

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 HOUSE BILL 3213

 By: Hickman

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6
7 AS INTRODUCED

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9 An Act relating to prisons and reformatories;
10 amending 57 O.S. 2011, Section 561.1, as amended by
11 Section 256, Chapter 304, O.S.L. 2012 (57 O.S. Supp.
12 2013, Section 561.1), which relates to private prison
13 contractors; directing the Department of Corrections
14 to seek additional request for proposals under
15 certain circumstances; providing an exception; and
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 57 O.S. 2011, Section 561.1, as
19 amended by Section 256, Chapter 304, O.S.L. 2012 (57 O.S. Supp.
20 2013, Section 561.1), is amended to read as follows:

21 Section 561.1 A. Except as otherwise provided by subsection K
22 of this section, prior to entering into a contract with any private
23 prison contractor for construction or operation, or both, of a
24 correctional facility, the Department of Corrections shall establish
25 a process for requesting proposals or negotiated contracts from such
26 contractors. The Department of Corrections shall develop criteria

1 for the process by which a contractor for the construction or
2 operation, or both, of a private prison is to be awarded a contract.
3 The criteria shall be subject to approval by the State Board of
4 Corrections. The criteria for selection of a site for a proposed
5 facility to be constructed or operated, or both, by a private
6 contractor shall include, but shall not be limited to, the
7 availability of medical services, support services, transportation
8 services and the availability of potential employees who would be
9 qualified to perform required functions at a state correctional
10 facility.

11 B. Any contract between the Department of Corrections and a
12 private prison contractor, whereby the contractor provides for the
13 housing, care, and control of inmates in a nondepartmental facility
14 operated by the contractor, shall contain, in addition to other
15 provisions, terms and conditions:

16 1. Requiring the contractor to provide said services in a
17 facility which meets accreditation standards established by the
18 American Correctional Association;

19 2. Requiring the contractor to receive accreditation for said
20 facility from the American Correctional Association, within three
21 (3) years of commencement of operations of the facility;

22 3. Requiring the contractor to obtain written authorization
23 from the governing board of any municipality in which the facility
24 is to be located, or if the facility is not to be located within a

1 municipality, written authorization from the board of county
2 commissioners of the county in which the facility is to be located;
3 and

4 4. Granting the Department the option at the beginning of each
5 fiscal year pursuant to an agreement, to purchase any such facility,
6 with or without inventory or other personal property, at a
7 predetermined price, which shall be negotiated and included in a
8 schedule or a formula to be contained in the original agreement.

9 Such agreements relating to a correctional facility, the
10 construction of which was financed or is to be financed by
11 obligations issued from a local governmental entity the repayment of
12 which is to be made in whole or in part from rentals from the State
13 of Oklahoma or the Department of Corrections, shall be submitted to
14 the Council on Bond Oversight as provided in subsection I of this
15 section.

16 C. A contractor proposing to enter a contract with the
17 Department of Corrections for construction or operation, or both, of
18 a correctional facility pursuant to this section must demonstrate:

19 1. The qualifications and the operations and management
20 experience to carry out the terms of the contract; and

21 2. The ability to comply with the standards of the American
22 Correctional Association and with specific court orders.

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1 D. In addition to meeting the requirements specified in the
2 requests for proposals, a proposal for the construction and
3 operation of a correctional facility must:

4 1. Provide for regular, on-site monitoring by the Department of
5 Corrections;

6 2. Acknowledge that payment by the state is subject to the
7 availability of appropriations;

8 3. Provide for payment of a maximum amount per fiscal year;

9 4. Demonstrate a cost benefit to the State of Oklahoma when
10 compared to the level and quality of programs provided by state-
11 operated facilities that have similar types of inmates at an
12 operational cost not more than the cost of housing inmates in
13 similar facilities and providing similar programs to those types of
14 inmates in state-operated facilities. The Department of Corrections
15 shall be responsible for determining the cost/benefit of the
16 proposal;

