

APPENDIX VI Appeal Procedure



Area Agency on Aging of Pasco-Pinellas, Inc. Aging and Disability Resource Center Procedures

LEAD AGENCY DISPUTE RESOLUTION REGARDING PROCUREMENT OF COMMUNITY CARE FOR THE ELDERLY CONTRACTUAL SERVICES

1. The **Lead Agency Dispute Resolution Process** is outlined in Rule 58C-1.0031, **(Exhibit A)**
2. **Payment of the Impartial Decisionmaker.** Any person or firm who files a formal written protest will be responsible for payment of the specific costs associated with the dispute resolution including payment of the Impartial Decisionmaker's time per hour. This includes preparation and hearing fees and all costs associated with the decisionmaking process. The Impartial Decisionmaker's fee is \$150 per hour.

Exhibit A

58C-1.0031 Lead Agency Dispute Resolution.

(1) AREA AGENCY ON AGING PROCEDURES.

(a) In order to meet the requirement set forth in Section 430.203(9)(a)1., F.S., an area agency on aging must specify in its request for proposal that the notice of intent to award will be published in the same manner as the request for proposal was published.

(b) In addition, an area agency on aging (AAA) must comply with the bid process standards set forth in Section 430.203(9)(a), F.S., and this rule.

(c) The AAA must post the notice of intent to award pursuant to paragraph (a) of this subsection upon selection of a lead agency or lead agencies. This notice must include information that substantially affected parties will have an opportunity to request a hearing challenging the proposed action and instruction on how to request a hearing. The notice must also include the following statement: "Failure to file a notice of protest as described in subsection (4) of Rule 58C-1.0031, Florida Administrative Code (F.A.C.), shall constitute a waiver of proceedings under Rule 58C-1.0031, F.A.C."

(2) IMPARTIAL DECISIONMAKERS.

(a) Upon the effective date of this rule, the AAA must solicit and maintain a registry of impartial decisionmakers.

(b) The decisionmaker must meet the minimum qualifications below:

1. Be a member in good standing of The Florida Bar;

2. Have at least 5 years experience in the practice of administrative law, preferably with experience in government procurement procedures;

3. Have not been directly involved, or have any family member who was directly involved, in the intended award of the bid under protest;

4. Not be currently employed by, or have a family member currently employed by, the AAA awarding the bid, or any lead agency or other agency that has filed a bid for lead agency designation with the AAA awarding the bid; and

5. Not have any other conflict of interest that would affect the decisionmaker's impartiality in the specific proceedings.

(c) Individuals interested in designation as an impartial decisionmaker must complete DOEA Form CCE-001, CCE Impartial Decisionmaker Application, May, 2010, which is hereby incorporated by reference. The form may be obtained from the following website: <http://elderaffairs.state.fl.us/english/ruleforms/CCE-001.doc>.

(3) STANDARDS FOR BID PROTEST.

(a) In a protest to the notice of award, the following shall apply:

1. No submissions made after the bid or proposal opening that amend or supplement the bid or proposal shall be considered.

2. The burden of proof shall rest with the party protesting the proposed AAA intent to award.

(b) In a protest, the decisionmaker must conduct a de novo proceeding to determine whether the AAA's proposed action is contrary to its governing statutes or rules, or to the solicitation specifications. The standard of proof for the protestor must be whether the AAA's action was clearly erroneous, contrary to competition, arbitrary or capricious.

(4) PROTESTING PARTY PROCEDURES.

(a) Any party who is substantially affected by the AAA's intended decision to award a contract for lead agency must file a written notice of protest with the AAA within 72 hours after the posting of the notice of award, excluding weekends and state holidays. A substantially affected party is any party who bid on the AAA's request for proposal for designation as a lead agency.

(b) A formal written protest must be filed within 10 calendar days after the date the notice of protest is filed, unless the 10th day falls on a weekend or state holiday, in which case the deadline shall be the next business day.

(c) The formal written protest must state, with particularity, the facts and law upon which the protest is based.

(d) Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings.

(e) If any substantially affected party decides to participate in the protest proceedings, that party must give notice within 3 business days of the posting of the initial notice of protest by the AAA.

(5) PROCEDURES FOR BID PROTEST.

Upon receipt of a timely filed notice of protest, the AAA must take the following steps:

(a) Stop the contract award process until the subject of the protest is resolved by final action as required by Section 430.03(9)(a)2., F.S.

(b) Immediately post the notice of protest in the same manner as the notice of intended award was posted.

(c) Select an impartial decisionmaker as required by Section 430.203(9)(a), F.S., from the registry referenced in subsection (2) of this rule.

1. The decisionmaker must be randomly selected.

2. The AAA must immediately provide the protesting party with the name of the appointed impartial decisionmaker.

3. If the protesting party has an objection to the selected decisionmaker, the protesting party must raise the objection in writing with the AAA within 48 hours, excluding weekends and state holidays, or the objection is deemed to be waived. However, if any party or the decisionmaker later discovers that the decisionmaker has a conflict of interest, the party may raise that objection in writing to the AAA within 48 hours of acquiring knowledge of the conflict, excluding weekends and state holidays, or the objection is deemed to be waived.

4. Upon receipt of a timely objection, the AAA must randomly select another decisionmaker.

(d) Provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding weekends and state holidays. If the subject of a protest is not resolved by mutual agreement within the time frame set forth in this paragraph, a proceeding must be conducted as set forth in subsection (6) of this rule.

(6) DISPUTE RESOLUTION.

