HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3390 By: O'Donnell

COMMITTEE SUBSTITUTE

An Act relating to legal representation; amending 74 O.S. 2011, Section 20i, which relates to contracting for legal representation; clarifying types of entities authorized for contracting; requiring certain identification and fee schedule; specifying certain fee limitations; requiring standard contract clause and specifying contents; requiring posting of contract; requiring maintenance of records; adding requirements for Attorney General notification; specifying requirements for contracts exceeding certain costs; requiring requests for proposals; specifying procedures and requirements for requests for proposals; providing for selection of attorney or firm; requiring presentment of proposed contract and certain information to the Legislative Oversight Committee under certain circumstances; requiring an agency or official to submit certain information for settlement agreements; requiring the Attorney General to submit certain report annually; providing contents of report; providing for selection of arbitrators and mediators for court-ordered arbitration or mediation; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 2011, Section 20i, is amended to read as follows:

Section 20i. A. An agency or official of the executive branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney as such if otherwise authorized by law;

2. Contracting with the Office of the Attorney General; or

3. If the Attorney General is unable to represent the agency, or official due to a conflict of interest, or the Office of the Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

B. When entering into a contract for legal representation by one or more private attorneys or law firms, an agency or official of the executive branch shall select an attorney or attorneys or a law firm or law firms from a list of attorneys and firms maintained by the Attorney General. An agency may contract for legal representation with one or more attorneys who are not on the list only when there is no attorney or firm on the list capable of providing the specific representation and only with the approval of the Attorney General. The list shall include any attorney or firm who desires to furnish services to an agency or official of the executive branch and who has filed a schedule of fees for services with and on a form approved by the Attorney General. The list of attorneys and firms desiring to furnish services and a schedule of fees for each attorney and firm shall be maintained and made available to the public.

C. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General and as long as the new schedule of fees would not violate the fee schedules set forth in subsections D and E of this section.

D. An agency or official of the executive branch may not enter into a contingency fee contract that provides for the private attorney or firm to receive an aggregate contingency fee in excess of:

1. Twenty-five percent (25%) of that portion of any amount recovered that is Ten Million Dollars ($10,000,000.00) or less;

2. Twenty percent (20%) of that portion of any amount recovered that is more than Ten Million Dollars ($10,000,000.00) but less than or equal to Fifteen Million Dollars ($15,000,000.00);

3. Fifteen percent (15%) of that portion of any amount recovered that is more than Fifteen Million Dollars ($15,000,000.00) but less than or equal to Twenty Million Dollars ($20,000,000.00);

4. Ten percent (10%) of that portion of any amount recovered that is more than Twenty Million Dollars ($20,000,000.00) but less than or equal to Twenty-five Million Dollars ($25,000,000.00); and

5. Five percent (5%) of that portion of any amount recovered that is more than Twenty-five Million Dollars ($25,000,000.00).

E. Notwithstanding subsection D of this section, the total fee payable to all retained private attorneys in any contingency fee contract shall not exceed Fifty Million Dollars ($50,000,000.00), exclusive of any costs and expenses provided by the contract and actually incurred by the retained private attorneys, regardless of the number of actions or proceedings or the number of retained private attorneys involved in the matter.

F. The Attorney General shall develop a standard clause for inclusion in every contract for contingency fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the state, including, without limitation, the following requirements and the state shall not enter into a contract for contingency fee attorney services that does not incorporate these requirements:

1. The government attorneys shall retain complete control over the course and conduct of the case;

2. A government attorney with supervisory authority shall be personally involved in overseeing the litigation;

3. The government attorneys shall retain veto power over any decisions made by outside counsel;

4. Any defendant that is the subject of litigation may contact the lead government attorneys directly, without having to confer with contingency fee counsel;

5. A government attorney with supervisory authority for the case shall attend all settlement conferences; and

6. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the government attorneys and the state.

G. Copies of any executed contingency fee contract and contingency fee contract with the private attorney shall be posted on the Attorney General's website for public inspection within five (5) business days after the date the contract is executed and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments to the contract. Any payment of contingency fees shall be posted on the Attorney General's website within fifteen (15) days after the payment of the contingency fees to the private attorney and shall remain posted on the website for at least three hundred sixty-five (365) days after the payment is made.

H. Any private attorney under contract to provide services to the state on a contingency fee basis shall, from the inception of the contract until at least four (4) years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the providing of attorney services. The private attorney shall make all such records available for inspection and copying upon request. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one-tenth (1/10) of an hour and shall promptly provide these records to the Attorney General upon request.

~~C.~~ I. Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and~~, if not fully described in the contract,~~ notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction requiring representation;

2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official, if an attorney is employed by the agency or official;

3. The reason or reasons for not obtaining the representation from the Attorney General by contract;

4. The anticipated cost of the representation including the following:

a. the basis for or method of calculation of the fee including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and

b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract; ~~and~~

5. An estimate of the anticipated duration of the contract;

6. The past or present relationship, if any, between such attorney, law firm or any partner or other principal in such law firm and the state agency or state agent proposing to enter into the contract;

7. If the contract contemplates that all or part of the fee is contingent on the outcome of the legal proceeding, the reasons the contingent fee arrangement is believed to be in the state's interest and any efforts undertaken to obtain private counsel on a noncontingent fee basis; and

8. The justification for the determination that the selection of a contract for legal representation by one or more private attorneys or firms was made based on the ability of the private attorney or firm to provide the most economical and most competent service which furthers the best interest of the state. The most economical and most competent services does not necessarily mean the least expensive proposal.