17 5. Permit the state to terminate the contract for cause;

18 6. Contain a proposed per diem operational cost per inmate for
19 the initial year and subsequent years of operations;

20 7. Subject to appropriations, provide that cost adjustments may
21 be made only once each fiscal year, to take effect at the beginning
22 of the next fiscal year using as the maximum percentage increase, if
23 any, an increase not to exceed the previous year's Consumer Price
24 Index for All Urban Consumers (CPI-U) as prepared by the United

1 States Bureau of Labor Statistics, except as otherwise provided by
2 subsection K of this section;

3 8. Have an initial contract term of not more than one (1) year,
4 with an option to renew for additional periods not to exceed twenty
5 (20) years;

6 9. If the proposal includes construction of a facility, contain
7 a performance bond approved by the Department that is adequate and
8 appropriate for the proposed contract;

9 10. Provide for assumption of liability by the private vendor
10 for all claims arising from the services performed under the
11 contract by the private vendor;

12 11. Provide for an adequate plan of insurance for the private
13 vendor and its officers, employees, and agents against all claims,
14 including claims based on violations of civil rights arising from
15 the services performed under the contract by the private vendor;

16 12. Provide for an adequate plan of insurance to protect the
17 state against all claims arising from the services performed under
18 the contract by the private vendor and to protect the state from
19 actions by a third party against the private vendor, its officers,
20 employees, and agents as a result of the contract;

21 13. Provide plans for the purchase and assumption of operations
22 by the state in the event of the bankruptcy of the private vendor;
23 and

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1 14. Contain comprehensive standards for conditions of
2 confinement.

3 E. At the beginning of each fiscal year, the Department of
4 Corrections shall determine the budgeted average daily cost per
5 inmate. There shall be a separate computation of budgeted average
6 daily cost for maximum security, medium security, minimum security,
7 and community facilities. This information shall be presented to
8 the State Board of Corrections for informational purposes only.
9 After the close of each fiscal year, the Department shall determine
10 the actual average daily cost per inmate for the operational costs
11 at each major category of correctional facility. There shall be a
12 separate computation of the average daily rate for maximum security,
13 medium security, minimum security, and community facilities. The
14 Department shall present to the State Board of Corrections at its
15 January meeting comparative data on budgeted daily cost versus
16 actual daily cost, and, after appropriate review and analysis, the
17 Board shall adopt as a final action of the Board an average daily
18 cost per inmate by facility category for the immediately preceding
19 fiscal year.

20 F. If a request for proposal process is utilized and no
21 proposals conform to the established criteria, the Department shall
22 prepare an additional request for proposals. The Department of
23 Corrections shall evaluate the proposals within thirty (30) days of
24 receipt from the prospective contractor. The Department of

1 Corrections shall specifically determine whether a proposal meets
2 the requirements of paragraph 4 of subsection D of this section by
3 comparing the daily rate for housing and care of inmates pursuant to
4 any proposed contract with a private contractor to the daily rate
5 for housing and care of inmates at the comparable type of facility
6 operated by the Department of Corrections using the information
7 provided pursuant to paragraph 6 of subsection D of this section.
8 The Department shall evaluate proposals taking into account any
9 direct or indirect costs that would continue to be paid by the
10 Department of Corrections including, but not limited to,
11 transportation, records management, discipline, general
12 administration, management of inmate trust funds, and major medical
13 coverage. Such costs shall be added to the proposed per diem of the
14 private vendor when comparing the total per diem costs of the state
15 operating facilities.

16 G. If the Department of Corrections proposes to enter into a
17 contract for the construction or the operation, or both, of a
18 private prison, the Department shall compare both the capital costs
19 and the operating costs for the facility to the imputed capital
20 costs and the projected operating costs of a comparable facility
21 constructed and operated by the Department of Corrections.

