

HOUSE BILL No. 2401

AN ACT concerning the department of corrections; authorizing the secretary of corrections to enter agreements for public-private partnerships for projects for new or renovated buildings at correctional institutions for education, skills-building and spiritual needs programs; establishing a nonprofit corporation to receive gifts, donations, grants and other moneys and engage in fundraising projects for funding such projects; amending K.S.A. 75-3739 and repealing the existing section.

WHEREAS, The Legislature finds that it is in the public's interest to prepare incarcerated persons to be ready to meet Kansas workforce needs when released, by providing education and skills-building programs and services; and

WHEREAS, There is a public need for the construction or renovation of facilities that are used predominantly for education and skills-building programs and services for persons housed in adult correctional institutions, to prepare incarcerated persons for employment and successful reentry after incarceration; and

WHEREAS, It is in the public interest to authorize, encourage and incentivize public-private partnerships to support projects to raise funds for and construct or renovate buildings to provide space to deliver education and skills-building programs and services; and

WHEREAS, It is the intent of the Legislature to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital and other funding sources for constructing and upgrading buildings for education and skills-building programs at correctional institutions and to provide the greatest possible flexibility to public and private entities for entering public-private partnerships for that purpose; and

WHEREAS, It is the intent of the Legislature to encourage and enable partnerships with faith-based organizations to address the spiritual needs of incarcerated persons:

Now, therefore:

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in K.S.A. 75-3739, and amendments thereto, and sections 1 through 5, and amendments thereto:

(a) "Private entity" means any partnership, firm, association, corporation, sole proprietorship or other business organization, whether organized for profit or not-for-profit and includes any faith-based organization.

(b) "Secretary" means the secretary of corrections.

(c) "Public-private partnership" means the relationship established between the department of corrections and a private entity by contracting for the performance of any combination of specified functions or responsibilities to develop, finance, construct or renovate a building at a correctional institution where the department of corrections cost for development, finance, construction or renovation of such building does not exceed 25% of the total cost of the developing, financing, constructing or renovating such building.

(d) "Correctional institution" means the Lansing correctional facility, Hutchinson correctional facility, Topeka correctional facility, Norton correctional facility, Ellsworth correctional facility, Winfield correctional facility, Osawatomie correctional facility, Larned correctional mental health facility, Toronto correctional work facility, Stockton correctional facility, Wichita work release facility, El Dorado correctional facility, any juvenile correctional facility or institution as defined in K.S.A. 2020 Supp. 38-2302, and amendments thereto, and any other correctional institution established by the state for the confinement of adult or juvenile offenders under control of the secretary.

(e) "Public-private project" means the project to develop, finance, construct or renovate a building at a correctional institution pursuant to a public-private partnership.

(f) "Faith-based organization" means any religious, charitable and other organization as defined by article 17 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, or any other organization whose values are based on faith and beliefs, or both, that has a mission

based on social values of the particular faith and whose members are from a particular faith group.

(g) "Spiritual needs" means any program or service that addresses any issue related to sincerely held religious beliefs.

New Sec. 2. (a) The secretary is hereby authorized to enter agreements with private entities for public-private project for the purpose of funding new or renovated buildings at a correctional institution for:

- (1) Education and skills-building programs and services; and
- (2) purposes of addressing the spiritual needs of incarcerated persons.

(b) The secretary shall determine whether the project is suitable for a public-private partnership agreement, by conducting an analysis of the feasibility, desirability and the convenience to the public of the project and whether the project furthers the public policy goals of the department of corrections. The secretary shall consult with the secretary of administration for input from the office of facilities and property management when conducting such analysis.

(c) Prior to commencement of a public-private project, the secretary shall advise and consult with the joint committee on state building construction concerning such project, including the budget for such project.

(d) Nothing in this act shall be construed to mean that a public-private partnership may be established for the purpose of developing, financing or construction of a privately operated correctional institution.

(e) The secretary may request approval for the issuance of bonds for a public-private project from the department of administration for the purposes of K.S.A. 74-8905(b), and amendments thereto, and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905, and amendments thereto.

