS PROVISIONS

Subchapter ZZ. CONTRACTOR SOCIAL RESPONSIBILITY AND OFFSHORE SERVICES

- Sec.
- 7.831. Additional solicitation requirement.
- 7.832. Certification.
- 7.833. Evaluation.
- 7.834. Remedies.
- 7.835. Audit.

§ 7.831. Additional solicitation requirement.

Every entity submitting a bid or proposal to provide services to a Commonwealth executive agency shall clearly identify which, if any, elements of the service it proposes to perform outside of the United States in the bid or proposal documents as required under § 7.832 (relating to certification), either directly or through other contracts. In developing the criteria for evaluating proposals and selecting contractors, the Commonwealth executive agency shall consider the extent to which each potential contractor proposes to perform elements of the service being procured outside of the United States to the extent permitted by the laws and treaties of the United States and clearly state the criteria being used to make evaluation in all requests for proposals or other bidding documents. This requirement applies to contracts issued under 62 Pa.C.S. §§ 513 and 517 (relating to competitive sealed proposals; and multiple awards).

§ 7.832. Certification.

Potential contractors who propose to perform contracted services provide a signed, written certification with their bid or proposal as to those elements or services which will be provided physically or by contract outside of the geographical boundaries of the United States. This requirement applies to contracts issued under 62 Pa.C.S. §§ 513 and 517 (relating to competitive sealed proposals; and multiple awards).

§ 7.833. Evaluation.

In the selection process, the Commonwealth executive agency shall award points commensurate with the amount of contracted services performed in

the United States relative to amount of contracted services performed in the United States by other offerors or contractors. Those offerors or contractors who do not provide the certification required under § 7.832 (relating to certification) will not receive any of the points allotted for this criterion/evaluation factor.

§ 7.834. Remedies.

Any contractor or subcontractor who is found to have falsely certified that services covered under a proposed contract will be performed within the United States or who fails to otherwise conform to the certification by providing services outside of the United States which had been certified as being provided within the United States shall be subject to one or more of the following:

- (1) The contract at issue may be cancelled.
- (2) The contractor may be debarred from doing business with the Commonwealth.
- (3) Criminal action may be taken for filing a false certification with a public official.
- (4) Payment may be withheld by the Commonwealth purchasing agency.
- (5) The Commonwealth purchasing agency may take action to recover any payments made.

§ 7.385. Audit.

The Commonwealth purchasing agency shall reserve the contractual right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to ensure compliance with the certification submitted by the contractor or subcontractor under § 7.832 (relating to certification).

[Pa.B. Doc. No. 08-126. Filed for public inspection January 25, 2008, 9:00 a.m.]