

An act relating to privatization contracts

It is hereby enacted by the General Assembly of the State of Vermont:  
Sec. 1. 3. V.S.A §343 is amended to read

§343. PRIVATIZATION CONTRACTS; PROCEDURE

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

(1)(A) Thirty-five days prior to the beginning of any open bidding process, the agency provides written notice to the collective bargaining representative of the intent to seek to enter a privatization contract. During those 35 days, the collective bargaining representative shall have the opportunity to discuss alternatives to contracting. Such alternatives may include amendments to the contract if mutually agreed upon by the parties. Notices regarding the bill opportunity may not be issued during the 35-day discussion period. The continuation of discussions beyond the 35-day period should shall not delay the issuance of notices.

(B) The agency shall prepare a specific written statement of the services proposed to be the subject of the services proposed to be the subject of the privatization contract, including the specific quantity and standard or quality of the subject services. For each position in which a bidder will employ any person pursuant to a privatization contract and for which the duties are substantially similar to the duties performed by a State employee, the statement shall also include a statement of the minimum wage rate to be paid for each position, which shall not be less than the average step of the grade under which the comparable regular State employee is paid. This statement shall be subject to 1 V.S.A. chapter 5, subchapter 3 (Public Records Act).

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

(3) When comparing the cost of having a service provided by classified State employees to the cost of having the service provided by a contractor:

(A) The expected costs of having services provided by classified State employees and obtaining the service through a contractor should be compared over the life of the contract. One-time costs associated with having services provided by a contractor rather than classified State employees, such as the expected cost of leave pay-outs for separating employees, unemployment compensation, and the cost of meeting the State's obligation, if any, to continue health insurance benefits, shall be spread over the expected life of the contract.

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

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

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

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

(i) wages, benefits, and training

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

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

(D) Possible reductions in the cost of obtaining services from classified State employees that require concessions shall not be considered unless proposed in writing by the certified collective bargaining agent and mutually agreed to by the State and collective bargaining agent.”

(4) Every bid for a privatization contract shall include provisions specifically establishing the wage rate for each position, which shall not be less than the minimum wage rate contained in the statement described in subdivision (1)(B) of this subsection. Every bid shall also include provisions for the contractor to include in the contract the costs of health, dental, and vision insurance plans for every employee employed pursuant to the contract, equal to the percentage paid by the State for State employees. The health insurance plan described in the bid shall provide coverage to the employee and the employee’s dependent children, if any. The bid shall require that each contractor submit quarterly payroll records to the agency, which list the name, address, Social Security number, hours worked, and the hourly wage paid for each employee in the previous quarter.

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

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

(B) the quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements of the statement prepared pursuant to subdivision (1) of this subsection

(C) the designated bidder and its supervisory employees, while in the employ of the designated bidder, have no record of substantial or repeated willful noncompliance with any relevant federal or State regulatory statute, including statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest; and

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

(b) Each privatization contract shall include the following terms and conditions:

(1) Provisions specifically establishing the wage rate for each position, which shall not be less than the minimum wage rate contained in the statement described in subdivision (a)(1) of this section.

(2) Provisions for the contractor to include in the contract the costs of health, dental, and vision insurance plans for every employee employed pursuant to the contract equal to the percentage paid by the State for State employees. The health insurance plan shall provide coverage to the employee and the employee's spouse and dependent children, if any. Each contractor shall submit quarterly payroll records to the agency, which list the name, address, Social Security number, hours worked, and the hourly wage paid for each employee in the precious quarter.

(3) A provision that the agency shall not amend any privatization contract if the amendment has the purpose or effect of voiding any requirement of this section.

(4) A provision requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons, and to take affirmative steps to provide such equal opportunity for all persons.

(5) A provision granting all employees employed under the contract just cause employment protection.

(6) A provision requiring the contractor to comply with a policy of whistleblower protection equal to those defined in sections 971-978 of this title.

(c) After the 35-day period of review described in subdivision (a)(1)(A) of this section, bust subsequent to the certification described in subdivision (a)(5), a panel, to be composed of the Commissioner of Labor or designee, the Auditor of Accounts or designee, and the president of the collective bargaining agent or

designee, shall issue a decision on the compliance of the proposed privatization contract with the terms of this title and, if necessary, the collective bargaining representative may bring a civil action to invalidate the proposed privatization contract.

(d)(1) The Attorney General is authorized, upon request, to investigate compliance with the terms of this title. In the event of a determination of noncompliance by the Attorney General, the contract shall not be renewed, and the services shall be thereafter provided by classified State employees.

Sec. 2., EFFECTIVE DATE

This act shall take effect on passage.