

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 687

By: Corn

AS INTRODUCED

An Act relating to corrections; amending 57 O.S. 2001, Section 561, as amended by Section 1, Chapter 350, O.S.L. 2002 (57 O.S. Supp. 2004, Section 561), which relates to private prison contractors; requiring a complete financial sufficiency analysis for certain private prison contractors; prohibiting recommendation or contracting with certain contractors for certain reason; exempting certain private prison contractors from certain requirements; providing certain limitations for certain exclusion to certain requirements; granting the state certain title rights or options in certain contracts by agreement; expanding requirements for financial condition of certain private prison contractors; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 561, as amended by Section 1, Chapter 350, O.S.L. 2002 (57 O.S. Supp. 2004, Section 561), is amended to read as follows:

Section 561. A. The Department of Corrections is hereby authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Corrections. Services offered for persons under the custody or supervision of the Department are to include, but not be limited to, housing, alcoholism or drug treatment, mental health services, nursing home care, or halfway house placement. Such services must meet standards prescribed by law or prescribed and established by the State Board of Corrections for implementing such a program, including but not limited to standards concerning internal and perimeter security, discipline of inmates, educational

and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services must be contracted for in accordance with Section 85.7 of Title 74 of the Oklahoma Statutes. Such services, if provided by private prison contractors, shall be contracted for as required by this section.

B. The Department of Corrections is authorized to lease existing facilities or portions thereof from private prison contractors, counties or other governmental entities and operate such facilities or portions thereof in the same manner as other state owned and operated prison facilities. All lease agreements entered into pursuant to this section shall be negotiated between the Department and the lessor. The Department of Central Services shall assist in the negotiations if requested by the Department of Corrections.

C. Subject to the requirements of this section and Section 561.1 of this title, the Department of Corrections is hereby authorized to provide for the construction or operation or both construction and operation of correctional institutions of the Department of Corrections by private prison contractors. Such operation shall meet standards prescribed by the State Board of Corrections, including but not limited to, standards concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, and proper food, clothing, housing, transportation, and medical care. Such services shall be contracted for in accordance with the provisions of Section 561.1 of this title and the provisions of this section.

D. A comprehensive file for all private prison contractors interested in and capable of operating an institution within the Department of Corrections or providing for the housing, care, and control of inmates in a facility owned and operated by the contractor shall be maintained by the Department. These files shall include:

1. A completed application form;
2. A resume of the contractor's staff and capability;
3. A completed performance evaluation form for past projects on which the contractor has provided private prison services;
4. A list of past contracts with this state;
5. A list of contracts to provide similar services to other states or to the United States; ~~and~~
6. The mailing address of each private prison contractor; and
7. A complete financial evaluation with documentation demonstrating the fiscal solvency and responsibility of the private prison contractor over the previous three-year period, or a demonstration by documentation of an equivalent financial sufficiency for any private prison contractor that has not been in operation within the previous three-year period, including, but not limited to, any county jail or private entity.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file, and shall be provided necessary forms within twenty (20) days of the request and the Department shall add such contractor to the list within twenty (20) days of receipt of a properly completed application.

The Department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

E. If the Department intends to secure the services of a private prison contractor, all persons and firms 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 time schedule for project;
3. Last date for submitting notice of interest in performing services to the Director; and

4. Other pertinent data.

Private prison 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 Department within thirty (30) days of the postmark date of the letter of notification mailed by the Department. Contractors shall file an updated application form at the request of the Department.

F. The Department 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. Before the Department awards a contract to a private prison contractor, the plans shall be approved by the State Board of Corrections.

G. The Department shall review the files of the private prison contractors desiring consideration for the project. After performing a complete financial sufficiency analysis of the county jail or private prison contractor and the analysis required by Section 561.1 of this title, the Department shall select no less than three and no more than five contractors for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of contractors selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the project, as well as the following factors to be determined from the comprehensive 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.

