

# **SERVICE INDUSTRIES CONTRACT**

On the 19<sup>th</sup> day of November, 2019, this Contract is entered into by and is between the Oklahoma Department of Corrections, ("DOC"), and PROCOM, LLC ("Contractor").

This contract is authorized by Title 57 O.S. Sections 546-549, Private Prison Industries. The purpose of the contract is to provide a working relationship between the parties for their mutual benefit.

Now, therefore, for, and in consideration of the mutual promises, covenants, conditions, and terms as hereinafter set forth, the parties mutually agree as follows:

1. DOC Agrees To:

- a. Provide spaces within the Oklahoma Department of Corrections at Mack Alford Correctional Center and Eddie Warrior Correctional Center. These will be known therein as the PROCOM Call Centers which sites are located within the security boundaries of the respective correctional centers.
- b. Provide heating /air conditioning for use by the contractor.
- c. Provide work stations and chairs to the Contractor and provide for repair of such office furniture.
- d. Provide a secure closet for storage of Contractor's tools and storage for supplies.
- e. Provide access by Contractor, its duly authorized agents, business invitees, and employees to the private prison industry location, subject to the security requirements of the center.
- f. Provide electricity, water, and gas utilities, and the mechanical systems using such utilities, including maintenance thereof, at no expense to Contractor.
- g. Provide for disposal of waste materials, trash hauling, and ground maintenance at no expense to Contractor.
- h. Provide training and orientation to the Contractor, its agents, and employees, regarding security procedures, including the security procedures for a tool control and inventory system that meets the Department's security requirements.

- i. Refer qualified offenders for employment by Contractor in accordance with procedures specified in OP-060107, Systems of Incarceration and OP-030103, Offender Job and Program Assignments.

2. Contractor Agrees To:

- a. Be responsible for all costs associated with the operating of his business and not relating to the facilities as discussed in Section 1-i, including any cost associated with office supplies and reproduction services essential for daily business needs.
- b. Operate a telemarketing business whose purpose is selling products and services to the business market and customers. The Contractor shall provide vocational training and work for a range of 100 offenders at the Eddie Warrior Correctional Center and 60 offenders at the Mack Alford Correctional Center performing this business. These services will not include the manufacturing of any tangible product.
- c. Provide and maintain a telephone system and connectivity services at its expense.
- d. Maintain the working area in a clean, neat, and orderly appearance.
- e. Not make any improvements, alterations, or renovations to the site without prior written approval of the Coordinator and OCI Director. All costs and allocation of the costs of such improvements, alterations, or renovations shall be as mutually agreed by the parties, in writing.
- f. Comply with all federal and state laws and Department policies and regulations otherwise applicable, for offender workers and complying with the security procedures of the center.
- g. Be solely responsible for any and all loss or damages to its private or business personal property arising from natural acts, and may purchase adequate insurance coverage for such natural disasters, if so desired.
- h. Along with its agents, employees, and business invitees expressly agree and hereby consent to reasonable vehicle and personal searches upon entering and leaving the correctional center by Department personnel. Any violations of applicable state law shall subject such violator to criminal prosecution or exclusion or both.
- i. The Contractor agrees to comply with all applicable laws concerning marketing its product in a non-discriminatory manner.

### 3. DOC and Contractor Agree:

- a. All private personal property of Contractor, its agents, and employees, and all personal business property, equipment, tools, fixtures, inventory, materials, vehicles, and supplies shall be at the sole risk of Contractor, and neither the Department nor the State of Oklahoma, or any agents or employees, thereof, shall be liable for damage or loss to both private or business property of Contractor, its agents, or employees, nor shall the Department and the State of Oklahoma be liable for any damages or losses arising out of any acts, omissions, or other occurrences of offenders, whether or not employed by Contractor.
- b. Nothing herein contained shall be construed as creating a leasehold estate or other property interest in the working site located within the center.
- c. The Contractor shall have the same authority to manage its offender employees concerning personnel matters such as firing, disciplining, earning, and granting leave, layoffs, etc., pursuant to its written personnel policies within the normal course of private business standards.

### 4. CONTRACTORS EMPLOYMENT RESPONSIBILITIES

- a. The Contractor shall provide job descriptions, responsibilities, minimum job qualifications, and a current copy of its written personnel policies to the OCI Partnership Coordinator. The Contractor shall provide work orientation, job training, and instruction for its offender employees.
- b. The Contractor agrees to work shifts of no longer than eight working hours. The normal working hours shall be between 0800 and 1700 hours, Monday through Friday, excluding approved holidays. Weekend or night shifts are not prohibited by this contract but may be utilized under the terms and conditions of this contract. Any additional shifts required shall be approved by the Department and the warden of the correctional facility.

### 5. EMPLOYEE COMPENSATION AND BENEFITS

- a. The Contractor agrees to pay the Department during a two (2) week training period a rate of \$3.75 per hour.
- b. After completion of the training period, the labor rate will be \$7.25 per hour.
- c. Remit to the Department the full amount on an invoice within forty-five (45) working days after the presentation of the invoice. Customer agrees to pay 1.5% per month of any outstanding amount, accruing the first day payment

is overdue, plus costs of collection, including attorney's fees and costs on all past due amounts.

- d. Any benefits, other than those listed above, shall be at the sole discretion and cost of Contractor and shall be subject to the term and conditions of this contract. The Department shall be trustee for any benefits provided offender employees.

