

State Procurement May Require Promulgation of Additional Rules

Judge Richard Callahan, of the Cole County Circuit Court, recently voided a state contract for prison phone services as a result of litigation over the method for awarding the contract.

Judge Callahan relied on a statute that requires the "criteria" for evaluating responses to state requests for proposals (RFPs) to be included in either rules or the RFP itself. This statute says that the evaluation of proposals must be based on rules promulgated by the office of administration and criteria set out in the RFP.

Judge Callahan set aside the award of the contract because the state had evaluated the price points using a formula that was not promulgated as a rule. The testimony in this case showed that the state has used the same formula for years, convincing the judge that it should have been promulgated as a rule.

The Court also found that the state had acted in an arbitrary and capricious manner in awarding the contract because the state did not have a set of criteria for the award of points for using blind and sheltered workshops. Finally, the Court awarded attorneys' fees to the plaintiff.

The state has appealed this ruling to the Western District Court of Appeals, but it raises a substantial issue as to whether the state has improperly awarded contracts in the past using policies that should have been promulgated as rules.