Executive Order Suspending State Contracts

University contracts with the State of California may be impacted by Gov. Schwarzenegger’s June 8, 2009, Executive Order S-09-09 (Order), which suspends funding for State agency contracts except for those specified in the Order. Moreover, new contracts between the University and the State, as well as amendments to and extensions of existing contracts between these parties, may also be impacted.

Specifically, the Order “disencumbers funds” for contracts entered into on or after March 1, 2009, for goods or services that have not been provided. Funding approval for proposed contracts for fiscal year 2008-09 have also been suspended. The Order does not apply to projects funded by the American Recovery and Reinvestment Act; projects funded by bonds or grants; projects specifically mandated by court orders; public-private partnerships that require no direct state expenditures; or interagency agreements exempt by Department of Finance guidelines. Moreover, if legal liability will be incurred as a result of the suspension or termination of a contract, the relevant State department or agency must obtain approval to continue encumbering State Funds from the Agency Secretary and the Director of the Department of Finance. For fiscal year 2009-2010, all State departments must submit reduction plans to (and presumably obtain approval from) the Agency Secretary for new contracts, extensions and purchases.

The Office of the General Counsel (OGC) recommends that University offices administering contracts with the State contact the relevant State agency or department to determine whether it intends to cancel or terminate a contract pursuant to the Order. Similarly, a University office administering an interagency agreement or one that contains terms identical to an interagency agreement is encouraged to contact the relevant department or agency to confirm that it will treat the contract as an interagency agreement. We further recommend that University offices obtain written confirmation regarding an agency or department interpretation.

Please note that while the Order may affect contracts that the University has with the State, it does not require the University to suspend University contracts with other parties.

The Order can be found at: http://gov.ca.gov/executive-order/12460/.

CONTACT If you have questions regarding how Executive Order S-09-09 may affect your contracts or projects, please contact Mary MacDonald, Senior Counsel, Business & Land Use.