

REFERENCE TITLE: adult incarceration contracts; services; costs

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HB 2313**

Introduced by  
Representatives Contreras P: Aguilar, Austin, Blattman, Crews, Ortiz,  
Sandoval, Schwiebert, Seaman, Stahl Hamilton, Sun, Terech, Villegas

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  
3 to read:

4 41-1609.01. Adult incarceration contracts; criteria; service  
5 and cost comparisons

6 A. On publication, any request for proposals shall be provided to  
7 the joint legislative budget committee for its review.

8 B. To be considered for an award of a contract, the proposer must  
9 demonstrate that it has:

10 1. The qualifications, operations and management experience and  
11 experienced personnel necessary to carry out the terms of the contract.

12 2. The ability to comply with applicable correctional standards and  
13 any specific court order, if required.

14 3. A demonstrated history of successful operation and management of  
15 other secure facilities.

16 C. The proposer of a contract for correctional services must agree  
17 that this state may cancel the contract at any time after the first year  
18 of operation, without penalty to this state, on giving ninety days'  
19 written notice.

20 D. A contract may provide for annual contract price or cost  
21 adjustments, except that any adjustments may be made only once each year  
22 effective on the anniversary of the effective date of the contract. If  
23 any adjustment is made pursuant to the terms of the contract, it shall be  
24 applied to the total payments made to the contractor for the previous  
25 contract year and shall not exceed the ~~percent~~ PERCENT of change in the  
26 average consumer price index as published by the United States department  
27 of labor, bureau of labor statistics between that figure for the latest  
28 calendar year and the next previous calendar year.

29 E. Any price or cost adjustments to a contract different than those  
30 authorized in subsection D of this section may be made only if the  
31 legislature specifically authorizes the adjustments and appropriates  
32 monies for that purpose, if required.

33 F. An award of a contract shall not be made unless an acceptable  
34 proposal is received pursuant to any request for proposals. For the  
35 purposes of this subsection, "acceptable proposal" means a proposal that  
36 substantially meets all of the requirements or conditions set forth in  
37 this section and that meets all of the requirements in the request for  
38 proposals.

39 G. A proposal shall not be accepted unless the proposal offers cost  
40 savings to this state.

41 H. A proposal shall not be accepted unless the proposal offers a  
42 level and quality of services that are at least functionally equal to  
43 those that would be provided by this state.

1 I. Notwithstanding section 41-2546, a contract to provide  
2 correctional services as described in this section may be for an initial  
3 period of not more than ten years.

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

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

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

29 L. THE DIRECTOR SHALL CONDUCT A COST COMPARISON OF EXECUTED PRIVATE  
30 PRISON CONTRACTS ONCE EVERY FIVE YEARS FOR EACH CONTRACT.

31 M. THE DIRECTOR SHALL PROVIDE THE MOST RECENT SERVICE COMPARISON  
32 AND COST COMPARISON PRESCRIBED BY SUBSECTION K OF THIS SECTION THAT THE  
33 DEPARTMENT PREPARES FOR CONTRACTORS WHO EXCLUSIVELY CONTRACT WITH THE  
34 DEPARTMENT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR ITS REVIEW.

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

38 1. The contractor provides audited financial statements for the  
39 previous five years, or for each of the years the contractor has been in  
40 operation, if fewer than five years, and provides other financial  
41 information as requested.

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

1           3. The contractor agrees to be liable for the costs of any  
2 emergency, public safety or security services provided to the contractor  
3 by ~~the~~ THIS state or any political subdivision of ~~the~~ THIS state and to  
4 reimburse ~~the~~ THIS state or any political subdivision of ~~the~~ THIS state  
5 for the cost of any such services.

6           ~~t.~~ 0. The sovereign immunity of this state does not apply to the  
7 contractor. Neither the contractor nor the insurer of the contractor may  
8 plead the defense of sovereign immunity in any action arising out of the  
9 performance of the contract.

10          ~~M.~~ P. A contract for correctional services shall not authorize,  
11 allow or imply a delegation of authority or responsibility to a prison  
12 contractor for any of the following:

13           1. Developing and implementing procedures for calculating inmate  
14 release dates.

15           2. Developing and implementing procedures for calculating and  
16 awarding sentence credits.

17           3. Approving the type of work inmates may perform and the wages or  
18 sentence credits that may be given to inmates engaging in the work.

19           4. Granting, denying or revoking sentence credits, placing an  
20 inmate under less restrictive custody or more restrictive custody or  
21 taking any disciplinary actions.