



**TED STRICKLAND**  
GOVERNOR  
STATE OF OHIO

## **Executive Order 2010-09S**

### **Banning the Expenditure of Public Funds for Offshore Services**

1. **Ohio's Economic Vitality Necessitates Constant Vigilance in State Job Creation Efforts.** State officials and employees must at all times remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio, in particular, and must do so especially during Ohio's continuing efforts to recover from the recent global recession.
2. **No Public Funds Should be Spent on Services Provided Offshore.** Allowing public funds to pay for offshore services undermines economic development objectives and any such offshore services carry unacceptable quality and security risks.
  - a. **The Purchase of Offshore Services with Public Funds Undermines Economic Development and Other Job Creation and Retention Objectives.** The expenditure of public funds for services provided offshore deprives Ohioans and other Americans critical employment opportunities. It also undermines efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which the State has invested heavily.
  - b. **The Purchase of Offshore Services Has Unacceptable Business Consequences.** The use of offshore service providers could pose unacceptable data security, and thus privacy and identity theft risks. There are pervasive service delivery problems with offshore providers, including dissatisfaction with the quality of their services and with the fact that services are being provided offshore. It is difficult and expensive to detect illegal activity and contract violations and to pursue legal recourse for poor performance or data security

violations. The State's use of offshore service providers ill-serves the people of Ohio who are the primary consumers of the services provided by the State.

- 3. Ohio's Policy Has Been – and Must Continue To Be – That Public Funds Should Not Be Spent on Services Provided Offshore.** Throughout my Administration, procurement procedures have been in place that restrict the purchase of offshore services. Despite these requirements, federal stimulus funds were recently used to purchase services from a domestic company which ultimately provided some of those services offshore. This incident was unacceptable and has caused me, through this Order, to redouble my commitment to ensure that public funds are not expended for offshore services.
- 4. Additional Steps Will Ensure that Public Funds Are Not Spent on Services Provided Offshore.** In order to ensure that the State of Ohio makes no expenditures for services provided offshore, I hereby order the following:
  - a. No Cabinet Agency, Board or Commission (Executive Agency) shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Order applies to all funds in the custody of an Executive Agency, be they from state, federal, philanthropic or private sources. It applies to all purchases of service made directly by an Executive Agency and services provided by sub-contractors of those providing services purchased by an Executive Agency.
  - b. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
  - c. The Department of Administrative Services, through Ohio's Chief Procurement Officer (OCPO), shall have in place, by August 31, 2010, procedures to ensure all of the following:
    - i. All agency procurement officers, or the person with equivalent duties at each Executive Agency (APOs), have standard language in all Executive Agency contracts which:
      - (a) Reflect this Order's prohibition on the purchase of offshore services.
      - (b) Require service providers or prospective service providers to:

- (i) Affirm that they understand and will abide by the requirements of this Order.
  - (ii) Disclose the location(s) where all services will be performed by any contractor or subcontractor.
  - (iii) Disclose the locations(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.
- ii. All APOs are ensuring that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include 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 sub-contractor, will not be considered.
  - iii. All procurement manuals, directives, policies, and procedures reflect the requirements of this Order.
  - iv. All APOs have adequate training which addresses the terms of this Order.
5. **Exceptions.** Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:
- a. Services necessary to support the efforts of the Department of Development Global Markets Division to attract jobs and business to the State of Ohio, including incidental services for the support of trade missions, payment of international staff, and services necessary for the operation of international offices.
  - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities.

- I signed this Executive Order on August 6, 2010 in Columbus, Ohio and it will not expire unless rescinded.



*Ted Strickland*  
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Ted Strickland, Governor

ATTEST:

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Jennifer Brunner, Secretary of State

## DEPARTMENT OF ADMINISTRATIVE SERVICES

### STANDARD TERMS AND CONDITIONS

#### EXECUTIVE ORDER 2010-09S

#### Banning the Expenditure of Public Funds on Offshore Services

September 3, 2010

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#### **I. EXECUTIVE ORDER REQUIREMENTS:**

The Contractor affirms to have read and understands Executive Order 2010-09S issued by Ohio Governor Ted Strickland 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. The Executive Order is provided as an attachment and also is available at the following website:  
<https://procure.ohio.gov/pdf/EO201009S/EO2010-09.pdf>.

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

#### **II. TERMINATION, SANCTION, DAMAGES:**

If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of [insert percent here] of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

**III. ASSIGNMENT / DELEGATION:**

The Contractor will not assign any of its rights, nor delegate any of its duties and responsibilities under this Contract, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

STANDARD AFFIRMATION AND DISCLOSURE FORM

EXECUTIVE ORDER 2010-09S

Banning 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.

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**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 2010-09S issued by Ohio Governor Ted Strickland. 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. The Executive Order is attached and is available at the following website:

<https://procure.ohio.gov/pdf/EO201009S/EO2010-09.pdf>.

The Bidder/Offeror shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem the Bidder/Offeror not responsive and no further consideration will be given to the response. Bidder/Offeror's offering will not be considered. If the Bidder/Offeror will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address, City, State, Zip)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by Contractor:

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

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(Name)

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(Address, City, State, Zip)