Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF THE SECRETARY
Room 383, Capitol Annex
702 Capital Avenue
Frankfort, KY 40601-3462
(502) 564-4240
Fax (502) 564-6785

Steven L. Beshear
Governor

Lori H. Flanery
Secretary

SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a formal review process should be created whereby the Finance and Administration Cabinet would provide oversight and direction to an agency of the Commonwealth that is in a dispute with a vendor regarding documents that it believes are being improperly withheld by the vendor and are necessary to conduct a thorough review of the vendor's activities pursuant to said contract; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, 45A.230, and 200 KAR 5:314, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

I. Upon the filing of a Petition for Determination with the Finance and Administration Cabinet by an agency of the Commonwealth, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.

II. Upon the filing of a Petition for Determination from an agency of the Commonwealth, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits,

investigations or any other formal inquiry and a dispute has arisen as to what documents are necessary to conclude the inquiry.

III. Upon the filing of a Petition for Determination by an agency of the Commonwealth pursuant to Section I or Section II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

IV. If the Determination concludes that documents are being wrongfully withheld by the vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall pursue any and all options that it possesses to obtain the documents in question, including, but not limited to the following:

a. Initiating discussions with the vendor to obtain the documents determined to be necessary for the inquiry;
b., Terminating the vendor's contract; or
c. Filing an action jointly or singularly against the vendor in a court of appropriate jurisdiction to obtain a court order mandating the disclosure of the documents determined to be necessary for the inquiry.

V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

THIS ORDER SHALL BECOME EFFECTIVE UPON EXECUTION.

Lori H. Flanery

Lori H. Flanery, Secretary
Finance and Administration Cabinet

Dated: August 25, 2011

APPROVED FOR FORM AND LEGALITY:

E. Jeffrey Mosley

General Counsel
Finance and Administration Cabinet