

GOVERNMENT CODE
CHAPTER 495. CONTRACTS FOR CORRECTIONAL FACILITIES AND SERVICES
SUBCHAPTER A. CONTRACTS WITH PRIVATE VENDORS AND COMMISSIONERS
COURTS

Sec. 495.001. AUTHORITY TO CONTRACT. (a) The board may contract with a private vendor or with the commissioners court of a county for the financing, construction, operation, maintenance, or management of a secure correctional facility.

(b) A facility operated, maintained, and managed under this subchapter by a private vendor or county must:

(1) hold not more than an average daily population of 1,000 inmates;

(2) comply with federal constitutional standards and applicable court orders; and

(3) receive and retain, as an individual facility, accreditation from the American Correctional Association.

(c) A facility authorized by this subchapter may be located on private land or on land owned by the state or a political subdivision of the state. The board may accept land donated for that purpose.

(d) The population requirements imposed by Subsection (b)(1) do not apply to a facility that is under construction or completed before April 14, 1987.

(e) The board shall give priority to entering contracts under this subchapter that will provide the institutional division with secure regionally based correctional facilities designed to successfully reintegrate inmates into society through preparole, prerelease, work release, and prison industries programs.

(f) Notwithstanding Subsection (b)(1), a facility that before December 1, 1991, was operated, maintained, and managed under this subchapter by a private vendor or county may not hold more than an average daily population of 500 inmates, unless the commissioners court of the county in which the facility is located expresses in a resolution on the subject that the limit on population imposed by this subsection should not apply to the facility.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.001 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 2.01, eff. Dec. 1, 1991.

Sec. 495.002. INMATES. The institutional division may confine only minimum or medium security inmates in a facility authorized by this subchapter. An inmate confined in a facility authorized by this subchapter remains in the legal custody of the institutional division.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.002 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.003. CONTRACT PROPOSALS; QUALIFICATIONS AND STANDARDS. (a) The board may not award a contract under this subchapter unless the board requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Subsections (b), (c), and (d).

(b) A person proposing to enter a contract with the board under this subchapter must demonstrate:

(1) the qualifications and the operations and management experience to carry out the terms of the contract; and

(2) the ability to comply with the standards of the American Correctional Association and with specific court orders.

(c) In addition to meeting the requirements specified in the requests for proposals, a proposal must:

(1) provide for regular, on-site monitoring by the institutional division;

(2) acknowledge that payment by the state is subject to the availability of appropriations;

(3) provide for payment of a maximum amount per biennium;

(4) offer a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than 10 percent of the cost of housing inmates in similar facilities and providing similar programs to those types

of inmates in state-operated facilities;

(5) permit the state to terminate the contract for cause, including as cause the failure of the private vendor or county to meet the conditions required by this subchapter and other conditions required by the contract;

(6) provide that cost adjustments may be made only once each fiscal year, to take effect at the beginning of the next fiscal year;

(7) have an initial contract term of not more than three years, with an option to renew for additional periods of two years;

(8) if the proposal includes construction of a facility, contain a performance bond approved by the board that is adequate and appropriate for the proposed contract;

(9) provide for assumption of liability by the private vendor or county for all claims arising from the services performed under the contract by the private vendor or county;

(10) provide for an adequate plan of insurance for the private vendor or county and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor or county;

(11) provide for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor or county and to protect the state from actions by a third party against the private vendor or county, its officers, guards, employees, and agents as a result of the contract;

(12) provide plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor or inability of the county to perform its duties under the contract; and

(13) contain comprehensive standards for conditions of confinement.

(d) Before the commissioners court of a county proposes to enter into a contract under this subchapter, the commissioners court of the county must receive the written approval of the sheriff of the county. A sheriff may not unreasonably withhold written approval under this subsection. A correctional facility provided by a county under this subchapter is subject to the same standards and requirements as a correctional facility provided by a private vendor.

(e) The Legislative Budget Board determines the costs and cost savings under Subsection (c)(4) and may consider any relevant factor, including additional costs to the state for providing the same service as a private vendor or county, indirect costs properly allocable to either the state or the private vendor or county, and continuing costs to the state directly associated with the contract.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.003 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 2.03, eff. Dec. 1, 1991.

Sec. 495.004. LIMITATION ON AUTHORITY OVER INMATES. A private vendor or county operating under a contract authorized by this subchapter may not:

(1) compute inmate release and parole eligibility dates;

(2) award good conduct time;

(3) approve an inmate for work, medical, or temporary furlough or for preparole transfer; or

(4) classify an inmate or place an inmate in less restrictive custody than the custody ordered by the institutional division.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.004 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.005. CIVIL LIABILITY. A private vendor operating under a contract authorized by this subchapter may not claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor or county. This section does not deprive the private vendor or the state of the benefit of any law limiting exposure to liability, setting a limit on damages,

or establishing a defense to liability.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01 eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.005 by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.006. CONVERSION OF FACILITY. The board may not convert a facility into a correctional facility operated by a private vendor or by a county if, before April 14, 1987, the facility is:

(1) operated as a correctional facility by the board;
or

(2) being constructed by the board for use as a correctional facility.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.006 by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.007. LIMITATION. The board may not enter into contracts under this subchapter for more than 4,580 beds.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 2.02, eff. Dec. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 238, Sec. 6.01, eff. May 22, 1993; Acts 1999, 76th Leg., ch. 1188, Sec. 1.13, eff. Sept. 1, 1999.

