

REFERENCE TITLE: adult incarceration contracts; cost comparison

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2354

Introduced by
Representative Campbell

AN ACT

AMENDING SECTION 41-1609.01, ARIZONA REVISED STATUTES; RELATING TO THE STATE DEPARTMENT OF CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1609.01, Arizona Revised Statutes, is amended to
3 read:
4 41-1609.01. Adult incarceration contracts; criteria
5 A. On publication, any request for proposals shall be provided to the
6 joint legislative budget committee for its review.
7 B. To be considered for an award of a contract, the proposer must
8 demonstrate that it has:
9 1. The qualifications, operations and management experience and
10 experienced personnel necessary to carry out the terms of the contract.
11 2. The ability to comply with applicable correctional standards and
12 any specific court order, if required.
13 3. A demonstrated history of successful operation and management of
14 other secure facilities.
15 C. The proposer of a contract for correctional services must agree
16 that this state may cancel the contract at any time after the first year of
17 operation, without penalty to this state, on giving ninety days' written
18 notice.
19 D. A contract may provide for annual contract price or cost
20 adjustments, except that any adjustments may be made only once each year
21 effective on the anniversary of the effective date of the contract. If any
22 adjustment is made pursuant to the terms of the contract, it shall be applied
23 to the total payments made to the contractor for the previous contract year
24 and shall not exceed the per cent of change in the average consumer price
25 index as published by the United States department of labor, bureau of labor
26 statistics between that figure for the latest calendar year and the next
27 previous calendar year.
28 E. Any price or cost adjustments to a contract different than those
29 authorized in subsection D of this section may be made only if the
30 legislature specifically authorizes the adjustments and appropriates monies
31 for that purpose, if required.
32 F. An award of a contract shall not be made unless an acceptable
33 proposal is received pursuant to any request for proposals. For the purposes
34 of this subsection, "acceptable proposal" means a proposal that substantially
35 meets all of the requirements or conditions set forth in this section and
36 that meets all of the requirements in the request for proposals.
37 G. A proposal shall not be accepted unless the proposal offers cost
38 savings to this state. COST SAVINGS SHALL BE DETERMINED BASED ON THE
39 STANDARD COST COMPARISON MODEL FOR PRIVATIZATION ESTABLISHED BY THE DIRECTOR.
40 H. A proposal shall not be accepted unless the proposal offers a level
41 and quality of services that are at least functionally equal to those that
42 would be provided by this state.
43 I. Notwithstanding section 41-2546, a contract to provide correctional
44 services as described in this section may be for an initial period of not
45 more than ten years.

1 J. The initial contract may include an option to renew for two
2 subsequent renewal periods of not more than five years each.

3 K. THE PERFORMANCE OF THE CONTRACTOR SHALL BE COMPARED TO THE
4 PERFORMANCE OF THIS STATE IN OPERATING SIMILAR FACILITIES, AS PROVIDED IN
5 THIS SECTION. THE DEPARTMENT SHALL CONDUCT A BIENNIAL COMPARISON OF THE
6 SERVICES PROVIDED BY THE VENDOR TO COMPARE PRIVATE VERSUS PUBLIC PROVISION OF
7 SERVICES. THE COMPARISON OF SERVICES SHALL BE BASED ON PROFESSIONAL
8 CORRECTIONAL STANDARDS SPECIFIED BY THE DIRECTOR AND INCORPORATED INTO THE
9 CONTRACT AND SHALL BE USED TO DETERMINE IF THE CONTRACTOR IS PROVIDING AT
10 LEAST THE SAME QUALITY OF SERVICES AS THIS STATE AT A LOWER COST OR IF THE
11 CONTRACTOR IS PROVIDING SERVICES SUPERIOR IN QUALITY TO THOSE PROVIDED BY
12 THIS STATE AT ESSENTIALLY THE SAME COST. IN CONDUCTING THE COMPARISON OF
13 SERVICES THE DIRECTOR SHALL CONSIDER:

- 14 1. SECURITY.
- 15 2. INMATE MANAGEMENT AND CONTROL.
- 16 3. INMATE PROGRAMS AND SERVICES.
- 17 4. FACILITY SAFETY AND SANITATION.
- 18 5. ADMINISTRATION.
- 19 6. FOOD SERVICE.
- 20 7. PERSONNEL PRACTICES AND TRAINING.
- 21 8. INMATE HEALTH SERVICES.
- 22 9. INMATE DISCIPLINE.
- 23 10. OTHER MATTERS RELATING TO SERVICES AS DETERMINED BY THE DIRECTOR.

24 L. THE DIRECTOR SHALL CONDUCT A COST COMPARISON OF EXECUTED
25 PRIVATIZATION CONTRACTS ONCE EVERY FIVE YEARS FOR EACH CONTRACT.

26 M. THE DIRECTOR SHALL PROVIDE THE MOST RECENT SERVICE COMPARISON AND
27 COST COMPARISON FOR CONTRACTORS WHO EXCLUSIVELY CONTRACT WITH THE DEPARTMENT
28 TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS REVIEW.

29 ~~K.~~ N. A contract for correctional services described in this section
30 shall not be entered into unless the following requirements are met:

31 1. The contractor provides audited financial statements for the
32 previous five years, or for each of the years the contractor has been in
33 operation, if fewer than five years, and provides other financial information
34 as requested.

35 2. The contractor provides an adequate plan of insurance, specifically
36 including coverage or insurance for civil rights claims and liabilities as
37 approved by the risk management division of the department of administration.

38 3. The contractor agrees to be liable for the costs of any emergency,
39 public safety or security services provided to the contractor by the state or
40 any political subdivision of the state and to reimburse the state or any
41 political subdivision of the state for the cost of any such services.

42 ~~L.~~ O. The sovereign immunity of this state does not apply to the
43 contractor. Neither the contractor nor the insurer of the contractor may
44 plead the defense of sovereign immunity in any action arising out of the
45 performance of the contract.

1 ~~M.~~ P. A contract for correctional services shall not authorize, allow
2 or imply a delegation of authority or responsibility to a prison contractor
3 for any of the following:
4 1. Developing and implementing procedures for calculating inmate
5 release dates.
6 2. Developing and implementing procedures for calculating and awarding
7 sentence credits.
8 3. Approving the type of work inmates may perform and the wages or
9 sentence credits that may be given to inmates engaging in the work.
10 4. Granting, denying or revoking sentence credits, placing an inmate
11 under less restrictive custody or more restrictive custody or taking any
12 disciplinary actions.