

# Arizona Department of Corrections



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Certified Mail, Return Receipt Requested  
Article No. 7007 0220 0001 0230 8756  
and Article No. 7007 0220 0001 0230 8749

March 19 , 2012

Caroline Isaacs, Program Director  
The American Friends Service Committee  
103 N. Park Ave., Ste 111  
Tucson, Arizona 85719  
**Via Email:** [CIsaacs@afsc.org](mailto:CIsaacs@afsc.org)

Rev. Oscar Tillman, President  
The NAACP of Maricopa County  
1818 South 16<sup>th</sup> Street  
Phoenix, Arizona 85034

Re: Letter of Protest, Request for Proposal (RFP) ADOC12-00001388/ADC 120088DC –  
2,000 Medium Security Prison Beds

Dear Ms. Isaacs and Mr. Tillman:

As Agency Chief Procurement Officer (ACPO) for the Arizona Department of Corrections (Department) I have carefully reviewed your protest and decided that both the protest and the request for a stay should be denied for the reasons set forth below.

## Chronology

1. Request for Proposal No. (RFP) ADOC12-00001388 was issued on February 2, 2012 with a proposal due date of March 6, 2012.
2. Pre-Proposal Conference was held on February 10, 2012.
3. Solicitation Amendment No. 1 issued on February 23, 2012 and extended RFP due date to March 13, 2012.
4. Solicitation Amendment No. 2 issued on February 24, 2012.

5. Solicitation Amendment No. 3 issued on March 2, 2012.
6. Solicitation Amendment No. 4 issued on March 6, 2012.
7. RFP Due Date March 13, 2012.
8. Proposal responses received from Corrections Corporation of America (CCA), Emerald Correctional Management, The GEO Group, Inc., Management and Training Corporation (MTC), LaSalle Corrections.
9. Protest filed on March 5, 2012

### **Summary of Protest**

The protest can be briefly summarized as follows:

The American Friends Service Committee (“AFSC”) and the NAACP of Maricopa County (“NAACPM”) assert that the grounds for their protest are that Arizona does not need and cannot afford prison beds; that existing private prison contracts are in violation of A.R.S. 41-1601.01 (G), (H)

#### **Agency Chief Procurement Officer Analysis**

The protest should be denied because neither of the protestors qualifies as an interested party under Arizona Administrative Code (“A.A.C.”) R2-7-101 (31) which states “**Interested party**” means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon circumstances of each case.” Only an interested party may file a protest. A.A.C. R2-7-A901(A).

There is no doubt that AFSC and NAACPM fail to qualify as interested parties. Neither entity is registered as a vendor through the State of Arizona, ProcureAZ system and registration is a requirement of the RFP, section 2.7 subsection 2.7.2 “Submission required in ProcureAZ”, which states “To submit an offer, Offerors must register in the ProcureAZ system... Neither entity has ever indicated any interest in becoming a vendor to the ADC contracts such as the one contemplated in the RFP. Moreover, the protestors’ own protest makes it clear that they are not interested in becoming offerors, but rather are expressing their political opposition to the policy choices of the Arizona Legislature concerning private prisons. Finally, AFSC recently sued in the Arizona Superior Court for Maricopa County, Case No. CV2011-017119, seeking an injunction against the Department’s issuance of a previous private prison solicitation because of the AFSC’s political opposition to private prisons. The superior court entered a final judgment of dismissal in that case, and AFSC filed, but then abandoned, an appeal.

This attempted protest is obviously an attempt by the AFSC to find another method to express its political opposition to the use of private prisons in Arizona.

The protest must be denied for this reason alone. However, even if the AFSC and the NAACPM were interested parties, their purported protest would be denied on the merits. In the paragraphs

below, each of the issues raised by the protestors is first identified and then discussed. Each fails to state a valid basis for protest.

**The protestors' first contend that additional prison beds (public or private) are not needed in Arizona.** The protestors are wrong. This sort of determination is accorded by law to the ADC. ADC has the full power and discretion to make and support its business decisions for needs related to prisons. The subjective statement by an unqualified party further supports the conclusion that the purported grounds of the protest are invalid, have no support and are unsubstantiated.