J. After the approval of the contract by the Attorney General for legal representation by one or more private attorneys, the Attorney General must make available to the public via the Attorney

General's website the items required in paragraphs 1 through 8 of subsection I of this section.

~~D. Before~~ K. 1. In addition to the requirements of subsections I and J of this section, before entering into a contingency fee contract for legal representation by one or more private attorneys or firms where the agency has reason to believe that the case, transaction or matter will equal or exceed Twenty Thousand Dollars ($20,000.00) or after employment when it becomes apparent that the case, transaction or matter will equal or exceeds Twenty Thousand Dollars ($20,000.00), an agency or official of the executive branch shall obtain the approval of the Attorney General when the total cost, including fees and expenses, of all contracts relating to the same case, transaction, or matter will equal or exceed Twenty Thousand Dollars ($20,000.00).

2. In addition to the requirements of subsections I and J and paragraph 1 of this subsection, before entering into a contingency fee contract for legal representation by one or more private attorneys or firms, if the agency has reason to believe that the total cost for the case, transaction or matter, including fees and expenses, will equal or exceed One Million Dollars ($1,000,000.00) or after employment it becomes apparent that the costs in the case, transaction or matter, including fees and expenses, will equal or exceed One Million Dollars ($1,000,000.00), an agency or official of

the executive branch shall obtain the approval of the Governor's General Counsel.

3. Before entering into a contract for legal representation by one or more private attorneys or firms to initiate a legal action on behalf of the state, an agency or official of the executive branch shall initiate a request proposal from at least three qualified private attorneys or firms, when possible, engaged in providing such services. Notice of the request for proposal shall be published on the Attorney General's website. The request for proposal must solicit a billable hourly rate, regardless of whether a contingency fee is ultimately agreed upon, and must specify the importance of price, quality, ability and experience. The selection of a contract for legal representation by one or more private attorneys or firms must be made using the criteria established in the request for proposal. The selection of a contract for legal representation by one or more private attorneys or firms must be made on the basis of the response to the request which is the most economical and provides the most competent service which furthers the best interests of the state. The most economical and most competent services does not necessarily mean the least expensive proposal.

3. Any amendment, modification, or extension of a contract which, had it been a part of the original contract would have required approval by the Attorney General, shall also require approval by the Attorney General.

L. After entering into a contingency fee contract for legal representation by one or more private attorneys or firms if the agency has reason to believe that the case, transaction or matter will equal or exceed One Million Dollars ($1,000,000.00), an agency or official of the executive branch shall submit a copy of the proposed contract to the Legislative Oversight Committee overseeing the operations of the Legislative Office of Fiscal Transparency (LOFT) along with the following:

1. A description of the litigation or of the transaction requiring representation;

2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official;

3. The justification for selecting the attorney or firm contracted to represent the state;

4. The reason or reasons for not obtaining the representation from the Attorney General by contract; and

5. An estimate of the anticipated duration of the contract.

M. Settlement agreements shall not contemplate the ultimate use and destination of recovered funds unless done in accordance with paragraphs 11 and 12 of Section 18b of this title.

N. Within ten (10) days of an agency or official of the executive branch entering into a settlement agreement, when a private attorney or firm was hired on a contingency fee contract and the settlement was equal to or greater than One Million Dollars

($1,000,000.00), an agency or official of the executive branch shall present the settlement agreement to the Legislative Oversight Committee overseeing the operations of the Legislative Office of Fiscal Transparency (LOFT) unless otherwise postponed by LOFT.

~~E.~~ O. When an agency or official of the executive branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with the applicable provisions of Section 85.41 of ~~Title 74 of the Oklahoma Statutes~~ this title.

~~F.~~ P. The provisions of this section shall not apply to the Oklahoma Indigent Defense System created pursuant to Section 1355 et seq. of Title 22 of the Oklahoma Statutes.

~~G. The Attorney General shall, on or before February 1 of each year, make a written report on legal representation obtained pursuant to paragraphs 2 and 3 of subsection A of this section. The report shall include a brief description of each contract, the circumstances necessitating each contract, and the amount paid or to be paid under each contract. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives, and the Chair of the Appropriations Committee of the Senate.~~

Q. By February 1 of each year, the Attorney General shall submit a report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives and the Chair of the Appropriations Committee of the Senate describing the use of contracts with private attorneys in the preceding calendar year. At a minimum, the report shall identify all new contracts entered into during the calendar year and all previously executed contracts that remain current during any part of the calendar year. For each contract, describe:

1. The name of the private attorney with whom the agency has contracted including the name of the attorney's law firm;

2. The nature and status of the legal matter;

3. The name of the parties to the legal matter;

4. The amount of any recovery;

5. The amount of any hourly rate; and

6. The amount of any contingency fee paid.

R. In any court-ordered mediation or arbitration in which an agency or official of the executive branch is a party, the Attorney General shall nominate the arbitrator or mediator, with final selection to be made by the Contingency Review Board.

SECTION 2. This act shall become effective November 1, 2020.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2020 - DO PASS, As Amended.