H. A full report of the evaluation procedures and recommendations of the Department shall be prepared by the

Department and submitted to the State Board of Corrections for the independent review of the entire process. The Department is prohibited from recommending or entering into any contract with any county jail or private prison contractor that does not demonstrate fiscal solvency and budgetary responsibility to operate such facility without the necessity of contracting with the Department. Provided, however, any county jail or private prison contractor under any contract with the Department of Corrections on the effective date of this act, may continue such contract on an annual basis without any additional requirement to demonstrate fiscal solvency and budgetary responsibility on the existing contract; provided, no lapse, revocation, termination, suspension or other interruption of the contract or its terms occur for any purpose, and subject to continued appropriations for such contract, in the discretion of the Department.

I. 1. The Department shall select the contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

2. The Department shall execute the contract with the selected contractor, which contract shall include a fair and reasonable fee.

3. The negotiated scope and fee shall be reported to the Board for the approval of the award of the contract.

J. The Department of Central Services shall render assistance to the Department of Corrections in implementing the contracting procedures provided for in this section. The Department of Central Services may have a representative at any meeting involving negotiations of a contract between the Department and a private prison contractor. Before submission of the proposed contract to the Legislative and Executive Bond Oversight Commissions, and prior to the date as of which the proposed contract is executed by the State Board of Corrections, the Attorney General and the Director of the Department of Central Services shall review the proposed final

version of the contract. The Attorney General and the Director of the Department of Central Services shall have a period of fifteen (15) days from receipt of the proposed final version of the contract to approve the contract and execute the document. If either the Attorney General or the Director of the Department of Central Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Corrections. The Department of Corrections shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Central Services shall have an additional fifteen-day period to approve the proposed contract and to execute the document. Failure of the Attorney General or the Director of the Department of Central Services, respectively, to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signature by the Attorney General and the Department of Central Services. The contract shall contain a statement to be executed by the Attorney General and the Director of the Department of Central Services that each one of them, respectively, has reviewed the proposed contract for compliance with the provisions of this section and Section 561.1 of this title, and all other applicable provisions of law and that the contract conforms with those requirements. Neither the private prison contractor nor the State Board of Corrections shall execute the contract until the document has been executed by the Attorney General and the Director of the Department of Central Services as required by this subsection unless the approval of the respective official has been made as a result of failure to take action within the fifteen-day period prescribed by this subsection.

K. The Director of Central Services is authorized to lease real property and improvements thereon to a private prison contractor in

conjunction with a contract for private management of a state correctional institution located or to be built on the property. Said lease may be entered into for one (1) year periods, renewable at the sole option of the State of Oklahoma, but not to exceed a cumulative period of fifty (50) years.

L. Contracts awarded to private prison contractors pursuant to the provisions of this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year. The state may require the right or option to have a title or other beneficial interest in the property, including, but not limited to: an option to purchase, a reversionary interest or remainder interest at the conclusion of any contract period or in the event of insolvency or sale, or in consideration of value received or for the discharge of any debt, encumbrance, or otherwise. Such interest shall be included in the written terms of the contract.

M. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the State Board of Corrections:

1. That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

2. That the contractor can provide 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 and that the contractor does not rely solely on the funds or benefits to be provided by the Department of Corrections;

4. That the contractor has the ability to comply with applicable court orders and corrections standards; and

5. That, in the case of a contractor who will be providing the services in a nondepartmental facility operated by said contractor, the contractor shall be able to meet accreditation standards and receive accreditation, as required by the terms of the contract pursuant to subsection C of Section 561.1 of this title.

N. No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Board that the contractor can obtain insurance or provide self-insurance to:

1. Indemnify the state against possible lawsuits arising from the operation of prison facilities by the contractor; and

2. Compensate the state for any property damage or expenses incurred due to the operation of prison facilities.

O. A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, qualifications, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, 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 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.

P. Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

Q. The Director,            or ~~his~~ a designee,            shall monitor the performance of the contractor.

SECTION 2. This act shall become effective July 1, 2005.

SECTION 3. 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.

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