

TO BE RESCINDED

173-3-05

Procuring goods and services by open and free competition.

- (A) **Applicability:** An AAA shall procure goods and services according to this rule any time the AAA procures the services with Older Americans Act funds, whether AAA pays for the goods or services wholly with the Older Americans Act funds or with a mix of Older Americans Act funds and other funds.
- (B) **Competitive procurement:** Except as otherwise stated in paragraph (C) of this rule, each AAA shall use one of the following three methods of procurement when purchasing goods and services:
- (1) **Small-purchase procurement:** An AAA may use this type of competitive procurement for small purchases. For purposes of this rule, a "small purchase" is any purchase that costs less than the federal simplified acquisition threshold. The federal procurement law under 41 U.S.C. 134 (October 1, 2013) establishes the threshold at \$100,000. If an AAA uses this type of competitive procurement, the AAA shall obtain price or rate quotes from an adequate number of bidders who are qualified to provide the goods or services.
 - (2) **Sealed-bidding procurement:** An AAA may use this type of competitive procurement for goods or services if a complete, adequate, and realistic specification or description of the items to be purchased is available; two or more responsible bidders are willing and able to compete effectively for the business; the procurement lends itself to a fixed-price provider agreement; and the selection of the successful bidder can be made principally on the basis of price.
 - (3) **Competitive-proposals procurement:** An AAA may use this type of competitive procurement when the conditions are not appropriate for the use of sealed bidding, but adequate competition exists. If an AAA uses this method, the AAA shall comply with the following four requirements:
 - (a) The AAA shall publish the RFP and identify all evaluation factors and their relative importance. The AAA shall honor any request to a publicized proposal to the maximum extent practical.
 - (b) The AAA shall solicit proposals from an adequate number of bidders who are qualified to provide the goods or services.
 - (c) The AAA shall have a method for conducting technical evaluations of the proposals it receives and for selecting awardees.

(d) The AAA shall award the responsible provider whose proposal is most advantageous to the program with price and other factors considered.

(C) Non-competitive procurement: An AAA shall not procure goods or services through a non-competitive process unless all of the following four conditions are met:

(1) The three competitive methods under paragraph (B) of this rule are infeasible.

(2) One of the following three circumstances exists:

(a) After soliciting a number of sources, the AAA can verify that competition is inadequate for competitive procurement because the goods or services that the AAA would have procured with open and free competition are available from only a single source. However, the AAA may not determine that competition is inadequate if its procurement was anti-competitive. 45 C.F.R 92.36(c) (10/1/2013 edition) says that any of the following seven situations are anti-competitive:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business.

(ii) Requiring unnecessary experience and excessive bonding.

(iii) Non-competitive pricing practices between firms or between affiliated companies.

(iv) Non-competitive awards to consultants that are on retainer contracts.

(v) Organizational conflicts of interest.

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement.

(vii) Any arbitrary action in the procurement process.

(b) A public exigency or emergency for the goods or services exists that would not permit the delay that would necessarily result if the AAA would procure by open and free competition.

- (c) The federal government mandates procuring for the goods or services by a means other than open and free competition.
- (3) The AAA submits a request to ODA for authority to conduct a non-competitive procurement and provides ODA with evidence to verify that the circumstances in paragraphs (C)(1) and (C)(2) of this rule exist. If the AAA wants to procure goods or services from a single source, the AAA shall also verify that the circumstances in paragraphs (C)(1) and (C)(2) of this rule exist by including the names of all known providers of the goods or services that are located in, or willing to do business in, the planning and service area, combined with letters or emails from each of those providers that verifies that they are unable to provide the goods or services that the AAA wants to procure.
- (4) ODA authorized the non-competitive procurement transaction and authorizes so before the AAA makes the purchase.
- (D) Notwithstanding ODA's approval, an AAA that procures goods or services through a non-competitive process, or in violation of federal procurement requirements, shall be liable to ODA for the repayment of any costs that are later disallowed by the federal government.

Effective:

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Certification

Date

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Statutory Authority: 173.01, 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 (October, 2015 edition).
Rule Amplifies: 173.392; Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. Parts 74 or 92 (October, 2013 edition).
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