

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGES OF AMERICA, INC.,

Petitioner,

vs.

Case No. 16-5237BID

DEPARTMENT OF CORRECTIONS,

Respondent.

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RECOMMENDED ORDER

On October 12 and 13, 2016, Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings conducted a duly-noticed hearing pursuant to section 120.57(3), Florida Statutes (2016), in Tallahassee, Florida.

APPEARANCES

For Petitioner: Amy W. Schrader, Esquire  
Baker Donelson  
Suite 925  
101 North Monroe Street  
Tallahassee, Florida 32301

For Respondent: Jonathan P. Sanford, Esquire  
Sean W. Gellis, Esquire  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue to be determined is whether the specifications for Request for Proposals number FDC RFP-17-108, "Community Release Center (CRC) in Orange County, Florida," are contrary to the

governing statutes, rules or policies of the Florida Department of Corrections (the Department or DOC).

PRELIMINARY STATEMENT

On August 11, 2016, the DOC advertised a Request for Proposals (RFP) with advertisement number RFP-17-108, entitled, "Community Release Center (CRC) in Orange County, Florida" (RFP-17-108 or the RFP). On August 16, 2016, Petitioner, Bridges of America, Inc. (Petitioner or Bridges), notified the Department that it intended to protest the specifications of FDC RFP-17-108 pursuant to section 120.57(3) and Florida Administrative Code Rule 28-110.003. Bridges filed a Formal Written Protest and Petition for Formal Administrative Hearing on August 26, 2016, which the Department forwarded to the Division of Administrative Hearings for assignment of an administrative law judge on September 13, 2016.

Petitioner moved for leave to file an Amended Written Protest and Petition for Formal Hearing, which was granted by Order dated September 16, 2016. That same day a Notice of Hearing was issued scheduling the hearing for October 12 and 13, 2016. The Department moved to dismiss the Amended Petition, which was denied by Order dated September 30, 2016. On October 10, 2016, the parties filed a Joint Pre-hearing Stipulation in which it was agreed that DOC would revise portions of the RFP to address Bridges' concerns regarding the time for

contract performance and the requirement to pay for a contract monitor. Given this stipulation, the remaining issue for resolution in this proceeding is whether the omission of substance-abuse transition beds in Orange County as part of the RFP is contrary to governing law, arbitrary and capricious, or contrary to competition.

The hearing commenced on October 12, and concluded the following day. At hearing, the parties submitted Joint Exhibits 1 through 6 and 10 through 19. Petitioner presented the testimony of Lori Constantino-Brown, Petitioner's President and CEO; Abraham Uccello, DOC's Director of Development, Improvement and Readiness; John Becker, Assistant Bureau Chief for Classification Management; Margaret Agerton, Assistant Bureau Chief of In-Prison Substance Abuse Management; and Mark Tallent, Budget Director for the Department. The Department's Exhibits numbered 1 through 3 were also admitted.

The three-volume Transcript of the proceedings was filed with the Division on October 19, 2016. Both parties filed their Proposed Recommended Orders on October 31, 2016. All references to the Florida Statutes are to the 2016 codification unless otherwise indicated.

#### FINDINGS OF FACT

Based upon the oral and documentary evidence presented at hearing, the following facts are found:

1. Petitioner is a vendor that currently holds contracts with the Department to provide work-release beds and transitional work-release beds throughout the state of Florida and holds a contract providing these services in Orange County, Florida. Its Orange County facility is referred to in this proceeding as Orlando Bridges and qualifies as a community release center. Bridges is a vendor who would, potentially, bid on the request for proposal at issue in this case. Petitioner has standing to challenge the specifications of RFP-17-108, and there is no dispute that Petitioner timely filed its notice of intent to protest the specifications; timely filed a formal written protest; and timely filed the required protest bond.

2. On August 11, 2016, the Department issued FDC RFP-17-108, "Community Release Center (CRC) in Orange County, Florida." A community release center is defined by Florida Administrative Code Rule 33-601.602(1)(n) as "a correctional or contracted facility that houses community custody inmates participating in a community release program."

3. The RFP seeks proposals from vendors to provide:

A facility located in Orange County, Florida, with qualified staff to deliver a Community Release Center (CRC) for male inmates. Services will include operation of each facility, security, supervision, housing, care, meals, employability skills, licensed substance abuse outpatient and after care services, cognitive-behavioral interventions, parenting, family

reunification, anger management, mentoring, budgeting, victim awareness and related transition services to enhance the inmate's successful reintegration back into society.