22 H. The Department of Corrections shall deliver to the State
23 Board of Corrections the top three qualified prospective private
24 prison contractors identified pursuant to this section and pursuant

1 to Section 561 of this title together with the information reviewed
2 and analyzed by the Department of Corrections during analysis of the
3 proposals as required by this section. The Board of Corrections
4 shall evaluate the information provided and shall make a final
5 decision selecting the contractor within fifteen (15) days of
6 receipt of the information.

7 I. Any contract subject to the provisions of this section
8 entered into by the Board of Corrections shall be subject to the
9 approval of the Council on Bond Oversight in the same manner as
10 provided by law for the review of issuance of obligations by State
11 Governmental Entities as prescribed by Section 695.8 of Title 62 of
12 the Oklahoma Statutes.

13 J. Before submission of the proposed contract to the Council on
14 Bond Oversight, and prior to the date as of which the proposed
15 contract is executed by the Board of Corrections, the Attorney
16 General and the Director of the Office of Management and Enterprise
17 Services shall review the proposed final version of the contract.
18 The Attorney General and the Director of the Office of Management
19 and Enterprise Services shall have a period of fifteen (15) days
20 from receipt of the proposed final version of the contract to
21 approve the contract and execute the document. If either the
22 Attorney General or the Director of the Office of Management and
23 Enterprise Services has objections to the proposed contract, the
24 objections shall be communicated in writing to the Department of

1 Corrections. The Department of Corrections shall take appropriate
2 action regarding the objections and shall resubmit the proposed
3 contract for additional review. The Attorney General and the Office
4 of Management and Enterprise Services shall have an additional
5 fifteen-day period to approve the proposed contract and to execute
6 the document. Failure of the Attorney General or the Director of
7 the Office of Management and Enterprise Services, respectively, to
8 act within the fifteen-day period shall constitute approval of the
9 respective official to the proposed final version of the contract.
10 The contract shall contain a separate signature block or line for
11 signature by the Attorney General and the Office of Management and
12 Enterprise Services. The contract shall contain a statement to be
13 executed by the Attorney General and the Director of the Office of
14 Management and Enterprise Services that each one of them,
15 respectively, has reviewed the proposed contract for compliance with
16 the provisions of this section and Section 561 of this title, and
17 all other applicable provisions of law and that the contract
18 conforms with those requirements. Neither the private prison
19 contractor nor the State Board of Corrections shall execute the
20 contract until the document has been executed by the Attorney
21 General and the Director of the Office of Management and Enterprise
22 Services as required by this subsection unless the approval of the
23 respective official has been made as a result of failure to take
24 action within the fifteen-day period prescribed by this subsection.

1 K. The State Board of Corrections may renew a private prison
2 contract which is in effect for any time period during the fiscal
3 year ending June 30, 2009, if the Board determines that the renewal
4 of such contract will result in a reduced per diem in the fiscal
5 year ending June 30, 2010. If the State Board of Corrections makes
6 such determination, the contract shall not be subject to the
7 restrictions of paragraph 7 of subsection D of this section and the
8 Board shall negotiate the contract based upon such terms as the
9 Board deems to be in the best interest of operational efficiency,
10 including the inmate population, per inmate cost, public safety and
11 such other terms as the State Board of Corrections determines to be
12 relevant to such contract. The State Board of Corrections shall
13 have the authority to negotiate the term of any contract executed
14 pursuant to the provisions of this subsection subject to the
15 availability of appropriations to the Department of Corrections each
16 year.

17 L. When the Department of Corrections is seeking additional
18 space for housing inmates not currently available through existing
19 contract, the Department shall prepare an additional request for
20 proposals; provided, however, a request for proposals shall not be
21 required if an existing contract with a private prison contractor
22 can be amended to provide for additional housing in a private prison
23 facility where inmates in the custody of the Department of
24 Corrections are presently being held.

1 SECTION 2. This act shall become effective November 1, 2014.

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3 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/19/2014 -
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