EXHIBIT D - BIDDERS HEARING PROCEDURE

HEARING/PROCEDURES FOR BID PROTESTS REGARDING PROCUREMENT OF CONTRACTUAL SERVICES

1. Issues Causing Protest. Any person or firm whose substantial interests have been affected adversely by a notice of decision concerning a procurement solicitation award may file a written notice of protest with the contact person listed in the solicitation.

2. Parties. Parties in any Area Agency on Aging of Pasco-Pinellas, Inc. (AAAPP) hearing proceedings are, AAAPP, “protesting party” or “interveners”.

(a) Hearing officer shall mean the individual presiding over the hearing. (b) Protesting party shall mean any person or firm whose substantial interests have been adversely affected by a notice of decision of award: (c) Interveners: i. Persons, other than the original parties to a pending proceeding, who have a substantial interest therein and who desire to become parties thereto, may petition the AAAPP for leave to intervene. ii. An intervener shall declare its position and allege sufficient facts in support thereof in its petition to intervene. iii. Petitions for leave to intervene may be filed at any time prior to the termination of the hearing and may be granted at the discretion of the hearing officer.

3. Representation by counsel. A party may be represented by an attorney or may appear on its own behalf.

4. Consolidation. If there are separate matters before the hearing officer which involve similar issues, facts, or identity of parties, they may be consolidated. Any party to a matter before the hearing officer may request it be consolidated with another such matter. The hearing officer may, on the hearing officer’s own initiative, order separate matters consolidated.

5. Joinder. If it appears that the determination of the rights of parties in a proceeding before the hearing officer will necessarily involve a determination of the substantial interests of persons or firms who are not parties, the hearing officer may, upon motion of any party of record, or upon the hearing officer’s own motion, enter an order requiring that the absent person or firm be notified of the proceeding and be given an opportunity to be joined as a party of record.

6. Pre-hearing conferences. Once a proceeding governed hereby has been commenced, the hearing officer may conduct one or more pre-hearing conferences electronically or in person for the purpose of clarification, settlement, adjustment, stipulation, examination of exhibits and documents to be used in the hearing, exchange of names and addresses of witnesses, or agreements of parties to be submitted to the hearing officer.

(a) The matters accepted by the hearing officer pursuant to this Section shall become part of the record.

7. Filing the Protest. Any person or firm whose substantial interests have been adversely affected by a notice of decision of award must, in the following order:

(a) Serve a written notice of protest upon the contact person listed in the procurement solicitation in writing, within 72 hours of the last and final posting of the notice of decision, as indicated by the AAAPP-developed Procurement Timetable;

i. A notice of protest shall be addressed to the AAAPP; shall identify the procurement by number and title or any other language that will enable the AAAPP to identify it; and shall state that the person or firm intends to protest the decision. The required bond described in Subsection 8 should not be filed with the notice.

ii. The notice must be actually received by the AAAPP before the 72-hour period expires. The notice must be filed at the place designated by the procurement solicitation or, if no such place is designated, the notice must be filed with the AAAPP.

iii. A notice of protest may not be filed before the 72-hour period begins. The 72-hour period begins when notice of a decision is posted at the last and final posting of the notice of decision, as indicated by the AAAPP-developed Procurement Timetable;

iv. The 72-hour period is not extended by service of the notice of protest by mail.

v. If the 72nd hour falls on a Saturday, Sunday or a state observed holiday, then the last hour for service shall be the same hour on the next day, which is not one of the above.

(b) Within ten (10) calendar days after the notice of intent to protest is filed, the protesting party must file a formal written notice of protest with the contact person listed in the bid solicitation. The formal written protest is a petition that states with particularity the facts and law upon which the protest is based, contains the information specified in Section 9 and is substantially in the form set out in Exhibit A. If the formal written protest is filed in proper form within the 72-hour period for filing a notice of protest, the formal written protest will also constitute the notice of protest, and all time limits applicable to a notice of protest are waived and time limits relative to formal written protests apply. The time allowed for filing a petition or a bond is not extended by mailing either document. If the tenth (10th) calendar day is a Saturday, Sunday or a state observed holiday, then the last day allowed for filing shall be the next day which is not one of the above; and,

(c) Post a bond payable to the AAAPP as described in Section 8 below at the time of filing the formal written protest. In lieu of a bond, a cashier's check or money order in the amount of the bond may be accepted by the AAAPP at the AAAPP’s sole discretion.