## 6. LIABILITY LIMITS

- a. The Contractor, its agents or employees, pursuant to this contract shall not be deemed employees of the Department of Corrections or the State of Oklahoma, nor as agents thereof, in any manner whatsoever. The Contractor, its agents or employees, shall not hold themselves out nor claim, demand, or apply for any right, defense or privilege applicable to an agent, employee, or officer of the Department of Corrections or the State of Oklahoma, including but not limited to worker's compensation, unemployment insurance benefits, social security benefits, retirement benefits, or the Governmental Torts Claim Act, 51 O.S. sec. 151 et seq.
- b. The parties agree that the Governmental Tort Claims Act, 51 O.S. sec. 151 et seq. is applicable. Nothing herein shall be construed as a waiver of the sovereign immunity defense for the State of Oklahoma or the Department of Corrections.
- c. Where any damage or loss of the Contractor is the result of the negligence of Department or its agents or employees, for which the Department is held liable in a court of competent jurisdiction, such damage or loss shall exclude any punitive or consequential damage and all legal costs incurred.
- d. The Contractor agrees to protect, defend, indemnify, and hold harmless the State of Oklahoma, the Department, their agents or employees from any liability or claims arising out of or relating to products produced or services rendered under this contract. The Contractor agrees that the Department and its agents or employees is not a guarantor of the products produced or the services rendered, nor for the work performed by the employees of Contractor.

## 7. TERMINATION

- a. Unless otherwise agreed in writing, this contract shall expire at the close of business five years.
- b. In the event the Oklahoma Legislature fails to appropriate funds or the Governor vetoes funds appropriated which effectively prohibits the

Department from fulfilling its obligations under this contract, this contract shall terminate within ninety (90) days thereof.

- c. Either party may terminate this contract for any reason by providing one hundred-twenty (60) days written notification to the other party by certified mail, return receipt requested. The notification period shall begin to run upon the date the return receipt is signed.
- d. In the event the safety and welfare of Contractor, its agents, or employees is jeopardized for reasons relating to the security of the Correctional Center, the contract shall be suspended for an agreed upon period of time. In the event of any destruction of the building occupied because of natural acts or security disturbances the contract may be suspended for an agreed upon period of time not to exceed 30 days from the date safety and welfare is deemed to not be in jeopardy. In the event of any destruction of the building occupied because of natural acts or security disturbances, the contract may be suspended or terminated at the option of the Department if no suitable facility can be substituted within 45 days of such destruction or security disturbance.

#### 8. BREACH, DEFAULT, AND DISPUTES

- a. Either party may terminate this contract for the failure of the other party to perform as per the terms and conditions contained herein. Any damages shall be as authorized by law in a court of competent jurisdiction, except attorney's fees and related legal costs, which shall be borne by each party separately. Any mitigating circumstances shall be considered by both parties in determining failure to perform.
- b. In the event a bona fide dispute or a conflict of interest arises between the parties which cannot be resolved through reasonable diligence, either party may request mediation under the Oklahoma Dispute Resolution Act, 12 O.S. sec. 1801 et seq., as amended. Such request shall be agreed to by the other party. The parties agree that this process shall be binding and shall bar any legal action in a judicial or quasi-judicial tribunal. All costs relating to this process shall be borne separately by each party. Any dispute shall not affect the performance requirements and duties of this contract. It shall remain in full force and effect unless otherwise terminated.
- c. In the event the Contractor fails to comply with the discrimination clause stated in OP-030101 or causes actions that jeopardize the security interests of the Department, the Department may terminate or suspend this contract until such compliance is gained or cure tendered.

#### 9. RECORDS, DOCUMENTS, ACCOUNTS, AND REPORTS

- a. The Contractor shall maintain all records, books of accounts, personnel files, and such other documents required by law to be maintained and accounted for, and shall maintain them in a safe place, and make them available to state and federal officials for inspection as authorized by law, including inspection by the duly authorized officers of the Department. The Contractor agrees to retain all records, books of accounts, personnel files and such other documents required by law and other documents relevant to this contract, for a period of three (3) years, and shall make them available for inspection by state and federal officials as required by law, including inspection by the duly authorized officers of the Department.

#### 10. GOVERNING LAW AND SEVERABILITY

- a. If any provision, clause, or paragraph of this contract or any document incorporated by reference shall be determined invalid by court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this contract which are not affected by the determination. The provisions, clauses, or paragraphs, and any documents incorporated by reference are declared severable.
- b. This contract shall be governed by the laws of the State of Oklahoma.

#### 11. RULES AND REGULATIONS

- a. This contract contains all the terms and conditions agreed upon between the parties.

#### 12. NOTICES

- a. All notices required in this contract shall be mailed, "certified mail, return receipt requested", to the following addresses of the parties:

Alex Lunn, Director  
Oklahoma Correctional Industries  
3402 Martin Luther King, Blvd.  
Oklahoma City, OK 73111-4219

John Scallan, Managing Member  
711 Kimberly Ann Circle  
Mandeville, LA 70471

13. EXECUTION

- a. The parties shall execute this contract in duplicate originals by affixing their signatures hereto in the place provided, and by affixing their respective signatures shall warrant that each has the authority to execute and bind their agencies.

**DATE OF EXECUTION:** \_\_\_\_\_

OKLAHOMA DEPARTMENT  
OF CORRECTIONS

PROCOM, LLC

\_\_\_\_\_  
Justin Farris, Chief of Operations  
Oklahoma Department of Corrections

\_\_\_\_\_  
John Scallan, Managing Member

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Gary L. Elliott, Acting General Counsel

\_\_\_\_\_  
Alex Lunn, OCI Director

**PROCOM (Contractor)**  
**Prison Industry Enhancement**  
**Contract**  
**2019**