

173-3-05

**Older Americans Act: procurement standards.****(A) General procurement standards:**

- (1) When an AAA procures services paid, in whole or in part, with Older Americans Act funds, the AAA is subject to the requirements in 45 C.F.R. 75.327 to 75.335.
- (2) 48 C.F.R. Subpart 2.1 establishes the federal micro-purchase threshold. 45 C.F.R. 75.329 ~~prohibits~~ does not allow an AAA ~~from using to use~~ micro-purchase procurement for AAA-provider agreements (agreements) worth more than the federal micro-purchase threshold.
- (3) 2 C.F.R. Part 300 establishes the federal simplified acquisition threshold. 45 C.F.R. 75.329 ~~prohibits~~ does not allow an AAA ~~from using to use~~ small-purchase procurement for agreements worth more than the federal simplified acquisition threshold.

**(B) Authorization for non-competitive procurement: ~~To~~ An AAA may request authorization from ODA to use a non-competitive procurement process, ~~the AAA shall comply by complying~~ with paragraph (A) of this rule and ~~provide~~ providing a written or electronic request to ODA that meets all of the following conditions:**

- (1) The AAA ~~shall make~~ makes its request to ODA no fewer than thirty days before the AAA needs a decision from ODA.
- (2) The AAA's request ~~shall~~ does not consider a public exigency or emergency to be a basis for non-competitive procurement if the AAA created the exigency or emergency.
- (3) The AAA's request ~~shall provide~~ provides ODA with evidence to verify that the circumstances in 45 C.F.R. 75.329(f) exist.
- (4) If the AAA wants to procure services from a single source, the AAA's request ~~shall verify~~ verifies that the circumstances in 45 C.F.R. 75.329(f)(1) exist by including the names of all known providers of the services located in, or willing to do business in, the planning and service area. ~~The AAA's request shall also include~~ and includes emails or letters from each of those providers to document their inability to provide the services the AAA wants to procure. If the providers are unwilling to provide emails or letters to the AAA, the ~~AAA shall retain~~ AAA's request includes records of ~~its~~ the AAA's efforts to obtain information from the providers.

(C) Additional procurement standards for renewable and multi-year AAA-provider agreements:

(1) RFPs:

(a) An AAA may offer a provider a renewable or multi-year AAA-provider agreement (agreement) only if the RFP for the renewable or multi-year agreement clearly states all of the following:

(i) Whether the agreement would be renewable after the first term or for a multi-year term.

(ii) One of the following:

(a) The methodology by which the AAA would determine the amount, if any, of a rate increase upon renewal or during the multi-year term.

(b) A statement that the agreement would not include an opportunity for rate increases.

(b) An AAA may offer a provider a renewable agreement only if the RFP for the renewable agreement clearly states the following:

(i) The AAA retains the right to decline to renew a renewable agreement.

(ii) The circumstances under which the AAA may terminate a renewed agreement.

(c) An AAA may offer a provider a multi-year agreement only if the RFP for the multi-year agreement clearly states that the AAA may terminate a multi-year agreement, rather than fulfill all years of the multi-year term, under any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the services for a subsequent year.

(iii) A situation arises that was unforeseen at the time the AAA and the provider entered into the agreement. Examples of unforeseen situations are changes in market conditions or changes in the law regulating the services the agreement covers.

(2) Agreements:

(a) Every agreement for a renewable agreement or agreement with a multi-year term shall clearly state the following:

(i) Whether the agreement is renewable after the first term or for a multi-year term.

(ii) One of the following:

(a) The methodology by which the AAA determines the amount, if any, of a rate increase upon renewal or during the multi-year term.

(b) A statement that the agreement does not include an opportunity for rate increases.

(b) Every agreement for a renewable agreement shall clearly state the following:

(i) The AAA retains the right to decline to renew the agreement.

(ii) The circumstances under which the AAA may terminate a renewed agreement.

(c) Every agreement with a multi-year term shall clearly state that the AAA may terminate the multi-year agreement, rather than fulfill all years of the multi-year term, under any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the services for a subsequent year.

(iii) A situation arises that was unforeseen at the time the AAA and the provider entered into the agreement. Examples of unforeseen situations are changes in market conditions or changes in the law regulating the services that the agreement covers.

(3) Effective periods: No renewable or multi-year agreement (whether in its initial term or a renewed term) may remain in effect after the last day that the AAA's approved area plan is in effect unless the AAA makes a written or electronic request for authorization from ODA to extend the effective period no fewer than thirty days before the end of the effective period of the AAA's area plan and if ODA grants the requested extension to the AAA.

Effective: 1/1/2023  
Five Year Review (FYR) Dates: 10/14/2022 and 11/30/2027

CERTIFIED ELECTRONICALLY

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Certification

12/19/2022

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Date

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Statutory Authority: 121.07, 173.01, 173.02, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11  
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