

**AREA AGENCY ON AGING FOR NORTH FLORIDA, INC.
AGING AND DISABILITY RESOURCE CENTER**

SERVICE PROVIDER/BID DISPUTE APPEALS PROCEDURES

The Area Agency on Aging for North Florida, Inc. (“AAANF”) is the responsible authority on the settlement and satisfaction of all contractual and administrative issues, including both mid-contract enforcement sanctions and issues arising from contract awards entered into and in support of any Request for Proposal (“RFP”) or Invitation to Bid (“ITB”) let by the AAANF.

This policy sets for the process to contest or appeal a decision of the AAANF in matters related to either mid-contract enforcement and issues that arise in the process of competitive solicitation contract award.

I. BID DISPUTE AND APPEAL HEARING PROCEDURES

Federal and State regulations governing the award-making functions of AAANF require the establishment of an Appeal Hearing procedure for any applicant whose application to provide services is unsuccessful.

This Appeal Hearing is created pursuant to the requirements of s. 430.203(9), F.S., and Rule 58C-1, F.A.C. The Appeal Hearing offers the Appellant an opportunity to present its formal objections in a quasi-judicial setting to an impartial decision-maker appointed by AAANF. The Appeal Hearing format provides a formal forum through which both Appellant(s) and AAANF are afforded the opportunity to introduce specific evidence in the form of exhibits and to present officially recorded testimony relevant to the competitive solicitation.

In the event of a request for an Appeal Hearing, the following procedure will be employed:

1. **Appointment of an Appeals Committee**

The President of the Board of Directors of AAANF shall call for an independent Appeals Committee to hear RFP/ITB appeals. The Committee shall be comprised of 3-5 members. No members shall have served on the Review or Selection Committee related to the decision/award being protested. The Board President shall designate one member of the Appeals Committee as Presiding Officer. The decision of this Committee is final and binding.

2. **Right to Protest**

Any entity who is adversely affected by the agency decision or intended decision to make award under a competitive solicitation shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision.

- In the event of litigation, venue will be Leon County, Florida.
- If any designated protest timeline should fall on a Saturday, Sunday, or holiday, the date of the designated timeline shall be the next business day.

3. Burden of Proof/Standard of Proof

The Protester carries the burden of proof of establishing that the AAANF's proposed action is contrary to the AAANF's governing statutes, rules, or the solicitations specifications. The standard of proof shall be whether the intended action was clearly erroneous, contrary to competition, arbitrary, or capricious.

4. Filing the Protest

- a. Any person or entity affected adversely by an AAANF decision or intended decision or intended decision concerning a notice of contract or actual contract award must:
 - i. Advise the contact person listed in the RFP/ITB in writing, by the date and time specified in the RFP/ITB after the posting of the intended or actual contract award.
 - ii. The written intent to file a protest must be accompanied by a bond in the form of a cashier's check or money order made payable to AAANF in the amount of \$5,000 or 1% of the AAANF's total contract, whichever is less.
 - iii. The AAANF must immediately file the Notice of Intent to Protest in the same manner as the Notice of Intent to Award was noticed.
 - iv. Present a formal written protest to the AAANF Contact Person designated in the RFP/ITB, 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.
- b. Failure to file a notice of protest or file a formal written protest shall constitute a waiver of proceedings.

5. Content of the Formal Written Protest

The formal written protest must be printed, typewritten or otherwise duplicated in a legible form. The content of the formal written protest must contain:

- a. The name and address of the AAANF contact person listed in the RFP/ITB.
- b. The name and address of the duly authorized person of the entity filing the pro- test.
- c. An explanation of how the protesting entity's substantial interests have been affected by the notice of intent or actual contract award.
- d. A statement of all issues of disputed material fact. If there are none, the protest must so indicate.
- e. A concise statement of facts alleged as well as the rules and statutes which entitle the entity filing the protest to relief.
- f. The demand for relief to which the entity deems themselves entitled.
- g. Affirmation that the Protester or authorized representative will be available at the time and place designated in the RFP/ITB for appeals to be heard.
- h. Any other relevant, helpful information.

6. Procedures for Protest

- a. Upon receipt of a timely filed written protest, as prescribed above, the formal execution of the contract shall be halted until the resolution of the protest.
- b. The AAANF will post the notice of the protest in the same manner as it posted the notice of the intended award.
- c. 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 Intent to Protest. Failure to provide such notice will bar the affected party from participation in the appeal process and waive any claim against the results of the appeal process, including settlement.
- d. The AAANF will select an impartial decisionmaker, from the AAANF impartial decisionmaker registry, to serve as a hearing officer to preside over the protest.

