

DRAFT for ONLINE PUBLIC-COMMENT PERIOD
***** DRAFT - NOT YET FILED *****

173-3-05.1

Older Americans Act: procurement standards for renewable and multi-year AAA-provider agreements.

(A) An AAA shall not offer a provider a renewable or multi-year AAA-provider agreement ("agreement") unless the AAA procured for the agreement with multi-year terms according to rule 173-3-05 of the Administrative Code and this rule.

(B) Renewable:

To be certain that competition is fair, ODA proposes to require RFPs to indicate if AAA-provider agreements are renewable. If the RFP doesn't indicate that it is, after an agreement expires, a new round of competition begins. This topic exists in practice, but is not addressed by the current rules.

(1) If an agreement is to be renewable after the agreement's initial term, the AAA shall clearly state the following in the RFP for the renewable agreement:

(a) The AAA shall state that the agreement is renewable after the initial term.

(b) The AAA shall state that it retains the right to decline to renew the agreement.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases upon renewal, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases upon renewal. If the agreement upon which providers would bid does not include an opportunity for rate increases upon renewal, the AAA shall state that the agreement would not include an opportunity for rate increases upon renewal.

(d) The AAA shall state the circumstances, if any, under which it may terminate a renewed agreement.

(2) The AAA shall clearly state the following in each renewable agreement:

(a) The AAA shall state that the agreement is renewable after the initial term.

(b) The AAA shall state that it retains the right to decline to renew the agreement.

(c) If the agreement includes an opportunity for rate increases upon renewal, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases upon renewal. If the agreement does not include an opportunity for rate increases upon renewal, the AAA shall state that the agreement does not include an opportunity for rate increases upon renewal.

(d) A statement indicating the circumstances, if any, under which the AAA may terminate a renewed agreement.

(3) An AAA shall not award a renewable agreement that would remain in effect, whether in its initial term or a renewed term, after the last day the AAA's

To ensure open and free competition, ODA proposes to require AAAs to add language to AAA-provider agreements that give it the right to decline to renew.

ODA first adopted similar language for multi-year contracts into rule 173-3-04 on June 1, 2014. ODA now proposes to require AAAs to begin new AAA-provider agreements with every new area plan. New area plans should reflect new trends in the area. This should allow AAAs to offer new bidding opportunities to providers who may not currently have an AAA-provider agreement with the AAA, but who have the skill to solve new problems trending in the area.

approved area plan is in effect.

(C) Multi-year term:

ODA proposes to consolidate language for multi-year AAA-provider agreements from rules 173-3-04 and 173-3-06 into this new rule.

(1) If the agreement is for a multi-year term, the AAA shall clearly state the following in the RFP:

(a) The AAA shall state that the agreement is for a multi-year term.

(b) The AAA shall state that it may terminate the agreement, rather than fulfill all years of the multi-year term, under the any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the goods or services for a subsequent year.

(iii) A situation arises that was unforeseen at the time the AAA and the provider entered into the agreement. Examples of unforeseen situations are changes in market conditions or changes in the law regulating the goods or services the agreement covers.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases during the multi-year term, the AAA shall state the methodology by which the AAA would determine the amount, if any, of rate increases during the multi-year term. If the agreement upon which providers would bid does not include an opportunity for rate increases during the multi-year term, the AAA shall state that the agreement would not include an opportunity for rate increases.

(2) The AAA shall clearly state the following in each agreement with a multi-year term:

(a) The AAA shall state that the agreement is for a multi-year term.

(b) The AAA shall state that it may terminate the agreement, rather than fulfill all the years of the multi-year term, under any one or more of the following circumstances:

(i) The provider does not demonstrate satisfactory performance.

(ii) The AAA does not have funds to pay for the goods or services for a subsequent year.

(iii) A situation arises that was unforeseen at the time that the AAA and the provider entered into the agreement. Examples of unforeseen

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situations are changes in market conditions or changes in the law that regulates the goods or services the agreement covers.

(c) If the agreement upon which providers would bid includes an opportunity for rate increases during the multi-year term, in the agreement, the AAA shall include the methodology by which the AAA would determine the amount, if any, of rate increases during the multi-year term. If the agreement does not include an opportunity for rate increases during the multi-year term, in the agreement, the AAA shall state that it does not include an opportunity for rate increases.

(3) An AAA shall not award a multi-year agreement that would remain in effect after the last day the AAA's approved area plan is in effect.

This paragraph is retained from language ODA adopted into rule 173-3-04 on June 1, 2014.