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H.623

Introduced by Representatives Townsend of South Burlington, Buxton of
Tunbridge, Christie of Hartford, Cole of Burlington, Cross of
Winooski, Davis of Washington, Donovan of Burlington,
Krowinski of Burlington, Macaig of Williston, McCormack of
Burlington, Moran of Wardsboro, O'Sullivan of Burlington,
Poirier of Barre City, Spengler of Colchester, Stevens of
Waterbury, Weed of Enosburgh, and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Executive; standards for contracts including privatization contracts;
privatization contracts

Statement of purpose of bill as introduced: This bill proposes to impose new
requirements for agencies entering into privatization contracts.

An act relating to privatization contracts

It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 3 V.S.A. § 342 is amended to read:

2 § 342. CONTRACTING STANDARDS; PERSONAL SERVICES AND
3 PRIVATIZATION CONTRACTS

4 A personal services or privatization contract is contrary to the spirit and
5 intent of the classification plan and merit system and standards of this title, and
6 shall not be certified by the ~~attorney general~~ Attorney General under
7 subdivision 311(a)(10) of this title, unless the provisions of subdivisions (1),
8 (2), and (3) of this ~~subsection~~ section are met, or one or more of the exceptions
9 described in subdivision (4) of this ~~subsection~~ section apply.

10 (1) The agency will not exercise supervision over the daily activities or
11 methods and means by which the contractor provides services other than
12 supervision necessary to ensure that the contractor meets performance
13 expectations and standards; and

14 (2) The services provided are not the same as those provided by
15 classified ~~state~~ State employees ~~within the agency~~; and

16 (3) The contractor customarily engages in an independently established
17 trade, occupation, profession, or business; or

18 (4) Any of the following apply:

19 (A) The services are not available within ~~the agency~~ State
20 government or are of such a highly specialized or technical nature that the

1 necessary knowledge, skills, or expertise is not available within ~~the agency~~
2 State government.

3 (B) The services are incidental to a contract for purchase or lease of
4 real or personal property.

5 (C) There is a demonstrated need for an independent audit, review, or
6 investigation; or independent management of a facility is needed as a result of,
7 or in response to, an emergency such as licensure loss or criminal activity.

8 (D) The ~~state~~ State is not able to provide equipment, materials,
9 facilities, or support services in the location where the services are to be
10 performed in a cost-effective manner.

11 (E) The contract is for professional services, such as legal,
12 engineering, or architectural services, that are typically rendered on a
13 case-by-case or project-by-project basis, and the services are for a period
14 limited to the duration of the project, normally not to exceed two years or
15 provided on an intermittent basis for the duration of the contract.

16 (F) The need for services is urgent, temporary, or occasional, such
17 that the time necessary to hire and train employees would render obtaining the
18 services from ~~state~~ State employees imprudent. Such contract shall be limited
19 to 90 days' duration, with any extension subject to review and approval by the
20 ~~secretary of administration~~ Secretary of Administration.

1 (G) Contracts for the type of services covered by the contract are
2 specifically authorized by law.

3 (H) Efforts to recruit ~~state~~ State employees to perform work,
4 authorized by law, have failed in that no applicant meeting the minimum
5 qualifications has applied for the job.

6 (I) The cost of obtaining the services by contract is lower than the
7 cost of obtaining the same services by utilizing ~~state~~ State employees. When
8 comparing costs, the provisions of section 343 of this title shall apply.

9 Sec. 2. 3 V.S.A. § 343 is amended to read:

10 § 343. PRIVATIZATION CONTRACTS; PROCEDURE

11 No agency may enter a privatization contract, unless all of the following are
12 satisfied:

13 (1) The agency shall prepare a specific written statement of the services
14 proposed to be the subject of the privatization contract, including the specific
15 quantity and standard or quality of the subject services. ~~35~~ Thirty-five days
16 prior to the beginning of any open bidding process, the agency provides written
17 notice to the collective bargaining representative of the intent to seek to enter a
18 privatization contract. During those 35 days, the collective bargaining
19 representative shall have the opportunity to discuss alternatives to contracting.
20 Such alternatives may include amendments to the contract if mutually agreed
21 upon by the parties. Notices regarding the bid opportunity may not be issued

1 during the 35-day discussion period. The continuation of discussions beyond
2 the end of the 35-day period shall not delay the issuance of notices.