The Department intends to award one contract in Orange County for up to seventy-five (75) male beds. The number of awarded beds will be determined by the Department based on the Vendor's response to this RFP. The Department reserves the right to increase or decrease the bed allocation based on the Department's need, and the appropriation of funds.

4. The contract currently held by Bridges for its Orlando Bridges facility, Contract #C2489, was executed in 2008, and has been renewed and extended a number of times. It is scheduled to expire December 31, 2016. Under the current contract, Bridges provides up to 54 work release beds and up to 84 substance-abuse treatment transition beds (transition beds). The Department currently pays, on average, \$21 per day, per inmate, for work-release beds. It pays an average of \$52 per day for transition beds. Orlando Bridges also holds other contracts with the Department: according to Petitioner, it has slightly under 400 inmates currently, with 134 beds under Contract #C2489; 100 beds under a probation diversion program; and the remainder under other work-release programs.

5. The difference in cost between transition beds and work-release beds reflects the difference in services currently provided. For transition beds, inmates are placed at a facility,

such as the Orlando Bridges campus, which operates as a modified therapeutic community. Depending on the terms of the governing contract, the facility can either be provided by the vendor, as is the case with Orlando Bridges, or can be a Department-owned facility operated by a private vendor. The inmates assigned to transition beds receive intensive therapeutic services, including education, substance-abuse treatment, vocational training, employment and re-entry assistance, depending on the individual inmate's needs. The inmate focuses on treatment during this portion of the program. Once the treatment portion of the program is completed, inmates are transferred to work-release beds, where the goal is obtaining and maintaining work-release employment. Inmates receive some additional treatment while in work-release beds, but the focus is on employment.

6. Orlando Bridges is a 15-acre campus that could house up to 400 inmates. It is not a secure facility: it does not have a secured perimeter and does not have armed guards.

7. Under Contract #C2489, Orlando Bridges is assigned a "parent institution," which is located in the same geographic area and provides oversight and limited classification services to Orlando Bridges. The contract also provides for the transportation of inmates in the event that medical care is needed, because medical services are not included within the scope of the contract.

8. Contract #C2489 also delineates the process to be used should an inmate be terminated from the program or released from custody. Specifically, Contract #C2489 provides:

T. Termination from the Work  
Release/Program Center

All behavior problems, escapes, disciplinary problems, unusual incidents, special medical issues and requests for inmates to be removed from the program shall be reported to the OIC of the parent institution. The Department is responsible for terminating inmates from the Substance Abuse Transitional/Work Release (Re-entry) Program Center. An inmate may be terminated and returned to the physical custody of the Department from the Substance Abuse Transitional/Work Release Program Center when it has been determined that to do so is in the best interests of the Department, the Substance Abuse Transitional/Work Release (Re-entry) Program Center, and/or the inmate or for any other compelling reason related to public safety. Pursuant to this Contract and Department Policy, the Warden of the parent institution or other Department staff is authorized to approve an inmate's termination from the Transitional Work Release/Program Center. If it becomes necessary to terminate an inmate from the program, Department staff or other law enforcement staff shall assume physical custody of the inmate and transport the inmate to an appropriate facility. . . .

U. Release of Inmates from the Custody of  
the Department of Corrections

All inmates placed by the Department into the Contractor's Substance Abuse Transitional/Work Release (Re-entry) Center shall remain in the Substance Abuse Transitional/Work Release (Re-entry) Program Center program until their sentence of

incarceration is completed, or until returned to the Department's custody by reason of termination from the Substance Abuse Transitional/Work Release (Re-entry) Program Center program. . . . (emphasis added).

9. The Department currently has contracts for five facilities providing transition beds like those provided under Contract #C2489. The Department also has contracts that provide only for work-release beds, and has contracts of this type with Petitioner. For example, Turning Point in Broward County is a contract for 99 work-release beds and is a Bridges-owned facility.

10. RFP-17-108 seeks proposals for work-release beds only, although 21 more than are currently provided through Contract #C2489. The Department is not seeking transition beds, with their more intensive treatment component, as a part of this RFP. As a result, should Bridges choose to bid on this RFP, it would provide services for 63 fewer beds than it provides under the current contract, at an intensity level that is higher than the current work-release beds and lower than the current transition beds.

