ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2690 By: Paulk of the House

and

Leftwich of the Senate

(state government - Oklahoma Ethics in Privatization Functions Act - privatization contract - codification - effective date)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

[state government - Oklahoma Ethics in Privatization Functions Act - privatization contract - codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Ethics in Privatization Functions Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

It is hereby declared that the purpose of this act is to set guidelines for the purposes of privatization of state services and

contracts and to ensure that, if approved, privatization is cost effective and in the best interest of the citizens of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Ethics in Privatization Functions Act:

1. "Agency" means any executive office, department, division, board, commission or other officer or office in the executive branch of this state;

2. "Business entity" means individuals, partnerships, business trusts, cooperatives, associates, corporations or any other firm, group or concern which functions as a separate entity for business purposes;

3. "Dependent" means the spouse and children of an employee if such persons would qualify for dependent status under the Internal Revenue Code or for whom a support order has been or could be granted under Oklahoma law; and

4. "Privatization contract" means an agreement or combination or series of agreements by which a nongovernmental person or business entity agrees with an agency to provide services, valued at Sixty Thousand Dollars ($60,000.00) or more, which are substantially similar to and in lieu of services presently provided, in whole or in part, by regular employees of any agency.

B. Any subsequent agreement, including any agreement resulting from a rebidding of previously privatized service, or any agreement renewing or extending a privatization contract, shall not be considered a privatization contract. An agreement solely to provide legal, management consulting, planning, engineering or design services provided to the Department of Transportation, shall not be considered a privatization contract.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. No agency shall make any privatization contract and no such contract shall be valid unless the agency first complies with each of the following requirements:

1. The agency shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard of quality of the subject services which shall be of public record;

2. The agency shall solicit competitive sealed bids for privatization contracts pursuant to Section 85.1 et seq. of this title;

3. The agency shall designate a day in which it will accept sealed bids, which shall be the same day for all parties which shall be filed in the agency and in the Office of the Governor; and

4. The agency shall transmit the written statement referred to in paragraph 1 of this subsection to the Governor for review pursuant to Section 13 of this act.

B. The term of any privatization contract shall not exceed one (1) year. For each position in which a bidder will employ any person pursuant to a privatization contract and for which the duties are substantially similar to the duties performed by a regular agency employee or employees, the contract shall include a statement of the minimum wage rate to be paid for the position.

C. Every bid for a privatization contract and every privatization contract shall include provisions specifically establishing the wage rate for each position, which shall not be less than the federal minimum wage rate. Every bid and contract shall also specify whether the contractor will provide health, retirement, vacation or other benefits.

D. Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor. Every contract shall also contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons, and to take affirmative steps to provide equal opportunity for all persons pursuant to Section 840-2.9 of this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Every agency which is considering privatizing some of its functions shall prepare a comprehensive written estimate of the costs of regular agency employees providing the subject services in the most cost efficient manner. The estimate shall include all direct and indirect costs of regular agency employees providing the subject services, including, but not limited to, pension, insurance and other employee benefit costs.

B. The estimate shall remain confidential until after the final day for the agency to receive sealed bids for the privatization contract pursuant to this act, at which time the estimate shall become public record, and the agency shall file a copy of the estimate in the Office of State Finance.

C. If the comprehensive written estimate prepared by the agency, referred to in paragraph A of this section is less than the lowest sealed bid for the privatization contract, all bids shall be rejected. Bids may be resubmitted at a later date according to the procedures required for the original sealed bids. Provided, however, the agency shall not be required to prepare a second

written estimate if bids are resubmitted within six (6) months of the original designated date for the receipt of bids.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.6 of Title 74, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provisions of law, after consulting any relevant employees organization, the agency shall provide adequate resources for the purpose of encouraging and assisting present agency employees to organize and submit a bid to provide the subject services. The agency shall consider any employee bid on the same basis as all other bids. An employee bid may be made as a joint venture with other persons pursuant to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.7 of Title 74, unless there is created a duplication in numbering, reads as follows:

After soliciting and receiving bids, the agency shall, if it decides to enter into a privatization contract, select the lowest and best bid and shall publicly designate the bidder to which it proposes to award the contract. The agency shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder proposes to perform any or all of the contract outside the boundaries of this state, the contract cost estimate shall be increased by the amount of income tax revenue, if any, which will be lost to this state by the corresponding elimination of agency employees, as determined by the Oklahoma Tax Commission to the extent that it is able to do so.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.8 of Title 74, unless there is created a duplication in numbering reads as follows:

A business entity performing a contract awarded to it pursuant to the provisions of this act shall provide each year during which the contract is in force and effect the name of the chief executive officer or equivalent position of the business entity to which the contract has been awarded, the gross salary paid to that person and the office address at which that person can be contacted. The information required by this section shall be made available to the public upon request by the agency awarding the contract if jointly requested by the Department of Central Services.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.9 of Title 74, unless there is created a duplication in numbering, reads as follows:

A business entity to which a contract has been awarded pursuant to the provisions of this act shall submit an affirmative action plan to the Office of Personnel Management annually by September 1 for each year during which a contract is in force and effect. The Administrator of the Office of Personnel Management shall analyze the affirmative action plan and Equal Employment Opportunity Commission report prepared by such entity. On or before January 1 of each year, the Office of Personnel Management shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. The report shall state the efforts and progress made by the business entity in the area of affirmative action, including the status of recruitment, hiring, and promotion of women, men and minorities within job categories. The provisions of this section shall not require a business entity to grant preferential treatment to an individual or group because of race, color, religion, sex, national origin, age, or handicap

because of an imbalance which may exist in comparison with the employment statistics of the area involved.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.10 of Title 74, unless there is created a duplication in numbering reads as follows:

No business entity to which a contract is awarded pursuant to the provisions of this act shall:

1. Directly or indirectly solicit or accept any compensation, gift, loan, entertainment, favor or service given for the purpose of influencing the business entity in the discharge of the duties imposed pursuant to the contract; provided, however, this provision shall not apply to bona fide campaign contributions;

2. Use the contract to solicit or secure special privileges or exemptions for the business entity or others, except as provided by law; or

3. Disclose or offer to disclose confidential information acquired by the business entity to any person, group or others not entitled to receive such confidential information, nor shall the business entity use such information for its gain or benefit.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.11 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Each agency proposing to privatize shall certify in writing to the Governor that:

1. The provisions of this act and all other applicable laws have been complied with;

2. The quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements which equal or exceed the quality of services which could be provided by regular agency employees;

3. The contract cost will be less than the estimated cost, taking into account all comparable types of costs;

4. The designated bidder and the supervisory employees, while in the employ of the designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute including, but not limited to, occupational health and safety, nondiscrimination and affirmative action, environmental protection and conflicts of interest; and

5. That the proposed privatization contract is otherwise in the best interest of the public.

B. A copy of the proposed privatization contract shall accompany the certificate transmitted to the Governor and a copy shall be available at the agency for public inspection.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.12 of Title 74, unless there is created a duplication in numbering, reads as follows:

No state agency shall award a privatization contract, and no contract already awarded shall be valid, if within thirty (30) days after receiving the certificate of privatization contract, the Governor notifies the agency, in writing, of an objection. The objection shall be based on the Governor's independent review of all relevant facts. Any contract that is awarded shall contain a provision requiring the contractor to surrender any and all equipment, purchased pursuant to the contract, to the state if the contract is not completed for any reason.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 595.13 of Title 74, unless there is created a duplication in numbering, reads as follows:

Any present or former state employee involved in awarding the contract is prohibited, for a period of one (1) year from the date that employment with the state is terminated, from becoming an officer or employee of a business organization which is a party to any privatization contract with the state agency in which the present or former state employee is or was employed.

SECTION 14. This act shall become effective December 1, 1996."

Passed the Senate the 8th day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker of the House of Representatives