Failure to file a notice of protest or a formal written protest shall constitute a waiver of proceedings hereunder.

Failure to file the proper bond at the time of filing the formal written protest will result in the AAAPP summarily denying the protest and also be deemed a waiver of proceedings hereunder.

> 8. Posting Bond for Protest Filed. Any person or firm who files a formal written protest shall: (a) Post with the AAAPP at the time of filing the formal written protest, a bond payable to the AAAPP in an amount equal to one percent of the AAAPP's estimate of the total volume of the contract or $25,000.00, whichever is greater, which bond shall be conditioned upon the payment of all costs, attorney's fees, charges, and expenses incurred by the AAAPP in the administrative hearing in which the action is brought and in any subsequent proceeding regarding the protest, should the protest be denied. The hearing officer shall have the discretion to set the amount of the bond higher than these amounts if the situation warrants. For protests of decisions or intended decisions of the AAAPP pertaining to request for approval of exceptional purchases, the bond shall be in an amount equal to one percent of the AAAPP's estimate of the contract amount for the exceptional purchase requested or $25,000.00, whichever is greater. The hearing officer shall have the discretion to set the amount of the bond higher than these amounts if the situation warrants. Protesters shall also pay any costs, attorney's fees, charges and expenses incurred by the AAAPP if the protest is denied which are otherwise not paid by the protest bond. Protesters agree to pay these costs, attorney's fees, charges, and expenses by virtue of filing a notice of protest or formal written protest; and (b) Upon payment of such costs, fees, charges, and expenses by the person or firm protesting the award, the bond, cashier's check, or money order shall be returned to the protester. If the person or firm protesting prevails in the protest, the AAAPP shall return the bond, cashier's check or money order to the person or firm protesting.

In either case, the bond should be submitted to the AAAPP using a Procurement Protest Bond form, which is attached as Exhibit H. An original Procurement Protest Bond form should be made available to the person who files the protest at the time of notification of intent to file a formal written notice of protest. As stated previously, in lieu of a bond the AAAPP at its sole discretion may accept a cashier's check or money order in the amount of the bond. Failure to file the proper bond or provide the cashier's check or money order in the amount of the bond at the time of filing the formal protest will result in denial of the protest and a waiver of proceedings hereunder. Upon receipt of the formal written notice of protest, the contact person must secure the bond, cashier's check or money order until resolution of the protest.

> 9. Content of Formal Written Notice of Protest. The formal written notice of protest should
> be printed, typewritten, or otherwise duplicated in legible form. The content of the formal written notice of protest must contain: (a) The name and address of the AAAPP with which the protest will be filed; (b) The name, address, e-mail address and telephone number of the person or firm filing the protest or of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how its substantial interests have been affected by the procurement

solicitation or by the AAAPP's notice of intended or of actual contract award; (c) A statement of how and when the person or firm filing the protest received notice of AAAPP's notice of decision of award; (d) With particularity, the facts and law upon which the protest is based; (e) A statement of all issues of disputed material fact. If there are none, the protest must so indicate; (f) A concise statement of the ultimate facts alleged, as well as the rules, authority, and statutes which entitle the person or firm filing the protest to relief; (g) A demand for relief to which the person or firm deems to be entitled; and, (h) Any other information which the person or firm contends is material. (i) Signature of the person or representative of the firm filing the protest.

The protest shall not include challenges to the solicitation requirements, chosen procurement method, the evaluation criteria, the relative weight of the eight evaluation criteria, composition of the Evaluation Committee, or the formula specified for assigning points to the evaluation criteria.

10. AAAPP's Response to Protest. (a) Upon receipt of a formal written notice of protest which has been timely filed, the contract award process will be stopped until the protest is resolved, unless the AAAPP sets forth in writing particular facts and circumstances which require the continuance of the contract award process without delay in order to avoid immediate risk to the public health, safety, or welfare.