11. While the RFP seeks proposals for work-release beds as opposed to transition beds, there are some similarities between the RFP and the current contract because both deal with services provided at a community release center. For example, the RFP specifies that there will be a correctional institution that will be designated as a parent institution to provide oversight and



limited classification services, and has many of the same provisions with respect to licensure, facilities, staffing and oversight.

12. The RFP requires the vendor to provide job development, placement, and retention services, as did previously issued contracts providing for work-release beds. However, the RFP also requires bidders to provide readiness programs and services to address individual criminogenic needs of the inmate, such as development of independent living skills and economic self-sufficiency; mentoring; budgeting; anger management; cognitive-behavioral interventions; educational and literacy skills development; parenting; family reunification; life skills; victim awareness; and outpatient and aftercare substance-abuse services.

13. Similar to Contract #C2489, there are provisions within the RFP that refer to inmates being "returned to the physical custody of the Department." See, for example, sections 2.8.1 (Facility Intake) and 2.11.1.14 (Inmate Termination from the CRC).

14. RFP-17-108 is an initial step in a change of focus for the Department when it comes to providing substance-abuse treatment and work-release services to inmates. The overall vision is identified in Joint Exhibit 3, a document entitled "Timing of Effective Intervention." Joint Exhibit 3 is a document prepared by Maggie Agerton at the request of her supervisor, Abraham Uccello, to address how best to use the Department's

existing resources to provide the greatest amount of treatment to the most inmates. It is an internal document that has not been formalized. Mr. Uccello, who requested that the document be prepared, described Joint Exhibit 3 as a work product document and did not know what the final version would look like.

15. Department staff testified that the Department is looking at a new approach to providing work-release and substance-abuse services, because as a result of inmate classifications based upon the nature of the offenses committed, only nine percent of the inmate population qualifies for placement in the community.<sup>1/</sup> The Department has a budget of approximately \$27 million devoted to contracted substance-abuse treatment. Of that \$27 million, approximately \$15,489,548 (57%) of the budget is currently allocated for 688 transition beds statewide. Work-release slots with related treatment represent \$789,927 of the budget. The remainder of the budget (\$10,933,333) is used to serve the needs of the remaining 91% of the inmate population.

16. The Department's concern is that more resources should be used to treat moderate to high-risk inmates, because best practices studies show that these inmates are the one that most need the services to reduce recidivism. The Department's data indicates that approximately 62% of the inmate population have an identified need for substance-abuse treatment, and under the

current model, a significant percentage of the inmates with an identified need is being untreated.

17. In light of these concerns, the Department intends to move some, but not all, of its substance-abuse treatment "behind the fence" (i.e., in secured institutions) in order to reach a greater number of inmates. It also seeks to expand the number of work-release slots, with a "substance-abuse treatment overlay" for those expanded slots. As described in Joint Exhibit 3, the proposed approach is to provide as much intervention as possible while the inmate is housed in a secure facility; to require inmates mandated for substance-abuse treatment to receive it prior to being placed in work release; to use work release as a "privilege and incentive for hard work in core programming and readying oneself for release"; and to consider work release as the final transitional step between readiness and community transition. The primary focus of work release would be to obtain and maintain paid employment. Participants, however, would be given the opportunity to complete any domain programming that was not completed at the secure facility.

18. To that end, Joint Exhibit 3 identified requirements from prior requests for proposals and added some additional requirements for the work-release beds they would be seeking. The working document provides:

- In previous solicitations, proposers were required to provide, at a minimum:
  - A facility/site which provides housing in a clean, safe environment;
  - Sufficient qualified staff to operate the facility and programs;
  - Three (3) nutritious, balanced meals per day prepared on site and/or including preparation of sack lunches for inmates employed away from the CRC during scheduled meal times (if the meal cannot be consumed on site for these inmates);
  - Job development, job placement and job retention services;
  - Access to transportation as required by Department rules and regulations;
  - Personal financial management instructions; and
  - Licensed outpatient substance abuse treatment, intervention, and aftercare.
  
- In the current solicitation, the proposer must also provide readiness programs and services to address individual criminogenic needs of the participants. These services are intended to facilitate successful reintegration in the community upon completion of incarceration through development of independent living skills and economic self-sufficiency gained through meaningful employment. These include:
  - Cognitive-behavioral interventions;
  - Parenting;
  - Family reunification;
  - Anger management;
  - Mentoring, budgeting;
  - Victim awareness;
  - Compass 100; and
  - Related transition services and referrals.

