

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1115

By: Nations and Lindley of the
House

and

Rabon of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to state government; amending 74 O.S. 2001, Sections 588 and 589, which relate to the Oklahoma Privatization of State Functions Act; adding definitions; requiring a cost analysis and report prior to privatization of certain state functions; modifying notification requirement; making certain proposals confidential; adding certain requirements of agencies prior to entering into a contract to privatize a state function; requiring such contracts to contain certain provisions; requiring certain certification by agencies; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 588, is amended to read as follows:

Section 588. As used in ~~this act~~ the Oklahoma Privatization of State Functions Act:

1. "Agency" means an agency, board, commission or other entity of state government-;

2. "Cost analysis" means a study that includes, but is not limited to:

- a. all direct personnel costs, materials and supplies, equipment, capital and equipment depreciation costs, rent, maintenance and repairs, utilities, insurance, travel, operations overhead, and general

- administrative overhead associated with privatization of a function, program, service, unit, or division,
- b. a feasibility study determining whether other state agencies could perform the function, program, service, unit, or division sought to be privatized,
 - c. an analysis of the cost savings and quality enhancements expected to be gained by privatizing, and
 - d. any other provisions that may be required by rules adopted by the Department of Central Services related to privatization.

3. "Cost analysis report" means a written report of the cost analysis; and

4. "Privatize" means to enter into contract for the performance of a duty or function which is currently being performed by a state employee.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 588.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Before any agency contracts to privatize a function, program, service, unit, or division valued at One Hundred Thousand Dollars (\$100,000.00) or more, the agency must perform a cost analysis and provide a copy of the cost analysis report to the Department of Central Services.

B. The Department of Central Services shall review the cost analysis report and make a finding as to whether it fulfills the content requirements of the Oklahoma Privatization of State Functions Act and the rules of the Department. If the cost analysis report is found not to meet the requirements of the Oklahoma Privatization of State Functions Act or the rules of the Department, the Department shall return the cost analysis report to the agency with instructions.

C. The Director of the Department of Central Services shall promulgate rules necessary to implement the provisions of the Oklahoma Privatization of State Functions Act.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 589, is amended to read as follows:

Section 589. A. ~~Before~~ Upon a finding by the Department of Central Services pursuant to Section 2 of this act that the agency has complied with the requirements of the Oklahoma Privatization of State Functions Act, and before any agency can contract to privatize a function, program, service, unit or division, the agency must allow its employees the opportunity to submit proposals for improving the operations, efficiency or organization of the entity being considered for privatization.

B. The privatization process shall begin with:

1. Notification to employees impacted by the proposed privatization by the agency of its intent to privatize a function, program, service, unit, or division of the agency;

2. A specific statement that employees have an opportunity to submit proposals to the agency; and

3. Notification by the agency simultaneously with the notice required pursuant to paragraph 1 of this subsection, to the Director of the Office of State Finance and the Director of the Department of Central Services of the ~~agency's~~ intent of the agency to privatize a state function.

C. The agency shall provide information about the delivery of services to its employees as they develop proposals to be considered. This information shall include revenue expenditure data, wage and salary data, ~~and~~ an inventory of the supplies, equipment, and facilities associated with the program being privatized, and the cost analysis performed by the agency.

D. Proposals submitted by agency employees ~~to the agency~~ shall ~~be considered when a determination is made on seeking nonemployee~~

~~bids to privatize a function, program, service, unit or division of the agency~~ remain confidential and be considered simultaneously in the bid or proposal process with non-employee bids.

E. After an agency has decided to privatize a function, program, service, unit or division and has met the requirements of subsection D of this section, the agency shall notify the Director of State Finance of its intent to solicit bids by interested parties. Prior to solicitation of bids from other interested parties, the agency shall notify the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives of the ~~agency's~~ intent of the agency to solicit bids and a statement that the agency has given the opportunity to its employees to submit proposals pursuant to this section prior to the decision to privatize. ~~The agency shall also certify that the provisions of this act and all other applicable laws regarding the privatization of the respective state functions have been complied with.~~

F. The agency shall provide a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, severance payments to agency employees, and monitoring and otherwise administering contract performance.

G. The agency shall require the following information prior to entering into a contract to privatize a function, program, service, unit, or division:

1. Financial stability of the vendor, past and present litigation, and references related to past government contract performance information; and

2. Detail how the vendor will perform the contract, including staffing and equipment information.

H. The agency shall establish a plan and cost analysis on how to return the privatized function, program, service, unit, or division to the state if there is a contract cancellation.

I. Any contract with a vendor to privatize a function, program, service, unit, or division shall require that the payment to the contractor be linked to performance. The contract shall provide that the amount agreed upon in the contract may be reduced if the agency experiences a budget shortfall.

J. Each 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

Each agency deciding to privatize an agency function shall certify in writing to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Department of Central Services that:

1. The provisions of the Oklahoma Privatization of State Functions Act and all other applicable laws regarding the privatization of the respective state functions have been complied with;

2. The quality and cost of the services to be provided by the selected bidder are likely to exceed the quality and cost benefit standards for the state function as formerly delivered by agency employees; and

3. The proposed privatization contract is in the best interest of the public.

SECTION 5. This act shall become effective November 1, 2003.

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