STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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February 12, 2007

Opinion No. 07-12

South Central Correctional Facility RFP

QUESTION

Does TENN. CODE ANN. §§ 12-4-109, 41-24-101 *et seq*, or any other state statute or regulation require the Department of Correction to include in the RFP the contract maximum price stated in Section 3.3.6 of the proposed RFP?

OPINION

Yes. TENN. CODE ANN. § 12-4-109(a)(1)(A) requires that evaluation criteria must be included in the RFP.

ANALYSIS

TENN. CODE ANN. § 41-24-101, *et seq*. known as the "Private Prison Contracting Act of 1986" authorizes the State to contract for correctional services for only one (1) medium security or minimum security facility opened after July 1, 1991, pursuant to the requirements and procedures specified in Chapter 24. Corrections Corporation of America (CCA) is the current vendor whose contract expires in a few months.

The Department of Correction (DOC) is preparing to issue a Request for Proposals (RFP) to send to potential vendors. Pursuant to TENN. CODE ANN. § 41-24-104(a)(1), the Attorney General, the State Building Commission (SBC), and the Commissioner of the Department of Correction must first approve any request for proposals, any original contract, any contract renewal and any price and/or cost adjustment or any other amendment to any contract. The SBC gave its approval to issue the RFP at its January 11, 2007 meeting. This Office gave its approval to the SBC and DOC Commissioner Little by letter dated February 1, 2007.

The RFP and contract contain objective performance criteria and cost criteria to measure the level and quality of services as required by TENN. CODE ANN. § 41-24-104(c)(2). The statute requires that the cost of the private operation and the cost to the state to monitor the private operation is at least five percent (5%) less than the State's cost for essentially the same services.

This Office has reviewed the applicable statutes for private prison contracting with the procurement statute, TENN. CODE ANN. § 12-4-109, and determined that the contract maximum price

stated in Section 3.3.6 of the proposed RFP should be included in the RFP. The cost figure is the basis for the evaluation, and evaluation criteria should be included in RFPs. *See* TENN. CODE ANN. § 12-4-109(a)(1)(A). Moreover, the information is readily available as a public record. This Office, therefore, recommends that this cost figure be included in the RFP based upon RFP statutory requirements.

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Requested by:

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