- Readiness programming is based on individual needs and will be provided in instances where the participant did not receive the required level of service prior to placement at the CRC.

19. The terms of the RFP are consistent with the approach outlined in Joint Exhibit 3.

20. RFP-17-108 has no per diem rate specified that proposers are required to meet. The Department has left the cost open so that it can determine whether this approach is financially feasible. If a vendor believes that there are extra costs to run a facility as bid, the vendor can include those costs in the price it submits. If all bids come back too high, the Department will have to determine whether they can afford this approach.

21. The stated intention of the Department is, as current contracts for transition beds expire over the course of the next four years, the contracts will be allowed to expire or will perhaps not be renewed. No existing contract is being terminated. The goal is to replace the 688 transition beds with expanded work-release beds in the community. While substance abuse would then, for the most part, be provided behind the fence, even if the strategy is characterized as "moving" these 688 beds, the move would affect approximately .6 percent of the Department's current prison population.

22. Like all state agencies, the ability for the Department to implement programs depends upon the Legislature's willingness

to fund them. Petitioner contends that the Department is not free to pull back transition beds and move substance abuse treatment and more intense therapy behind the fence, because of a proviso in the Department's budget. To support this contention, they point to a section of the Department's budget from the General Appropriations Act (GAA) for 2016, House Bill 5001, submitted as Joint Exhibit 17. The specific line item from which the current funding for substance abuse treatment is authorized is line item 633. Section four of the GAA for 2016 contains the following proviso:

From the funds in Specific Appropriations 598A through 755, the Department of Corrections shall, before closing, substantially reducing the use of, or changing the purpose of any state correctional institution as defined in section 942.02, Florida Statutes, submit its proposal to the Governor's Office of Policy and Budget, the chair of the Senate Appropriations Committee, and the chair of the House Appropriations Committee for review.

23. Based upon this limitation, Petitioner contends that the Department's issuance of the RFP signals its intention to close, substantially reduce the use of, or change the purpose of a state correctional institution, by substantially reducing and changing the purpose of the facility at Orlando Bridge. Notably, the proviso contains no mention of substance abuse treatment or transition beds.

24. Mr. Uccello testified that, at the request of Kim Banks, the Department's CFO, and Steven Fielder, DOC's Chief of Staff, he made a presentation regarding the overall developmental plan for in-prison programs and treatment in a general meeting between the Office of Policy and Budget (OPB and House and Senate Appropriations staff. He understood that it was an informational meeting, and did not believe that approval of the proposal was required. There was no testimony to indicate that the proposal was presented to the chairs of the House and Senate Appropriations Committees.

25. Petitioner's President and CEO, Lori Constantino-Brown, state that this RFP, compared to Orlando Bridges' current contract, would require changes to all of Bridges' policies and operational procedures, would result in layoffs of her employees, and would limit the number of inmates served in a community setting. She also testified that there are additional costs needed to run the facility as proposed, and providing the services with the limited number of beds proposed, would not be cost-effective for any vendor.

26. Ms. Constantino-Brown acknowledged that Bridges does not have a right to provide transition beds as they exist under the current contract, and that an award to a different bidder would be lawful. She also acknowledged that if Orlando Bridges closed on January 1, 2017, because its contract expired, that would also

result in staff layoffs. The same result would occur should another vendor successfully bid on the RFP.

27. Petitioner has not demonstrated that the specifications of the RFP are arbitrary and capricious. The specifications are consistent with the Department's intended restructuring of substance-abuse treatment and work release opportunities for inmates. Whether or not the plan is ultimately successful, the thought process behind the specifications included in the RFP is to address legitimate concerns for providing the most treatment to the greatest number of inmates.

28. Petitioner stated at hearing that it was not challenging the policy articulated in Joint Exhibit 3, but spent a significant amount of time trying to establish that the changed strategy would not be less costly. However, the Department staff candidly testified that at this point, it is not possible to determine whether there would be any savings, because they do not know what vendors would identify as a price until they get responses to the RFP.

29. Petitioner has not demonstrated that the RFP is contrary to competition. While there was some testimony that the requirements of the RFP may be cost-prohibitive for Bridges to respond, there was no real evidence to indicate that it created an advantage for any vendor over others.