(f) The secretary shall submit to the house of representatives committee on corrections and juvenile justice and the senate committee on judiciary at the beginning of the regular session of the legislature in 2022 and annually thereafter a report of the following: Status of any public-private project entered into; funds raised for the education, skills-building and spiritual needs programs and services; buildings renovated or constructed for such programs or services; names of all education and skills-building program and service providers; brief description of the programs and services offered; number of inmates enrolled in an education or skills-building program or service; and graduation or completion outcomes of each education or skills-building program or service.

New Sec. 3. (a) For any proposed public-private project, the secretary shall cause to be prepared a budget for the project.

(b) The budget shall reflect the source of the funds and set out with particularity the full cost of construction and acquisition of such project. The budget may, but is not required to, include operational costs of such project.

(c) The secretary shall include any department of corrections costs for such projects in budget estimates pursuant to K.S.A. 75-3717 and 75-3717b, and amendments thereto, and clearly indicate the portion to be paid by the state and the portion to be paid by private funds.

(d) The secretary is authorized to establish a nonprofit corporation organized under section 501(c)(3) of the internal revenue code of 1986. The board of directors of the nonprofit corporation shall consist of representatives of the department of corrections and department of administration. The purpose of the nonprofit corporation shall be to receive gifts, donations, grants and other moneys and engage in fundraising to fund new or renovated building projects for education, skills-building and spiritual needs programs at any correctional institution.

New Sec. 4. (a) In any public-private partnership, the secretary

shall ensure the private entity is qualified to carry out the project, including, but not limited to, ensuring that the private entity:

(1) Has available such lawful sources of funding, capital, securities or other financial resources as are necessary to carry out the project;

(2) possesses either through its staff, subcontractors, a consortium or joint venture agreement the managerial, organizational, technical capacity and experience in the type of project undertaken;

(3) is qualified to lawfully conduct business in Kansas;

(4) certifies that no director, officer, partner, owner or other individual with direct and significant control over the policy of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States;

(5) maintains a policy of public liability insurance, a copy of which shall be provided to the secretary; and

(6) agrees to abide by all relevant local, state and federal laws, rules and regulations.

(b) In any public-private partnership, the secretary shall enter an agreement that reflects the roles, duties, responsibilities and commitments of all parties. The agreement shall include, but not be limited to:

(1) A clear statement: Of the purpose and scope of the project; of the roles and responsibilities of each party; that the private entity does not gain sovereign immunity by the agreement; and that each party bears liability and responsibility for the actions of such party's agents and employees;

(2) procedures that govern the rights and responsibilities of the public and private entities during the construction of the building and in the event of the termination of the agreement or a material default;

(3) a description of how the project will be carried out consistent with all standards binding on the state, department of corrections and correctional institution where the building is being constructed or renovated;

(4) a budget for the project that reflects source of funding and costs;

(5) a statement that upon completion, the buildings will be owned by the state; and

(6) a statement reflecting that maintenance and operations costs shall be the responsibility of the state after the building is completed.

New Sec. 5. (a) This act does not waive the sovereign immunity of the State of Kansas.

(b) This act does not create sovereign immunity for any private entity entering a public-private partnership under this act.

Sec. 6. K.S.A. 75-3739 is hereby amended to read as follows: 75-3739. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs; and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required in the following instances:

(1) For contractual services, supplies, materials; or equipment when, in the judgment of the director of purchases, no competition exists;

(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services;

(4) when any statute authorizes another procedure or provides an exemption from the provisions of this section;

(5) when compatibility with existing contractual services,

supplies, materials or equipment is the overriding consideration;

(6) when a used item becomes available and is subject to immediate sale;~~or~~

(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state; *or*

(8) *when a public-private partnership between the secretary of corrections and a private entity exists for any public-private project to develop, finance, construct or renovate a building at a correctional institution, provided state funds do not exceed 25% of the total cost. The provisions of this paragraph shall not apply to the procurement process established in K.S.A. 75-5801 et seq., and amendments thereto, regarding engineering services. As used in this paragraph, "public-private partnership," "private entity" and "public-private project" mean the same as defined in section 1, and amendments thereto.*

