

HOUSE OF REPRESENTATIVES

Thursday, March 18, 1999

ENGROSSED

Senate Bill No. 76

As Amended

ENGROSSED SENATE BILL NO. 76 — By PRICE of the Senate and HILLIARD of the House.

AN ACT RELATING TO COUNTIES AND COUNTY GOVERNMENT; AMENDING 19 O.S. 1991, SECTION 744, WHICH RELATES TO THE USE OF PRIVATE PRISON CONTRACTORS; AUTHORIZING CERTAIN CONTRACTS BETWEEN BOARD OF THE COUNTY COMMISSIONERS AND PRIVATE CONTRACTORS IF APPROVED BY VOTERS OF THE COUNTY; PERMITTING CONTRACTS TO BE FOR CERTAIN TIME PERIOD; AUTHORIZING THE BOARD OF COUNTY COMMISSIONERS TO CALL CERTAIN ELECTION FOR CERTAIN PURPOSE; REQUIRING COUNTY CLERK TO GIVEN CERTAIN NOTICE AND SETTING FORTH PUBLICATION REQUIREMENTS; REQUIRING ELECTION TO BE CONDUCTED IN CERTAIN MANNER; AUTHORIZING BOARD OF COUNTY COMMISSIONERS TO PROCEED WITH CERTAIN ACTION UPON VOTER APPROVAL; PERMITTING BOARD OF COUNTY COMMISSIONERS TO SOLICIT EVALUATION OF CERTAIN WORK; REQUIRING BOARD OF COUNTY COMMISSIONERS TO DEFINE SCOPE OF CERTAIN PROJECT; REQUIRING BOARD OF COUNTY COMMISSIONERS TO REVIEW CERTAIN FILES FOLLOWING CERTAIN VOTE;

REQUIRING THE COUNTY SHERIFF TO REPORT TO BOARD OF COUNTY COMMISSIONERS ON IMPLEMENTATION OF CERTAIN CONTRACT; PROVIDING FOR CERTAIN IMMUNITY FOR COUNTY SHERIFF; STATING THAT CERTAIN CONTRACT; PROVIDING FOR CERTAIN IMMUNITY FOR COUNTY SHERIFF; STATING THAT CERTAIN CONTRACT CONTAIN CERTAIN PROVISIONS; REQUIRING CERTAIN NOTICE OF TERMINATION OF CONTRACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 19 O.S. 1991, Section 744, is amended to read as follows:

Section 744. A. Each board of county commissioners is hereby authorized to enter into contracts with private contractors with the prior approval by voters of the county for: ~~the~~

1. The management and operation of any jail owned by the county ~~or for the;~~ and

2. The incarceration of inmates in jail facilities owned and operated by private contractors.

Such services shall meet any standards prescribed and established for county jails, including but not limited to standards concerning internal and perimeter security, discipline of inmates, employment of inmates, and proper food, clothing, housing, and medical care. ~~Said~~ The contracts ~~shall~~ may be entered into for a period not to exceed fifty (50) years subject to annual appropriations by the county excise board. ~~Said~~ The contracts shall be valid for a fiscal year only if the county excise board provides an appropriation for the contract for that fiscal year.

B. Whenever the board of county commissioners considers it to be in the best interest of the county to contract for jail management or operations or to terminate an existing contract for jail management or operations, the board shall call an election to place the issue of whether to contract for jail management or operations or to terminate an existing contract for jail management or operations to a vote of the qualified voters of the county. The election may be held at the same time as any general election or at a special election called by the board for such purpose. The county clerk shall cause notice of the election to be given by publication once a week for four (4) consecutive weeks prior to the election in at least one newspaper of general circulation in the county. The last published notice shall be not less than five (5) days before the election. The election shall be conducted in accordance with the general election laws of the state and the county election board shall conduct the election. If a majority of the votes cast are in favor of the proposition, the board of county commissioners shall be authorized to proceed to contract for such services as provided in this section or to terminate an existing contract for jail management or operations as provided in subsection N of this section.

