

APPENDIX IX

Appeal Procedures

The Appeal Procedures of the Area Agency on Aging Palm Beach/Treasure Coast ("AAPBTC") are listed below. For purposes of these procedures, an "intended decision" means: (1) issuance of specifications in a Request for Proposal (RFP) or any addenda, or (2) an intended contract award. Failure to file a notice of intent to appeal and a formal written appeal as described herein shall constitute a waiver of proceedings and a waiver of any rights to contest the terms, conditions, specifications, or award of the RFP or AAPBTC's intended decision.

1. STANDARDS FOR APPEAL

- a. No submission made after the date and time the Proposals are due to AAPBTC as per the timeline of events in the RFP that amends or supplements the application will be considered on appeal.
- b. The burden of proof rests with the party appealing AAPBTC's intended decision.
- c. The [decision maker] must determine whether AAPBTC's intended decision is contrary to its governing statutes or rules, or to the specifications in the RFP. The burden of proof for the appealing party is whether AAPBTC's intended decision was clearly erroneous, contrary to competition, arbitrary, or capricious.

2. APPEAL PROCEDURES

a. APPEALING PARTY PROCEDURES

- i. Any party who is substantially affected by AAPBTC's intended decision as reflected in the issuance of terms, conditions, or specifications in an RFP or in any addenda to an RFP must file a written notice of intent to appeal with AAPBTC within 72 hours after the posting of the RFP or any addenda by AAPBTC. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time period.
- ii. Any party who is substantially affected by AAPBTC's intended decision to award a contract must file a written notice of intent to appeal with AAPBTC within 72 hours after the posting of the notice of intent to award by AAPBTC, excluding Saturdays, Sundays, and state holidays. A substantially affected party is any party who submitted a bid on AAPBTC's RFP.
- iii. A formal written appeal must be filed within 10 calendar days after

the date the notice of intent to appeal is filed, unless the 10th day falls on a Saturday, Sunday, or state holiday, in which case the deadline shall be the next business day.

- iv. The formal written appeal must state, with particularity, the facts and law upon which the appeal is based. The issues to be addressed in any proceeding conducted pursuant to subsection 2(c) below are limited to those timely raised in any formal written appeal.
- v. Failure to timely file a notice of intent to appeal or formal written appeal shall constitute a waiver of proceedings.
- vi. If any substantially affected party decides to participate in the appeal proceedings, that party must give written notice to AAPBTC within 3 business days of the posting of the initial notice of intent to appeal.

b. PROCEDURES UPON TIMELY RECEIPT OF APPEAL:

Upon receipt of a timely notice of intent to appeal, AAPBTC must take the following steps:

- i. Stop the contract award process until the subject of the appeal is resolved by final action.
- ii. Immediately post the notice of intent to appeal in the same manner as the notice of intended award was posted.
- iii. Randomly select an impartial decisionmaker from the registry referenced in Rule 58C-1.0031(2), F.A.C.
 - 1. The decisionmaker must be randomly selected.
 - 2. AAPBTC 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 AAPBTC 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 AAPBTC 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, AAPBTC must randomly select another decisionmaker.

- iv. Provide the parties an opportunity to resolve the appeal by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays. If the subject of an appeal 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 2(c) below.

c. HEARING PROCEDURES:

- i. If the appeal is not resolved pursuant to paragraph 2(b)(4) above, the impartial decisionmaker must commence a hearing within 30 calendar days after AAAPBTC receives the formal written appeal, unless the 30th day falls on a Saturday, Sunday, 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.
- ii. The hearing shall be conducted pursuant to these procedures. Chapters 120 and 287, Florida Statutes, do not apply.
- iii. Discovery:
 - 1. 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.

- iv. The hearing will be conducted via Zoom video conference or similar video conference technology. The use of video technology is encouraged and will be preferred to a telephonic hearing. However, any party that is unable to use video will be permitted to appear via telephone only.
- v. The hearing should be conducted in such a manner to ensure that self-represented parties are not prejudiced by a lack of legal training or legal representation at the hearing.
- vi. The order of presentation at the hearing shall be as follows: (i) the appellant; (ii) AAAPBTC; and (iii) any substantially affected party participating in the appeal proceedings.
- vii. 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 2.c.iii.5. of these procedures.
- viii. An entry of default against a party is deemed the final decision of the decisionmaker and is not subject to the provisions of Section 2.e. of these procedures.

d. APPEAL RESOLUTION:

- i. The impartial decisionmaker must permit the parties to submit findings of fact, conclusions of law, draft orders and memoranda on the issues within a time designated by the impartial decisionmaker.
- ii. The impartial 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 Saturday, Sunday, 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 impartial decisionmaker must determine whether AAAPBTC's intended decision is clearly erroneous, contrary to competition, arbitrary or capricious, and may either affirm or reject AAAPBTC's intended decision.
2. If rejecting AAAPBTC's intended decision, the decisionmaker must simultaneously issue a recommendation to AAAPBTC 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 Section 2.e, of these procedures, AAAPBTC may either accept or reject the decisionmaker's recommendation. If AAAPBTC rejects the decisionmaker's recommendation, AAAPBTC 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 AAAPBTC 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 these procedures, AAAPBTC shall proceed under Section 2.e. of these procedures instead of Section 2.d.ii.3.

e. REVIEW OF DECISION:

- i. 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 following entities:
 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 <https://www.flcourts.org/Resources-Services/Alternative-Dispute-Resolution>.
- ii. 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.
 - iii. The request for review must be made within 10 calendar days after the date of the decision from the decisionmaker.
 - iv. The review shall not be a de novo proceeding, but only a review of the decision based on the record from the hearing.
 - v. 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 AAPBTC.
 3. If rejecting the decisionmaker's recommendation, the reviewer must issue a recommendation to AAPBTC, supported by findings of fact and conclusions of law.
 - vi. AAPBTC may either accept or reject the reviewer's recommendation. If AAPBTC rejects the reviewer's recommendation, AAPBTC 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 AAPBTC must either start the procurement process again or make an award consistent with its reason or reasons for rejecting the reviewer's recommendation.