3 (2) The agency shall solicit competitive sealed bids for the privatization
4 contracts based upon the statement referenced in subdivision (1) of this
5 section. This statement shall be a public record. The day designated by the
6 agency upon which it will accept these sealed bids shall be the same for any
7 and all parties. The term of any privatization contract shall not exceed five
8 years. No amendment to a privatization contract shall be valid if it has the
9 purpose or effect of avoiding any requirement of this section.

10 (3) The proposed contract is projected to result in overall cost savings to
11 the state of at least ten percent above the projected cost of having the services
12 provided by classified ~~state~~ State employees.

13 (3)(4) When comparing the cost of having a service provided by
14 classified ~~state~~ State employees to the cost of having the service provided by a
15 contractor:

16 (A) The expected costs of having services provided by classified ~~state~~
17 State employees and obtaining the service through a contractor should be
18 compared over the life of the contract. One-time costs associated with having
19 services provided by a contractor rather than classified ~~state~~ State employees,
20 such as the expected cost of leave pay-outs for separating employees,
21 unemployment compensation, and the cost of meeting the ~~state's~~ State's

1 obligation, if any, to continue health insurance benefits, shall be spread over
2 the expected life of the contract.

3 (B) The basic cost of services by a contractor includes:

4 (i) the bid price or maximum acceptable bid identified by the
5 contracting authority; and

6 (ii) any additional costs to be incurred by the agency for
7 inspection, facilities, reimbursable expenses, supervision, training, and
8 materials, but only to the extent that these costs exceed the costs the agency
9 could expect to incur for inspection, facilities, reimbursable expenses, and
10 materials if the services were provided by classified ~~state~~ State employees.

11 (C) The basic cost for services provided by a classified ~~state~~ State
12 employee includes:

13 (i) wages, benefits, and training;

14 (ii) the cost of supervision and facilities, but only to the extent that
15 these costs exceed the costs the agency could expect to incur for supervision or
16 facilities if the services were provided by a contractor; and

17 (iii) the estimated cost of obtaining goods when the comparison is
18 with the cost of a contract that includes both goods and services.

19 ~~(D) Possible reductions in the cost of obtaining services from~~
20 ~~classified state employees that require concessions shall not be considered~~

1 ~~unless proposed in writing by the certified collective bargaining agent and~~
2 ~~mutually agreed to by the state and collective bargaining agent.~~

3 (5) For each position in which a bidder will employ any person pursuant
4 to a privatization contract and for which the duties are substantially similar to
5 the duties performed by a State employee, the statement required by
6 subdivision (1) of this section shall include a statement of the minimum wage
7 rate to be paid for each position, which shall not be less than the first step of
8 the grade under which the comparable regular State employee is paid. Every
9 bid for a privatization contract and every privatization contract shall include
10 provisions specifically establishing the wage rate for each position, which shall
11 not be less than the minimum wage rate contained in the statement required by
12 the agency. Every bid and contract shall also include provisions for the
13 contractor to pay a percentage of the costs of health insurance plans for every
14 employee employed pursuant to the contract comparable to the percentage paid
15 by the State for State employees. The health insurance plan shall provide
16 coverage to the employee and the employee's spouse and dependent children,
17 if any. Each contractor shall submit quarterly payroll records to the agency,
18 which list the name, address, Social Security number, hours worked, and the
19 hourly wage paid for each employee in the previous quarter.

