



James River Consulting

Better IT & Services Contracting  
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A professional services firm specializing in IT and business services contracts, outsourcing, on demand, e-contracting, contracts processes, and contracts management staffing

# Newsletter

Q2 2009

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## Feature Article

*Note: James River is pleased to resume the Newsletter after a hiatus.*

### Managing Outsourcing Risks in the Obama Presidency

HOW AND WHERE companies in the US can outsource will inevitably become a political flash point during the presidency of Barack Obama. As outsourcing increasingly becomes the norm for American companies of all sizes, unemployment continues to rise.

But so far, any meaningful commentary about Obama and outsourcing is limited to reaction to language in the TARP that restricts how many positions the financial firms receiving TARP money can outsource overseas, along with Obama's repeated pledge to eliminate tax breaks for US companies outsourcing overseas made at his first address to Congress. Nor has Obama given us much to go on regarding future outsourcing of any kind by the Federal government, other than general comments about reducing the deficit through competitive contracting (Sen. Mikulski-D Md. wants to eliminate it.).

Obama and the current Democrat-controlled Congress may pass laws prohibiting regulated companies from outsourcing certain processes overseas. They may impose an across-the-board "Buy American" policy on outsourcing by state and local governments. They may use outsourcing as a component of foreign

policy. They may do nothing.

What is certain is that we cannot predict what Obama will do, and that for at least the next four years we must be prepared for dramatic and unprecedented Governmental action affecting how American companies do business. The Obama presidency presents us with a climate of higher business risk due to many long standing business assumptions becoming unpredictable, including the assumption that companies are free to globally outsource. It stands to reason, then, that business needs to exercise tighter control over outsourcing and other transactions.

Managing outsourcing risk is done through contracts and can take several forms.

One strategy is to build greater agility in outsourcing through techniques such as multi-sourcing of processes among several vendors, enhanced use of requirements to define services, and selective targeting of more data centric and easily commoditized operations. Obama and Congress can pass law in a matter of days that reshapes whole industries. Companies need to be ready to change their operations models just as quickly, and the corresponding outsourcing contracts should be crafted to support a rapid response.

Another strategy is to better understand outsourcing risks. Companies must have *(Continued on other side)*



### About James River

James River Consulting specializes in the development, negotiation, and management of IT and business services contracts with emphasis on IT and business outsourcing and on software-as-a-service/cloud computing/managed services. James River's offerings range from short-term staffing of contracts personnel, to sales contract processes, to e-Contracts, to competitive bidding, to SaaS and BPO contracts negotiation and management. James River's president, Eric Esperne, has over 15 years experience as an in-house legal counsel and director of contracts for both large and small IT companies.

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## Feature Article continued

a better grasp of the risks they are assuming going into an outsourcing relationship. Up front investment in modeling outsourcing, then identifying risks and mitigation prior to negotiation, should be an essential component of any outsourcing risk management strategy. Contract terms must also provide mechanisms for monitoring risks and taking corrective action.

A third strategy is to revisit alternatives to pure play outsourcing. These include shared services, consortium outsourcing and end of life cycle in sourcing. Because these alternative models are not straightforward buy/sell transactions, expertise is required to build the architecture of the contracts

underlying them.

Accountability was another major theme of the Obama campaign. Needless to say, companies that outsource will be held accountable for the actions and omissions of their outsourcing partners. Allocating liability in contracts isn't enough. Proactive and cooperative efforts to comply with laws and policies must be built into outsourcing contracts.

Contract management always delivers high returns on modest OPEX expenditures. At no time is this more true than now, during the historic, but unpredictable, Obama presidency.

## Company News

### IACCM Audio Conference on Outsourcing

Tim Cummins, President of the International Association for Contract and Commercial Management (IACCM) interviewed Eric Esperne, President of James River, about outsourcing contracts in an "Ask the Expert" audio call attended by IACCM members internationally. The call, conducted on March 19 and 31, was entitled "The Outsourcing Contracts Dilemma: How Parties Propose Outsourcing Terms and Negotiate," and covered research by James River on different approaches taken to outsourcing contracts formation.

### Article Published in SDCE Magazine

"Purpose-driven Outsourcing: Putting the horse before the cart in outsourcing strategy" by Eric Esperne appears in the February/March 2009 Issue of Supply & Demand Chain Executive Magazine. Go to <http://www.sdceexec.com/publication/index.jsp?pubId=1> to view the article online.

### Current Client Projects

James River recently completed a study for a large, New England Catholic health services company on management of a services contract for implementation of a health records system across several hundred physician sites. The study, prepared for the office of the CIO, looked at how to reduce the risks of overrun and sub-standard vendor performance within the limitations of the existing, previously negotiated contract terms. Strategies for termination and renegotiation were developed.

James River is also actively working with Government contractors around the Washington, DC, beltway, who are relying on James River's expertise in Government contracts acquisition and management.



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