11. Resolution of the Protest. (a) Prior to the informal resolution or the appointment and referral of the matter to a hearing officer, as provided in Section 11(b)-(c), the AAAPP Executive Director shall have the authority to evaluate whether the protest states a valid claim and complies with these procedural requirements. If the AAAPP Executive Director determines within seven (7) days after receipt of the protest that the protest does not state a valid claim or comply with these procedures, he or she shall summarily dismiss the protest in writing. This decision is final. (b) Upon receipt of the intent to protest or formal written notice of protest, the AAAPP may attempt to resolve the protest on an informal basis. The AAAPP will have seven (7) days after receipt of the formal written notice of protest to resolve the protest through mutual agreement of the parties. (c) If the protest is not resolved by mutual agreement within seven (7) days of receipt of the formal written protest, the AAAPP Executive Director shall appoint a hearing officer, who does not have a financial stake in the outcome of the dispute, to conduct a hearing to resolve the dispute. This provision is not meant to exclude AAAPP staff members or directors from being appointed hearing officers. If the AAAPP prevails in the dispute, any costs associated with the hearing officer shall be assessed against the protesting party. (d) Upon compliance with filing procedures, the final hearing shall be concluded within thirty (30) days of the filing of the formal written protest with the AAAPP and the AAAPP shall notify the parties as to the time and place of the hearing and any pre hearing conference. The AAAPP will post notice of the protest in the same manner as it posted the notice of the award. (e) If a hearing is held, the hearing officer shall: i. Administer oaths and affirmations; ii. Rule upon offers of proof and receive only relevant evidence. The hearing officer shall make the final determination as to what evidence is relevant and admissible. The hearing officer shall also make the final determination as to whether to allow written and/or oral evidence. In the event testimony from witnesses is received by the hearing officer, the witness must provide all testimony under oath and be

subject to examination and cross examination; iii. Regulate the course of the hearing; A. Opening and closing statements may be presented. These statements, if allowed, will be no more than three (3) minutes in length. The protesting party shall make its presentation first, then AAAPP shall make its presentation followed by any intervening party. All parties of record shall have an opportunity to rebut and respond to evidence and testimony introduced through the introduction of rebuttal evidence and cross examination. iv. Enter any order to carry out the purposes of this hearing procedure; v. Compel attendance of witnesses and production of documents under the control of any party to the protest; vi. The formal rules of evidence in judicial proceedings shall not apply; however, neither the hearing officer nor AAAPP Board of Directors ("Board") shall rely solely upon hearsay evidence for proof of any issue in dispute.
(f) The record of proceedings shall consist of: i. Notice of protest and petition. ii. Record of evidence received or considered by the hearing officer. iii. Stipulations or agreements of the parties accepted by the hearing officer. iv. The official transcript, if any. (g) The official transcript of the proceeding may be preserved by tape recording, shorthand, court reporter, or other device. Any party who wishes a written transcript of the testimony by a court reporter may do so at its expense. If a court reporter records and transcribes the proceedings, a copy of the transcription shall be filed with the AAAPP. In such event, the recording shall become the official transcript. (h) The hearing officer shall transmit the record of proceedings and a written recommendation to the Board within seven (7) days of the conclusion of the hearing. Concurrently, the hearing officer will send a copy of the written recommendation to all parties. The Board shall only consider matters in the record of the proceeding admitted by the hearing officer in making its final determination. This final action by the Board shall be by motion and memorialized by a written resolution at a regular or special Board meeting adopting or rejecting the written recommendation of the hearing officer. The seven (7)-day period may be waived or extended with the consent of all parties. An adverse determination by the Board against the protesting party shall result in the protest being denied and shall further result in the liability for costs, attorney's fees, charges, and expenses otherwise provided by the protest procedures. The Board's decision shall be the final decision regarding the protest.
(i) After the final Board action, AAAPP will post a Notice of Award in the same manner as it posted the notice of the award after the Board's initial decision and AAAPP will provide the protesting party and any intervener with the final action of the Board.

12. Applicability. These procedures shall only apply to those matters set forth in Section 1 above.