When the director of purchases approves a purchase of or contract for supplies, materials, equipment, or contractual services in any instance specified in this subsection, the director may delegate authority to make the purchase or enter the contract under conditions and procedures prescribed by the director. Except for purchases or contracts entered into without a competitive bid under subsection (a) (3), (a)(4), (a)(6) or subsection (h), no purchase or contract entered into without a competitive bid for an amount in excess of \$100,000 shall be entered into by the head of any state agency or approved by the director of purchases unless the director of purchases first posts an on-line notice of the proposed purchase or contract at least seven days before the purchase or contract is awarded. The director of purchases shall provide notice thereof to members of the legislature at the beginning of each calendar year that such information will be posted and the director of the division of purchases shall provide the uniform resource locator (URL) and the number of times such information shall be available. In the event a written protest of the awarding of such a contract occurs during the seven-day notice period, the director of purchases shall request from the protestor the contact information, including name and mailing address, of the person or entity that has expressed an interest in supplying the goods or services and provide a copy of the specification to the person or entity that has expressed an interest in supplying the goods or services and verify that such person or entity is interested and capable of supplying such goods or services.

Upon satisfaction of the director of purchases regarding the validity of the protest and the existence of competition, the director of purchases shall proceed with a competitive procurement. A competitive procurement shall not be required when, in the judgment of the director of purchases, the validity of the protest cannot be determined or competition for such goods or services cannot be verified by the director of purchases.

The director of purchases shall prepare a detailed report at least once in each calendar quarter of all contracts over \$5,000 entered into without competitive bids under subsection (a)(1), (2), (3), (5), (6)~~or~~, (7) *or* (8). The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(b) (1) If the amount of the purchase is estimated to exceed \$50,000, sealed bids shall be solicited by notice published once in the Kansas register not less than 10 days before the date stated in the notice for the opening of the bids. The director of purchases may waive this publication of notice requirement when the director determines that a more timely procurement is in the best interest of the state. The director of purchases also may designate a trade journal for the publication. The director of purchases also shall solicit such bids by sending notices by mail to prospective bidders and by posting the notice on a public bulletin board for at least 10 business days before the date stated in the notice for the opening of the bids unless otherwise provided by law. All

bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(2) The director of purchases shall prepare a detailed report at least once in each calendar quarter of all instances in which the director waived publication of the notice of bid solicitations in the Kansas register as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(c) All purchases estimated to exceed approximately \$25,000 but not more than \$50,000, shall be made after receipt of sealed bids following at least three days' notice posted on a public bulletin board.

(d) All purchases estimated to be more than \$5,000, but less than \$25,000, may be made after the receipt of three or more bid solicitations by telephone, telephone facsimile or sealed bid, following at least three days' notice posted on a public bulletin board. Such bids shall be recorded as provided in subsection (f) of K.S.A. 75-3740, and amendments thereto. Any purchase that is estimated to be less than \$5,000 may be purchased under conditions and procedures prescribed by the director of purchases. Purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section.

(e) With the approval of the secretary of administration, the director of purchases may delegate authority to any state agency to make purchases of less than \$25,000 under certain prescribed conditions and procedures. The director of purchases shall prepare a report at least once in each calendar quarter of all current and existing delegations of authority to state agencies as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(f) Subject to the provisions of subsection (e), contracts and purchases shall be based on specifications approved by the director of purchases. When deemed applicable and feasible by the director of purchases, such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both, for all supplies, materials, equipment and contractual services to be purchased by the state. The director of purchases may reject a contract or purchase on the basis that a product is manufactured or assembled outside the United States. No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(g) Notwithstanding anything herein to the contrary, all contracts with independent construction concerns for the construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

(h) The director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

(i) The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments thereto.

(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. Except as otherwise provided in subsection (k) ~~of this section,~~

purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section. As used in this subsection the term "grant" means a disbursement made from federal or private funds, or a combination of these sources, to a state agency. Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts over \$5,000 for services, supplies, materials or equipment entered into pursuant to subsection (h), (i) or (j) and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(l) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. A state agency shall submit to the secretary of administration such information relating to any proposed lease of real property as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

(m) The director of purchases shall require all bidders on state contracts to disclose all substantial interests held by the bidder in the state.

(n) As used in article 37 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, and other statutory provisions concerning state procurement, "sealed bids," "bulletin boards" and "mail" shall include electronic bids, electronic bulletin boards and electronic mail when such items are utilized in accordance with procedures prescribed by the director of purchases.

Sec. 7. K.S.A. 75-3739 is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.