

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-3-05

Rule Type: Amendment

Rule Title/Tagline: Older Americans Act: procurement standards.

Agency Name: Department of Aging

Division:

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 3/2/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.392; 42 U.S.C. 3025(a)(1)(C); 45 C.F.R. 1321.11(a).
5. **What statute(s) does the rule implement or amplify?** 173.39, 173.392; 42 U.S.C. 3030d; 45 C.F.R. Part 75, 1321.11(b), 1321.53.
6. **What are the reasons for proposing the rule?**

This rule exists as part of a chapter of rules ODA adopted to (1) implement the Older Americans Act Program for Ohio, (2) comply with the mandate in ORC§173.392, and (3) implement statewide, uniform standards (45 CFR Part 75) for AAA-provider agreements in Ohio for goods and services paid, wholly or in part, with Older Americans Act funds.

After reviewing this rule top-to-bottom, ODA proposes to amend the rule.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule implements the requirements in 45 CFR Part 75 for federally-funded programs to use open and free competition when procuring for goods and services. Part of ODA's compliance with 45 CFR Part 75 requires all providers entering into AAA-provider agreements to win those agreements through open and free competition with other providers. Through this process, each provider estimates its cost of doing business, puts the cost in a bid, then submits the bid to the AAA seeking a provider to win an AAA-provider agreement to administrate a home-delivered meals project paid with Older Americans Act funds. Providers who win a competition are paid according to what they bid. Therefore, if a provider estimates its adverse impact will increase, the provider will be paid for the increased impact by increasing the price in its bid. If a provider estimates its adverse impact will decrease, the provider may submit a lower-cost bid to increase its chances of winning the competition.

This rule makes general references to federal standards establishing procurement thresholds. After consulting with JCARR's attorney, ODA believes its references to federal standards in this rule are general references, not federal standards incorporated by reference. Providers must comply with the cited federal standards regardless of whether ODA cites the federal standards in this rule. ODA is not requiring AAAs to follow a standard that would not exist had ODA not cited it in these rules. Because the references direct readers to the federal rules regulating AAA-provider agreements, ODA now proposes to delete the citations of specific versions of the federal rules.

In the spirit of the previous amendment, ODA proposes to no longer repeat threshold dollar amounts in this rule since the federal government may change them regularly.

ODA also proposes to make the following amendments to this rule:

- (1) Replace "under" with "in" in (A).
- (2) Delete the quotation marks around "agreements" in (A)(1).
- (3) Delete unnecessary uses of "that" and "that are" in (B)(4).
- (4) Replace "verify that the providers are unable..." in (B)(4) with "document their inability...".

(5) Add a final sentence to (B)(4) to account for the possibility that providers unwilling to bid for an opportunity to provide goods or services may also be unwilling to submit emails or letters to the AAA to document their unwillingness to do so.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the proposed amendments to this rule will have no impact upon the biennial budget the Ohio General Assembly established for ODA.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Providers are directly affected by AAA-provider agreements. This rule requires AAAs to comply with federal law on competitive selection of providers. An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition.

ODA estimates providers will not experience an increased adverse impact resulting from ODA's proposed amendments to remove dates from general references to federal law in this rule or to remove outdated threshold dollar amounts from this rule. These amendments may produce the following positive impacts:

(1) They will keep the rules in step with federal standards that may change annually (e.g., thresholds). The current version of the rule forces AAAs to use the version of federal rules last cited in the current rule, even if the federal standard has since changed or changes annually.

(2) AAAs will no longer be required to retain access to old federal standards to comply with the rule.

(3) AAAs may take advantage of the newer, lower thresholds on competitive bidding and procure for goods and services through either the small or micro purchase options in 45 CFR 75.329. ODA estimates this will, in turn, reduce the adverse impact on the business community when submitting bids because small and micro-purchase bids aren't formal sealed bids, which require more paperwork.

Please review the BIA for additional information.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **Does this rule have an adverse impact on business?** Yes
- A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business?** Yes

As stated earlier, providers are directly affected by AAA-provider agreements. This rule requires AAAs to comply with federal law on competitive selection of providers. An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition. Please review the BIA for additional information.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms?** Yes

An inherent adverse impact of competition is that one or more bidders for an AAA-provider agreement may lose the competition.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

An inherent adverse impact of competition is that every provider who wants to win an AAA-provider agreement to receive Older Americans Act funds for providing their goods and services must prepare a bid to submit to the AAA.