30. While Petitioner claims it is not challenging the policy change itself, it points to no term in the RFP that it finds offensive. The challenge, instead, is to what is not included: transition beds like the ones Bridges provides now. It contends that this omission amounts to the closure, substantial change in services, or substantial reduction in services provided by a state correctional institution, and therefore violates the proviso limitation in the General Appropriations Act.

31. No term or specification in the RFP closes a state correctional institution.

32. No term or specification in the RFP substantially reduces the use of a state correctional institution. While there is some reduction in the number of beds provided for in the RFP, there is also a proviso allowing for an increase in the number of beds, depending on need and funding. Moreover, the beds included in Contract #C2489 do not represent all of the beds at Orlando Bridges.

33. No term or specification in the RFP changes the purpose of any state correctional institution. The purpose of Orlando Bridges, under its current contract, is to provide readiness programs to assist inmates to prepare for re-entry in society. RFP-17-108 seeks proposals for readiness programs, albeit using a restructured program model. While the vehicle may be different,

the purpose remains the same: preparing inmates for release with a goal of lower recidivism.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in this proceeding pursuant to sections 120.569, 120.57(1), and 120.57(3), Florida Statutes (2016).

35. This case purports to be a protest to the specifications in RFP-17-108. Section 120.57(3)(f) provides:

. . . Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

36. Bid protests are in the nature of de novo review, albeit on a somewhat modified basis. As stated in State Contracting and Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998), "the phrase 'do novo hearing' is used to describe a form of intra-agency review. The judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency."

37. Petitioner must demonstrate the factual basis for its challenge by a preponderance of the evidence. Id.; Florida Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

38. The First District Court of Appeal has emphasized that agencies have wide discretion in the bidding process: an agency's decision "should not be overturned 'even if it may appear erroneous and even if reasonable persons disagree.' The hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." Scientific Games, Inc. v. Dittler Bros., 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991) (citations omitted).

39. In this case, Petitioner is challenging the specifications of the RFP as opposed to challenging an award to a successful bidder. Therefore, as stated by the First District, "[a] challenge to an RFP must be directed to specifications that are so vague that bidders cannot formulate an accurate bid, or are so unreasonable that they are either impossible to comply with or too expensive to do so and remain competitive." Advocacy Ctr. for Pers. with Disab., Inc. v. Dep't of Child. & Fam. Servs., 721 So. 2d 753, 755 (Fla. 1st DCA 1998). This burden is consistent with the purpose for bid solicitation protests as articulated in Capeletti Brothers v. Department of Transportation, 499 So. 2d 855, 857 (Fla. 1st DCA 1986), to "allow an agency, in order to save expense to the bidders and to assure fair competition among

them, to correct or clarify plans and specifications prior to accepting bids.”

40. An act is considered to be contrary to competition if it runs afoul of the objectives of competitive bidding, which are:

[t]o protect the public against collusive contracts, to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in various forms; to secure the best values for the [public] at the lowest possible expense . . . .

Wester v. Belote, 138 So. 721, 723-24 (Fla. 1931); see also Harry Pepper & Assoc., Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977).

41. As a preliminary matter, Petitioner is not actually challenging any particular specification that is included in RFP-17-108. It has stated that this challenge is not to what the specifications require, but rather to the omission of transition beds like those in the current contract. Yet Petitioner acknowledges that there are currently contracts that do not include transition beds and points to no statutory requirement to include them in any solicitation for substance-abuse treatment or work-release beds.

42. What Petitioner is really challenging is the Department’s intention, as outlined in its working document admitted as Joint Exhibit 3, to expand its work-release beds at

community release centers and move more of its substance-abuse treatment behind the fence where more inmates may be served. While the Department is hoping that this model will result in savings and the ultimate increase in treatment of more needy inmates, it will also result in less lucrative contracts for vendors. Petitioner's intention to challenge the plan is evident in its Proposed Recommended Order: indeed, paragraphs 15 through 22, 26, and 27 all address the overall plan as articulated by Joint Exhibit 3, and not any specification in the RFP itself. Simply put, however, Joint Exhibit 3 is not the RFP, and a challenge pursuant to section 120.57(3) is not the vehicle by which to challenge Joint Exhibit 3.

