

ALICE Model No Offshoring of Public Contracts Act¹

Rationale: With state economies just recovering from the great recession with large amounts of unemployment throughout our communities, it makes little sense for [state] to allow state public service contracts to be awarded to perform that work outside the United States. By contracting and subcontracting outside of the country, jobs are displaced in the United States and in [state], and taxpayer dollars are used to create jobs in foreign countries. State tax revenues should be used to create jobs in the United States and in [state].

Summary: This act requires that state contracts primarily for the performance of services must include provisions specifying that all services performed under the contract or performed under a subcontract awarded under the contract must be performed within the United States. This requirement applies unless the [Director] certifies that the service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the Treasurer, or the Director certifies that inclusion of this provision would violate the terms, conditions, or limitations of a grant, funding, or financial assistance from the Federal government.

SECTION 1. SHORT TITLE. This act shall be known as the “No Offshoring of Public Contracts Act.”

SECTION 2. DEFINITIONS. As used in this act, "state contract" means every contract entered into by any of the following:

(1) The governor, the head of a principal department in the executive branch of state government, or the head of a division, board, bureau, office, commission, or other instrumentality within or created by such department.

(2) The contracting officer of the legislature or an office, board, bureau, or commission within or created by the legislature.

¹ This model was drafted by ALICE staff. ALICE would like to thank all those who provided feedback on this draft.

(3) The head or contracting officer of an independent state authority, commission, instrumentality, or agency within or created by such an authority that is authorized to enter into a contract that includes the performance of services. A county, municipality, or school district shall be deemed an agency or instrumentality of the state for the purpose of this act.

SECTION 3. STATE CONTRACTS, SERVICES PERFORMED WITHIN U.S.; EXCEPTIONS.

(a) (1) A state contract primarily for the performance of services shall include provisions specifying that all services performed under the state contract or performed under a subcontract awarded under the state contract shall be performed within the United States.

(2) A state contract shall provide that if a contractor or subcontractor performs the state contract or the subcontract with workers outside of the United States during the life of the state contract, the state contract shall be terminated for noncompliance and the contractor or subcontractor shall pay a penalty to the state agency or local government in an amount equal to the amount paid by the state agency or local government for the percentage of work that was performed with workers outside of the United States.

[Policy Options: *Outsourcing Rules*²]

² States may choose to specify that contract work must not only be performed in the United States but in the state awarding the contract:

[service contracts] will be performed solely with workers employed in California. [2012 California AB 2508](#).

If such an approach is adopted, language throughout the bill should substitute [state] for United States.

(b) The provision of subsection (a) of this section does not apply whenever any of the following certifications are made:

(1) The [Director of the Division of Purchase and Property] certifies in writing a finding that a service is required by the executive branch of the state and that the service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the state treasurer.

(2) The contracting officer for the legislature or for an office, board, bureau, or commission within or created by the legislature certifies in writing a finding that a service is required by the legislature or the office, board, bureau, or commission within or created thereby and that the service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the appropriate legislative authority.

(3) The contracting officer of an independent state authority, commission, instrumentality, or agency certifies in writing a finding that the service required by the independent state authority, commission, instrumentality, or agency cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the executive director or other equivalent authority of that authority, commission, instrumentality, or agency.

(4) A director or contracting officer in paragraphs (1) through (3) of this subsection (b), as may be applicable, certifies in writing a finding that inclusion in the state contract of a provision as described in subsection (a) of this section with respect to the performance of a service required by the contracting entity under the state contract would violate the terms, conditions, or limitations of a grant, funding, or financial

assistance from the federal government or an agency thereof, and the certification is approved by the appropriate approval officer.

(c) The state treasurer shall review all state contracts as defined [under state law], primarily for the performance of services, which contracts have not been completed or terminated, and determine if a service performed by the contractor or subcontractor is performed outside of the United States. Within 180 days after the effective date of this act, the findings of the review shall be reported in writing to the governor, the president of the [senate], the minority leader of the [senate], the speaker of the [general assembly], and the minority leader of the [general assembly], and shall be made available to the general public.

SECTION 4. EFFECTIVE DATE. This act shall take effect on the 90th day following enactment.

Exemplary Bills:

New Jersey- [Chapter 92](#)

California – [AB 2508](#)

For additional information:

Government Accountability Office - [Offshoring In Six Human Services Programs Offshoring Occurs In Most States, Primarily In Customer Service And Software Development](#)

New Jersey Legislature – [New Jersey Commission on Outsourcing and Offshoring Final Report](#)