

173-3-05

Competitive-bidding process.

(A) Under 45 C.F.R. 74.43 or 45 C.F.R. 92.36, when procuring a service that is reimbursed with Older Americans Act funds, each AAA shall select the provider by using a competitive-bidding process that offers, to the maximum extent practical, open and free competition.

(B) RFP content: When an AAA procures a service by selecting a provider through a competitive-bidding process, in the RFP, the AAA shall, at a minimum, include:

(1) A timetable that notes significant dates in the competitive-bidding process including, but not limited to, the date proposals are due and the date the AAA anticipates entering into the provider agreement;

(2) An accurate description of the service the AAA seeks to procure;

(3) An itemization of the costs that comprise a total bid price for the service;

(4) A listing of equipment or software licenses, if any, which the AAA intends to procure or provide separately;

(5) A list of review and scoring criteria that the AAA uses to review and score proposals; and,

(6) A requirement for each applicant, at a minimum, to state in its proposal:

(a) How it plans to provide the service described under paragraph (B)(2) of this rule;

(b) How its total bid price reflects the itemized costs described under paragraph (B)(3) of this rule;

(c) Proof that it is currently registered with the secretary of state as a non-profit organization, association, or trust, a co-operative, or, a for-profit business, limited liability company, limited partnership, or partnership having limited liability;

(d) Its primary business telephone number or toll-free telephone number;

(e) A written statement of agreement to comply with nondiscrimination laws, federal wage and hour laws, and workers' compensation laws in the recruitment and employment of individuals;

(f) An explanation of how he/she intends to comply with 45 U.S.C 3026(a)(4)(A)(ii), which, in relation to low-income minority individuals, older persons with limited English proficiency, and older persons residing in rural areas in the area the applicant intends to serve, requires the applicant to:

(i) Specify how he/she intends to satisfy those persons' service needs;

(ii) Provide services to those persons; and,

(iii) Meet the AAA's specific objectives for providing services to those persons.

(g) Evidence of at least one million dollars of commercial liability insurance coverage and insurance coverage for consumer loss due to theft or property damage and the written procedure describing the step-by-step instructions a consumer may follow to file a claim.

(C) RFP distribution: The AAA shall make a:

(1) Reasonable effort to notify potential applicants within the PSA; and,

(2) Special effort to attract minority organizations to participate in the competitive-bidding process, but, under 45 C.F.R. 74.44 or 45 C.F.R. 92.36, the AAA may not give minority organizations a preference when selecting providers for provider agreements.

(D) RFP period of duration: The AAA shall allow applicants no fewer than thirty days to respond to the RFP.

(E) Debarment: The AAA shall not enter into a provider agreement with any provider that is listed on the non-procurement portion of the General Services Administration's "Excluded Parties List System" ("EPLS"). Before entering into any provider agreement, the AAA shall check the EPLS to see if the provider is debarred or suspended by the federal government. Access to the EPLS is readily available on <http://www.epls.gov/>.

(F) Waivers:

(1) An AAA is not required to use the competitive-bidding process under paragraphs (A) to (D) of this rule when selecting a provider for a particular provider agreement if, before entering into the provider agreement, ODA provides the AAA with written approval to waive paragraphs (A) to (D) of this rule. An AAA seeking the written approval shall write to ODA to request a waiver. ODA may only approve the request if:

(a) The service that the provider agreement seeks to procure is available only from a single source;

(b) The public exigency or emergency for the service does not permit the delay that would necessarily result if the AAA complied with paragraphs (A) to (D) of this rule;

- (c) The federal government mandates a process other than the competitive-bidding process under paragraphs (A) to (D) of this rule; or,
- (d) The AAA provides justification for a waiver in its four-year strategic area plan that it is:
- (i) Developing a new service or a delivery model that is not yet available in a county or region in its PSA;
 - (ii) Participating in (or developing) a coordinated service system (e.g., care coordination program or regional transportation coordination program) that allows any willing provider who meets the requirements of established service specifications to participate; or,
 - (iii) Implementing a PSA-wide strategy to promote consistent access to services (e.g., an information and referral service).
- (2) An AAA is not required to use the competitive-bidding process under paragraphs (A) to (D) of this rule when selecting an alternative provider to a provider previously chosen through the competitive-bidding process if, at any time during a current provider agreement's effective dates, the AAA determines that the current provider is not earning a proportionate share of the funds made available under the current agreement, relative to the duration of the agreement, and the AAA wants to select one or more alternative providers by allocating a portion of any unearned funds to the alternative providers. The authority to waive paragraphs (A) to (D) of this rule for the situation in this paragraph is given by this paragraph; therefore, there is no need for an AAA to seek written approval from ODA to comply with this paragraph.
- (G) As used in this rule, "RFP" means "request for proposal."

Effective: 02/15/2009

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CERTIFIED ELECTRONICALLY

Certification

02/05/2009

Date

Promulgated Under: 119.03
Statutory Authority: 173.02; 173.392; Section 305 (a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11
Rule Amplifies: 173.04; 173.392; 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Parts 74 and 92