- i. If the Protester objects to the selection of the impartial decisionmaker, they must raise the objection in writing within 48 hours, excluding weekends and state holidays, or the objection is deemed waived. Upon receipt of a timely objection, the AAANF will randomly select another impartial decisionmaker from its registry.
- ii. The AAANF Board of Directors may, if it is deemed necessary, set forth writing the continuance of client services on an emergency basis without interruption. The purpose of the continuance would be the avoidance of immediate and serious danger to health, safety and welfare of functionally impaired elderly persons served by a firm or agency receiving funding from AAANF. This written determination will specifically detail underlying facts determining the Board's decision and will constitute the final Board action.

7. Resolution of the Protest

Upon receipt of the Formal Written Protest, the RFP/ITB AAANF Contact Person must attempt to resolve the protest in an informal manner through mutual agreement within 7 days, excluding weekends and state holidays. If the protest is not resolved in an informal manner through mutual agreement, the following procedures will take place:

- a. The impartial decisionmaker will commence a hearing within 30 calendar days after the filing of the formal protest.
- b. A notice indicating the date, time, and location of the hearing will be issued to the parties by the impartial decisionmaker.
- c. The service of discovery may begin immediately upon filing the formal protest. All responses to discovery are due 5 days from the receipt of the request. All discovery must be completed at least 48 hours prior to the formal hearing. The impartial decisionmaker shall have the authority to issue subpoenas. All depositions must have at least 3 day's notice. If any party fails to comply with the discovery rules provided herein, the decisionmaker must exclude the evidence from hearing, unless just cause is shown. 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. Upon consideration by the decisionmaker, if it is determined that the non-complying party must comply with the requested discovery, it must be

done within 48 hours after the decision to continue hearing.

- d. All parties may represent themselves or be represented by an attorney or designated alternate at the hearing.
- e. All parties will be provided the opportunity to present witnesses, evidence, and argument.
- f. The AAANF will preserve an official and complete record of the proceedings from a tape recording. If a party desires a court reporter to transcribe the proceedings, they may do so at their own expense.
- g. The decisionmaker must render a written recommendation decision within 30 calendar days after the hearing. 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. The written decision must include findings of fact and conclusions of law. Based on these findings and conclusions, the decisionmaker may recommend affirming or rejecting AAANF's intended award.
- h. The recommendation by the impartial decision-maker will be presented to the Ap- peals Committee for its review. The Appeals Committee may elect to accept the recommendation, amend the recommendation, or reject the recommendation. The decision of the Appeals Committee is final and binding
- i. Notice of Award will be finalized and re-posted following the posting of the decision of the Appeals Committee.
- j. If, after completion of the administrative hearing process the AAANF prevails, the AAANF shall recover all costs and charges relative to the bonded protest, including any attorney's fees, which will be incorporated in the final order or judgment. Upon payment of such costs and charges by the bonded protester, any balance of the bond shall be returned to the protester.

II. SERVICE PROVIDER DISCIPLINARY APPEALS PROCEDURES

The Contractor shall abide by all applicable current federal statutes, laws, rules and regulations as well as applicable current state statutes, laws, rules and regulations, policies of the Department of Elder Affairs, and the terms of any contract with the AAANF. The failure of the Contractor to abide by these laws, rules, regulations, policies, and terms of a contract with AAANF shall be deemed an event of default of the Contractor and subject the Contractor to disciplinary action including corrective action, unannounced special monitoring, temporary assumption of the operation of one or more contractual services, placement of the Contractor on probationary status, imposing a moratorium on Contractor action, imposing financial penalties for nonperformance or noncompliance, or other administrative action to immediate, unilateral cancellation at the discretion of the AAANF.

If the Area Agency finds that the Contractor fails to abide by all applicable current federal and state statutes, laws, rules and regulations, as well as conditions of a contract with the AAANF, the AAANF shall provide the Contractor a Notice of Violation which shall include a concise statement of the specific violations of the Contractor and the facts relied upon to establish the violation.

Upon receipt of the Notice of Violation, the Contractor shall have twenty-one (21) days to respond to the Notice of Violation. The Contractor's response must include a statement of any disputed issues of material fact and a concise statement of the specific facts the Contractor contends warrant reversal or deviation from the AAANF's proposed action, including an explanation of how the alleged facts relate to the specific rules, statutes, or contractual term.

Failure of the Contractor to respond to the Notice of Violation within twenty-one (21) days shall be deemed a waiver of the rights outlined above and the AAANF will proceed against the Contractor by default.

The AAANF, upon receiving a timely filed response to a Notice of Violation, will forward the response and all accompanying documentation to the Contract Manager to review and consider. The Contract Manager shall, within 30 days after the receipt of the Contractor's response, file an order which lays out the final determination of disciplinary action by the AAANF.

Board approved: 02/23/2023; replaces Bid Dispute and Appeal Hearing Procedures, previously approved on 08/26/2021 and Service Provider Appeals Procedure, dated 08/01/2013