20 (6) A privatization contract shall contain a provision requiring the
21 contractor to offer available employee positions pursuant to the contract to

1 qualified regular employees of the agency whose employment is terminated
2 because of the privatization contract and who satisfy the hiring criteria of the
3 contractor. The contract shall also contain a provision requiring the contractor
4 to comply with a policy of nondiscrimination and equal opportunity for all
5 persons and to take affirmative steps to provide such equal opportunity for all
6 persons.

7 (7) The agency shall prepare a comprehensive written estimate of the
8 costs of regular agency employees providing the subject services in the most
9 cost-efficient manner. The estimate shall include all direct and indirect costs
10 of regular agency employees providing the subject services, including pension,
11 insurance, and other employee benefit costs. For the purpose of this estimate,
12 any employee organization may, at any time before the final day for the agency
13 to receive sealed bids pursuant to subdivision (1) of this section, propose
14 amendments to any relevant collective bargaining agreement to which it is a
15 party. Any amendments shall take effect only if necessary to reduce the cost
16 estimate pursuant to this subdivision below the contract cost pursuant to
17 subdivision (9) of this section. Possible reductions in the cost of obtaining
18 services from classified State employees that require concessions shall not be
19 considered unless proposed in writing by the certified collective bargaining
20 agent and mutually agreed to by the State and collective bargaining agent. The
21 estimate shall remain confidential until after the final day for the agency to

1 receive sealed bids for the privatization contract pursuant to subdivision (1) of
2 this section, at which time the estimate shall become a public record and filed
3 with both the agency and the Secretary of Administration.

4 (8) After consulting with any relevant employee organization, the
5 agency shall provide adequate resources for the purpose of encouraging and
6 assisting present agency employees to organize and submit a bid to provide the
7 subject services. In determining what resources are adequate for this purpose,
8 the agency shall refer to an existing collective bargaining agreement of a
9 similar employee organization whose members perform the subject services
10 and which provides similar resources in the same or other agencies. If no such
11 collective bargaining agreement exists, the agency shall refer to any existing
12 collective bargaining agreements providing such resources, and shall provide
13 the resources at the minimum level of assistance provided in the agreements.
14 The agency shall consider any employee bid on the same basis as all other
15 bids. An employee bid may be made as a joint venture with other persons.

16 (9) After soliciting and receiving bids, the agency shall publicly
17 designate the bidder to which it proposes to award the contract. The agency
18 shall prepare a comprehensive written analysis of the contract cost based upon
19 the designated bid, specifically including the costs of transition from public to
20 private operation, of additional unemployment and retirement benefits, if any,
21 and of monitoring and otherwise administering contract performance. If the

1 designated bidder proposes to perform any or all of the contract outside the
2 boundaries of the State, the contract cost shall be increased by the amount of
3 income tax revenue, if any, that will be lost to the State by the corresponding
4 elimination of agency employees as determined by the Department of Taxes.

5 (10) The secretary of the agency and the Secretary of Administration
6 shall each certify in writing that:

7 (A) they have complied with all provisions of this section and of all
8 other applicable laws;

9 (B) the quality of the services to be provided by the designated bidder
10 is likely to satisfy the quality requirements of the statement prepared pursuant
11 to subdivision (1) of this section, and to equal or exceed the quality of services
12 which could be provided by regular agency employees pursuant to
13 subdivision (5).

14 (C) the contract cost pursuant to subdivision (9) of this section will
15 be less than the estimated cost pursuant to subdivision (7), taking into account
16 all the comparable types of costs;

17 (D) the designated bidder and its supervisory employees, while in the
18 employ of the designated bidder, have no adjudicated record of substantial or
19 repeated willful noncompliance with any relevant federal or State regulatory
20 statute, including statutes concerning labor relations, occupational safety and

1 health, nondiscrimination and affirmative action, environmental protection,
2 and conflicts of interest; and

3 (E) the proposed privatization contract is in the public interest, in that
4 it meets the applicable quality and fiscal standards set forth in this section.

5 (11) The State Auditor is authorized, upon request, to investigate and if
6 necessary, to invalidate any relevant contracts.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2014.