Sec. 495.008. AUDITING AND MONITORING CONTRACTS. (a) The department shall develop a comprehensive methodology for enhanced auditing and monitoring of all facilities operated under contract with the department that house inmates of the department and releasees under the supervision of the department. To achieve this objective, the department shall first review existing auditing, monitoring, and oversight capabilities of the department to determine what further procedures and resources are necessary to achieve this goal.

(b) The department shall ensure that all new and renewed contracts described by Subsection (a) include:

(1) a provision that the department or a designee of the department may conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance;

(2) minimum acceptable standards of performance prescribed by the department that include provisions regarding the health, safety, and welfare of inmates and releasees;

(3) a provision that if a review determines that a vendor is not in compliance with the contract, the department may require that the vendor's per diem compensation be withheld until the vendor meets contract requirements or the vendor is replaced;

(4) a provision requiring a vendor not in compliance with the contract to implement a plan of corrective action approved by the department; and

(5) a provision under which the state is indemnified for costs of litigation and for any damages in lawsuits alleging that the health, safety, or welfare of an inmate or releasee in a contract facility is not protected.

(c) The department shall complete at least one enhanced audit for each facility described by Subsection (a), without regard to whether the facility is operated by a public or private vendor. The enhanced audit must include an enhanced contract compliance review of any vendors hired by a community supervision and corrections department to operate a facility.

(d) The department, in conjunction with an advisory committee composed of state officials and private officials from within the industry, shall adopt rules to implement the requirements of this section.

(e) The department shall develop an appeals process, incorporated by reference into all new and renewed contracts, under which a vendor may appeal any imposed sanction under the contract, with the appeals process including the right to a formal hearing and a right to a final determination by the board.

(f) Expired.

Added by Acts 2001, 77th Leg., ch. 474, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER B. MISCELLANEOUS CONTRACTS FOR CORRECTIONAL FACILITIES AND SERVICES

Sec. 495.021. LEASE-PURCHASE, INSTALLMENT CONTRACTS. (a) The board may contract with the commissioners court of a county to use, lease-purchase, purchase on an installment contract, or acquire in any other manner a secure correctional facility financed and constructed under the authority of the county. The contract must be subject to specific appropriative authority in the General Appropriations Act, and the facility must be managed by the

institutional division.

(b) A contract under this section is subject to review and approval by the Bond Review Board under the provisions of Chapter 1231 without regard to the amount or the duration of the contract. Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.021 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.237, eff. Sept. 1, 2001.

Sec. 495.022. CONTRACTS WITH FEDERAL GOVERNMENT. (a) The board may contract with the federal government for the lease of any military base or other federal facility that is not being used by the federal government.

(b) A facility leased under this section may be used by the institutional division for the purpose of housing inmates determined by the division to be minimum security inmates.

(c) The board may not enter into a contract under this section unless funds have been appropriated specifically for the purpose of making payments on contracts authorized under this section.

(d) The board shall attempt to enter into contracts authorized by this section that will provide the institutional division with facilities located in the various parts of the state.

(e) A facility leased under this section by the board must comply with federal constitutional standards and applicable court orders.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.022 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.023. CONTRACTS FOR DIAGNOSTIC AND EVALUATION SERVICES. (a) The institutional division shall request proposals and may award one contract to a private vendor or community supervision and corrections department to screen and diagnose, either before or after adjudications of guilt, persons who may be transferred to the division. The term of the contract may not be for more than two years. The institutional division shall award the contract if the division determines that:

(1) the person proposing to enter into the contract can provide psychiatric, psychological, or social evaluations of persons who are to be transferred to the division;

(2) the services provided will reduce the chances of misdiagnosis of mentally ill and mentally retarded persons who are to be transferred to the division, expedite the diagnostic process, and offer savings to the division;

(3) the quality of services offered equals or exceeds the quality of the same services provided by the division; and

(4) the state will assume no additional liability by entering into a contract for the services.

(b) If the institutional division enters into the contract and during or at the end of the contract period determines that the diagnostic services performed under the contract are of a sufficient quality and are cost effective, the division shall submit requests for additional proposals for contracts and award one or more contracts in the same manner as provided by Subsection (a).

Added by Acts 1989, 71st Leg., ch. 212, Sec. 2.01, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Government Code Sec. 494.023 and amended by Acts 1991, 72nd Leg., ch. 16, Sec. 10.01(a), eff. Aug. 26, 1991.

Sec. 495.024. RELEASE OF OUT-OF-STATE INMATES. A county or a municipality or a private vendor operating a correctional facility under a contract with a county under Subchapter F, Chapter 351, Local Government Code, or a municipality under Subchapter E, Chapter 361, Local Government Code, that enters into a contract with any entity to house in this state inmates convicted of offenses committed against the laws of another state of the United States must require as a condition of the contract that each inmate to be released from custody must be released in the sending state.

Added by Acts 1997, 75th Leg., ch. 175, Sec. 1, eff. May 21, 1997.