**The protestors' second argument is that the State of Arizona cannot afford more private, for profit prison contracts.** This statement is also wrong. ADC obtains funds through its legislative budget process and believes adequate funds will be available to support the eventual contract award under this RFP. If at any time in the future funds were not available, the Department would rely on the appropriate contract provisions under the Terms and Conditions of the State, especially section 4 Costs and Payments, paragraphs 4.4 and 4.5.

**The protestors' third argument is that existing state contracted private, for-profit prisons are in violation of A.R.S. 41-1609.01 (G).** Not only is this statement wrong, even if it were correct, that would be utterly irrelevant to the current solicitation. The eventual award decision under this RFP will be made solely on the merits of the offerors responses and applicable statutes and rules.

**The protestors' next argument is that Management and Training Corporation and GEO Group are currently in violation of contract provisions (under other contracts) requiring cost savings.** Not only is this not correct, but even if it were correct, that would be irrelevant to the current RFP.

In a series of related contentions, the protestors' also argue that the RFP must be withdrawn because (a) existing state contracted private, for-profit prisons are in violation of A.R.S. 41-1601.01 (H); (b) because GEO Group is in violation of contract provisions (under a different contract) requiring it to maintain safe facilities; (c) because private, for-profit prisons are in violation of AD9-010-A3, Uniform Terms and Conditions, section 2.11.2 and 4.14, as these facilities have higher staff vacancy and turnover rates that equivalent state-operated prison units; and (d) because the protestors' believe there is evidence to suggest that Corrections Corporation of America has violated its contracts with other states. Not only are the protestors' factual contentions not correct, but even if they were correct, that would be irrelevant to the decision to issue the current RFP. These sorts of factors, if established, would be taken into account in the evaluation of offers received under the RFP.

The final issue raised by the protestors' is their argument that the RFP should be withdrawn because the protestors' believe that there is no urgency to this procurement, and the harm to the State and taxpayers that would be incurred if it is allowed to proceed is greater than any potential harm to the vendors from its withdrawal. This is also a policy determination that the Department is authorized to make, and the Department believes that there is great importance in going forward with this RFP at this time. As with all the other political arguments by the protestors', they should direct their policy arguments to the Legislature, not try to make them as a protest to the RFP.

The agency chief procurement officer considered all of the statements in the protest in reaching this decision, and if any portion of the protest was not directly addressed above, it was also considered and rejected as a valid basis for protest.

Under A.A.C. R2-7-A902(A), the agency chief procurement officer has considered the protestors' request for a stay. That request is denied because there is no reasonable probability the protest will be upheld and because a stay is not in the best interest of the State.

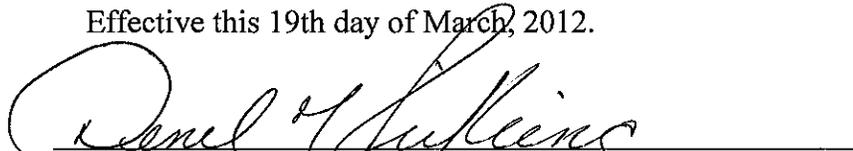
### Conclusion

Based upon all the foregoing, the ACPO has determined that the protestors are not interested parties entitled to file a protest and that they have failed to state a valid basis for protest. The request for a stay is denied. Anything else as part of the protest and not specifically stated in this response is hereby denied.

Appeals to the decision must be made pursuant to A.A.C. Rule R2-7-A905.

This is the ACPO's final decision denying the protest and the stay request for (RFP) ADOC12-00001388 filed by The American Friends Service Committee and the NAACP of Maricopa County, on March 5, 2012 as required under A.R.S. §41-2611 Arizona Administrative Code ("A.A.C.") R2-7-A901, ("A.A.C.") R2-7-A902 and ("A.A.C.") R2-7-A903. This decision may be appealed to the Director of the Department of Administration. If you appeal, you must file a written notice of appeal with the Director within thirty days from the date you receive this decision.

Effective this 19th day of March, 2012.

  
Denel Pickering, Chief Procurement Officer

cc: Charles L. Ryan, Director, Arizona Department of Corrections  
Michael P. Kearns, Division Director, Administrative Services  
Robert Patton, Division Director, Offender Operations

Original of the following mailed certified return receipt  
on March 19, 2012 to:

Caroline Isaacs, Program Director  
The American Friends Service Committee  
103 N. Park Ave., Ste 111  
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**Via Email:**

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1818 South 16<sup>th</sup> Street  
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