43. Petitioner relies heavily on the decision in Florida Association of Medical Equipment Services v. Agency for Health Care Administration, Case No. 02-1400BID (DOAH Oct. 18, 2002; AHCA Jan. 16, 2003) (FAMES). In FAMES, AHCA sought to limit the number of durable medical goods providers through the issuance of an RFP. FAMES challenged the specifications to the RFP, arguing successfully that AHCA had failed to seek a waiver from a federal requirement that Medicaid recipients be afforded a choice of providers. Unlike the situation presented in this case, there was an express statutory requirement in substantive federal law that mandated AHCA to seek the waiver it had chosen not to seek. In other words, approval by the federal government served as a

condition precedent, prescribed by statute, before AHCA could proceed with the RFP.

44. No similar condition precedent exists here. There is no statutory requirement that all community release centers contain intensive-therapy transition beds such as those in the current contract. Indeed, the definition of a community release center is "a correctional or contracted facility that houses community custody inmates participating in a community release program." Fla. Admin. Code R. 33-601.602(1)(n). RFP-17-108 contains specifications that require not only job-readiness training but also a treatment component based on the individual needs of the inmates. See paragraph 12. There is no statutory or rule requirement that they provide more.

45. Petitioner contends that the RFP specifications run afoul of the proviso language in GAA 2015, which affects line item 633 of the budget. As noted in the findings of fact, the budget proviso states:

From the funds in Specific Appropriations 598A through 755, the Department of Corrections shall, before closing, substantially reducing the use of, or changing the purpose of any state correctional institution as defined in section 942.02, Florida Statutes, submit its proposal to the Governor's Office of Policy and Budget, the chair of the Senate Appropriations Committee, and the chair of the House Appropriations Committee for review.

46. For Petitioner's argument to prevail, it must demonstrate that Orlando Bridges meets the definition of a state correctional institution, and that the Department is 1) closing the facility; 2) substantially reducing the use of the facility; or 3) changing the purpose of the facility. If so, Petitioner must also prove that DOC failed to submit its proposal to OPB, and the chairs of the House and Senate Appropriations Committees.

47. Section 944.02(8) defines a state correctional institution as "any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department."

48. The Department contends that community release centers do not meet this definition, because the agency headquarters do not view them in that light and, more importantly, there are provisions within both the current contract and the RFP that reference returning inmates to the physical custody of the Department under certain circumstances. If inmates are "returned" to the physical custody of the Department, it reasons, then prisoners are not in the Department's custody while at a community release center, and therefore the community release center does not meet the definition of a state correctional institution.

49. While the Department's argument has some appeal, it must be rejected. Rule 33-601.602(1)(c) defines a community release program as any program that "allows inmates to work at paid employment or a center work assignment or to participate in education, training, substance abuse treatment programs, or any other transitional program to facilitate re-entry into the community while in a community release center." There are a number of appellate cases, albeit in a different context, that expressly described work release centers or community release centers as state correctional institutions or facilities. See, e.g., Poillot v. State, No. SC15-1691, 2016 Fla. LEXIS 1996, 41 Fla. Law Weekly S 370 (Fla. Sept. 8, 2016); Thomas v. State, 741 So. 2d 1246 (Fla. 2d DCA 1999) ("Thomas was confined in the St. Petersburg Community Correctional Center, a state correctional facility."). In these cases, the issue was whether defendants were guilty of committing certain enumerated crimes "within three years after being released from a state correctional facility operated by the Department of Corrections or a private vendor" pursuant to what is now codified at section 775.082(9)(a)1., Florida Statutes. If a community release center is a state correctional facility for purposes of a criminal conviction, it must be within the definition of a state correctional institution as defined in section 944.02 here.



50. Given that a community release center qualifies as a state correctional institution, the next step in the inquiry is to determine the extent to which the proviso language applies to the issuance of the RFP, if at all. This question is a thorny one, because of the constitutional prohibition against placing substantive provisions within an appropriations bill. As stated in Department of Administration v. Horne, 269 So. 2d 659, 662 (Fla. 1972):

Actual modifications of existing statutes or new provisions which are plainly substantive in nature and upon a subject other than appropriations are in violation of Fla.Const. art. III, § 12. Separate provisions impinging upon the expenditures set forth, which involve existing statutes and which should have been enacted as general legislation, are contrary to this constitutional safeguard prohibiting substantive law or additional subjects being enacted by way of an appropriations bill.