C. A comprehensive file for all private contractors interested in and capable of managing or operating a county jail or incarcerating inmates in a facility owned and operated by the contractor shall be maintained by the county. These files shall include a completed application form, a resume of the contractor's staff and capability, completed performance evaluation form for past projects on which the contractor has provided jail services to the county, a list of past contracts with the county, and a list of contracts to provide similar services to other political subdivisions of this state or other states.

The file shall include the mailing address of each private contractor.

Any contractor may request at any time to be included in the comprehensive file, and shall be so included within twenty (20) days of the request.

The ~~county~~ board of county commissioners may solicit evaluation of work done by contractors from the state, other political subdivisions, or members of the private sector, which evaluation shall be part of the comprehensive file.

~~C. D.~~ The ~~county~~ board of county commissioners shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions to guide prospective contractors.

~~D. If E.~~ When the county intends to secure the services of a private ~~contractors~~ contractor, all contractors included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated cost and time schedule for project;
3. Funds available, including federal, state or other participation;
4. Last date for submitting notice of interest in performing services to the board of county commissioners; and
5. Other pertinent data.

Private contractors desiring consideration shall meet the requirements of this section and to be considered shall submit a letter expressing interest in the project to the board of county commissioners within thirty (30) days of the postmark date of the letter of notification mailed by the board. Contractors shall have on file an application form not over twelve (12) months old.

~~E. The~~ F. Following the vote required in subsection B of this section and the notice in subsection E of this section, the board shall review the files of the private contractors desiring consideration for the project, and shall select no ~~less~~ fewer than three and no more than five contractors for more detailed consideration. This initial screening should consider the

requirements of the project and the bid received, as well as the following factors to be determined from the file, and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the contractor to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

The board shall award the contract to the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

~~F.~~ G. The board shall negotiate the contract with the selected contractor, which contract shall include a fair and reasonable fee. If the board and the first-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice contractor shall commence. If the board and the second-choice contractor cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice contractor shall commence. If the board and the third-choice contractor cannot reach an agreement, then all negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract with any of the three selected contractors, the board shall select additional contractors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

~~G.~~ H. Should there be an inadequate expression of interest in the project, the board of county commissioners shall confer to add additional contractors for consideration which are known to be appropriate for the project.

~~H.~~ I. No contract authorized by the provisions of this section shall be awarded until the private contractor demonstrates to the satisfaction of the board of county commissioners:

1. That the contractor has the necessary qualifications and experience to provide the services specified in the contract;
2. That the contractor has the necessary qualified personnel to implement the terms of the contract;
3. That the financial condition of the contractor is such that the terms of the contract can be fulfilled;
4. That the ability of the contractor to obtain insurance or provide self-insurance to:
 - a. indemnify the county against possible lawsuits arising from the operation of jail facilities by the contractor, and
 - b. compensate the county for any property damage or expenses incurred due to the operation of jail facilities; and
5. That the contractor has the ability to comply with applicable court orders and jail standards.

I. J. The sheriff of the county or a person designated by the board of county commissioners shall monitor and report to the board of county commissioners on the implementation of the contract. The sheriff shall be immune from liability for the acts or omissions of the private contractor.

J. K. A private contractor, in implementing a contract pursuant to the provisions of this section, shall not be bound by state laws or other legislative enactments which govern the appointment, qualifications, duties, salaries or benefits of jailers or other employees of the jail facilities, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by the provisions of Section 3311 of Title 70 of the Oklahoma Statutes and be authorized to use firearms only to prevent the commission of a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

~~K.~~ L. A county is authorized to lease real property and improvements thereon to a private contractor in conjunction with a contract for private management of a jail facility located or to be built on the property. ~~Said~~ The lease may be entered into for periods up to fifty (50) years.

~~L.~~ M. Any contract between a county and a private contractor, whereby the contractor provides for the housing, care, and control of inmates in a facility owned and operated by the contractor, shall contain provisions granting the county the option at the beginning of each fiscal year to purchase, at a predetermined price any such facility.

N. Any contract between a county and a private contractor shall contain provisions granting the county the right to terminate a contract for jail management or operations with the approval of the qualified voters of the county as provided in subsection B of this section. Termination of an existing contract for jail management or operations following approval by qualified voters of the county shall require a thirty (30) day written notice to the private contractor following the election.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.