(a) If the protest is not resolved pursuant to paragraph (5)(d) of this rule, the impartial decisionmaker must commence a hearing within 30 calendar days after the AAA receives the formal written protest, unless the 30th day falls on a weekend or state holiday, in which case the deadline shall be the next business day. The provisions of this subsection may be waived only upon stipulation by all parties.

(b) In addition to the provisions included in Section 430.203(9)(a)3., F.S., which outline the rights of all substantially affected parties, the following procedures shall apply:

1. In any bid protest, the service of discovery may begin immediately upon filing of the formal written protest. Responses shall be due within 5 business days of receipt, not counting the day of receipt of any discovery requirement.

a. All discovery must be concluded at least 48 hours prior to the scheduled hearing date.

b. All discovery requests must be commenced in a manner that allows discovery to be concluded at least 48 hours prior to the scheduled hearing.

2. The decisionmaker shall have the authority to issue subpoenas.

3. All depositions must have at least 3 business days notice.

4. If a party fails to comply with the discovery rules provided herein, the decisionmaker must exclude such evidence from the hearing, unless just cause is shown as specified in subparagraph (e)1. of this subsection.

5. Should any party be prejudiced by another party's failure to provide discovery, the decisionmaker may continue the hearing for a period not to exceed 5 business days. The non-complying party must comply with the requested discovery within 48 hours after the decision to continue the hearing.

(c) The decisionmaker must render a written decision within 30 calendar days after the hearing if no transcript of the proceedings is requested, or within 30 days after receipt of the hearing transcript by the decisionmaker. If the 30th day falls on a weekend or state holiday, the deadline shall be the next business day. The provisions of this paragraph may be waived only upon stipulation by all parties.

1. The written decision must include findings of fact and conclusions of law. Based on these findings and conclusions, the decisionmaker may affirm or reject the AAA's intended award.

2. If rejecting the AAA's intended award, the decisionmaker must simultaneously issue a recommendation to the AAA supported by findings of fact and conclusions of law.

3. If a timely request for a review of the decisionmaker's recommendation is not made pursuant to subsection (7) of this rule, the AAA may either accept or reject the decisionmaker's recommendation. If the AAA rejects the decisionmaker's recommendation, the AAA must notify all parties in writing within 10 calendar days after the recommendation is received, outlining the reason or reasons for rejecting the recommendation; and the AAA must either start the procurement process again or make an award consistent with its reason or reasons for rejecting the decisionmaker's recommendation.

4. If a timely request for a review of the decisionmaker's recommendation is made pursuant to subsection (7) of this rule, the AAA shall proceed under subsection (7) instead of subparagraph (c)3. of this subsection.

(d) The decisionmaker must permit all parties the opportunity to submit findings of fact, conclusions of law, draft orders and memoranda on the issues within a time designated by the decisionmaker.

(e) A default must be entered against a party who:

1. Fails to appear at a hearing as directed by the decisionmaker, unless at least one of the following conditions exists:

a. Illness of a party, witness or attorney that would prevent attendance at the hearing;

b. An act of God that would prevent attendance at the hearing.

- c. A designated threat to public safety that would prevent attendance at the hearing; or
- d. Any other circumstance in the opinion of the decisionmaker that would warrant a continuance of the hearing.

2. Fails to comply with discovery after being granted a continuance as provided in subparagraph (b)5. of this subsection.

(f) An entry of default against a party is deemed the final decision of the decisionmaker and is not subject to the provision of subsection (7) of this rule.

(7) REVIEW OF DECISION.

(a) Pursuant to Section 430.203(9)(a), F.S., in the event a party requests a review of the decision by the decisionmaker, the parties must utilize, and mutually agree upon, an individual associated with one of the entities referenced in subparagraphs 1. and 2. of this paragraph for this review.

1. An arbitrator with the American Arbitration Association. The arbitrator must have experience with government contracts. Contact information for the association is American Arbitration Association, Bank of America Tower at International Place, 100 S.E. 2nd Street, Suite 2300, Miami, FL 33131, telephone number (305)358-7712.

2. A circuit court civil mediator certified by the Florida Supreme Court, who has experience with government contracts. Contact information for the Florida Supreme Court Dispute Resolution Center is http://199.242.69.70/pls/drc/drc_main_screen.

(b) The reviewer must not have any conflict of interest that would affect his or her impartiality. A conflict of interest is defined as the reviewer, or any reviewer family member, having current or past business association with any of the parties involved in the dispute.

(c) This action must be taken within 10 calendar days after the date of the decision from the decisionmaker.

(d) The review shall not be a de novo proceeding, but only a review of the decision based on the record from the hearing.

(e) The written decision of the reviewer must be made within 30 calendar days after the request for review, unless the 30th day falls on a weekend or state holiday, in which case the deadline shall be the next business day.

1. The written decision must include findings of fact and conclusions of law. Based on these findings and conclusions, the reviewer may affirm or reject the decisionmaker's recommendation.

2. If affirming the decisionmaker's recommendation, the reviewer must make such a statement in its recommendation to the AAA.

3. If rejecting the decisionmaker's recommendation, the reviewer must issue a recommendation to the AAA, supported by findings of fact and conclusions of law.

(f) The AAA may either accept or reject the reviewer's recommendation. If the AAA rejects the reviewer's recommendation, the AAA must notify all parties in writing within 10 calendar days after the recommendation is received, outlining the reason or reasons for not accepting the recommendation; and the AAA must either start the procurement process again or make an award consistent with its reason or reasons for rejecting the reviewer's recommendation.

Rulemaking Authority 430.203(9)(a) FS. Law Implemented 430.203(9)(a) FS. History--New 5-13-10.