See also Brown v. Firestone, 382 So. 2d 654, 669 (Fla. 1980); Fla. Pharmacy Ass'n v. Lindner, 645 So. 2d 1030 (Fla. 1st DCA 1994) (proviso cannot alter or amend existing law on any subjects other than appropriations); Dep't of Health and Rehabilitative Servs. v. Fla. Psychiatric Soc'y, 382 So. 2d 1280, 1283 (Fla. 1st DCA 1980) (appropriations not statutory authority for adoption of rules related to establishment of crisis stabilization units).

51. The issue has the potential to become thornier still because administrative law judges are not empowered to declare a

statute void or otherwise unenforceable. Palm Harbor Special Fire Control Dist. v. Kelly, 516 So. 2d 249, 250 (Fla. 1987). There is no reason to believe that this prohibition would not apply to budget provisos as well as substantive statutes. In this case, however, no determination of the constitutionality of the budget proviso at issue is necessary, because the terms of the RFP do not fall within the scope of the proviso in the Department's budget.

52. RFP-17-108 simply requests proposals for work release beds with expanded services. It does not close any facility. To the contrary, the contract the Department has with Orlando Bridge will expire by its own terms on December 1, 2016. Nothing in the RFP affects the expiration of that contract, and Ms. Constantino-Brown acknowledged that Bridges has no right to have its contract extended, and has no right to the existing beds. It has the opportunity, like any other vendor, to bid for the work-release beds that are proposed.

53. RFP-17-108 does not substantially reduce the use of a state correctional facility. It provides for 75 work-release beds with expanded services. As noted in the findings of fact, the inmate beds included in Contract #C2489 do not represent all the inmate beds occupied at Orlando Bridge. Even with the expiration of the current contract, approximately 265 inmates would not be affected by either the expiration of the contract or the issuance of the RFP. Should Bridges choose to bid on the RFP and be

awarded the 75 work-release beds it proposes, the population at Bridges would be approximately 340 inmates, which does not amount to a substantial reduction at the institution.<sup>2/</sup>

54. Finally, neither the expiration of the current contract nor the specifications of the RFP result in a change in the purpose of a state correctional institution. The successful vendor under the RFP, should there be one, would still be providing a community release center. The programs sought under the RFP continue to be programs as described for community release centers under rule 33-601.602. While there are differences in the services provided, those services are still those contemplated by the rule.

55. Accordingly, nothing in the RFP specifications, which are the issue in this proceeding, trigger the notification identified in the budget proviso.

56. In summary, the specifications in RFP-17-108 are not contrary to competition, arbitrary or capricious, and do not contravene the Department's governing statutes, the agency's rules or policies.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Corrections amend the RFP in a manner consistent with the stipulation of the parties in the Joint Pre-hearing Statement, i.e., by removing the

second sentence of section 1.4 of the RFP, and by removing section 2.5.19 of the RFP. It is also recommended that the Department enter a final order dismissing the Petition.

DONE AND ENTERED this 23rd day of November, 2016, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of November, 2016.

#### ENDNOTES

<sup>1/</sup> There are five levels of custody for inmates: maximum custody is for those on death row; close custody is for inmates that are shackled and "armed" (presumably meaning that their arms are restrained, as opposed to being armed in terms of handling a weapon) when transported outside of a secure facility; medium custody requires that the inmate be shackled and can be armed when being transported outside a secure facility; minimum custody inmates are generally not armed but are under supervision when transported; and community custody, which refers to those inmates that are placed in the community under community release, and can be used on outside work squads through non-Department contracted staff.

Some inmates can never reach community custody because of statutory restrictions dealing with escape, with sexual offenses, and certain other offenses that can never go below medium or minimum custody. Likewise, inmates against which there are domestic violence injunctions and those convicted of first,

second, or third-degree murder generally cannot be reduced to community custody.

<sup>2/</sup> Bridges focuses on the reduction of beds in the RFP over those in the current contract, asserting that this results in a loss of 66% of its current inmate population. That is not consistent with Ms. Constantino-Brown's testimony about the total population at Orlando Bridges.

COPIES FURNISHED:

Jonathan P. Sanford, Esquire  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399  
(eServed)

Amy W. Schrader, Esquire  
Baker Donelson  
Suite 925  
101 North Monroe Street  
Tallahassee, Florida 32301  
(eServed)

Sean W. Gellis, Esquire  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399  
(eServed)

Julie L. Jones, Secretary  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399  
(eServed)

Kenneth S. Steely, General Counsel  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399  
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.