

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

PROGRAM INSTRUCTION

Number 16-PI-22

Supersedes

Expiration Date

DATE: October 31, 2016

TO: Area Agency on Aging Directors

SUBJECT: For-Profit Contracting Certification

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Purpose: The purpose of this Program Instruction (PI) is to provide Area Agencies on Aging (AAAs) with notification of a new required certification process for all contracts entered into with profitmaking/for-profit organizations or individuals – and to share the content of the electronic certification form that AAAs will be required to submit to NYSOFA via the Reporting and Budgeting System as evidence of their compliance.

In addition, use of the NYSOFA form No. 76 – Area Agency on Aging Subcontract Transmittal Form – is no longer required.

Necessary Action: AAAs who are contracting for services with for-profit entities will be required to complete and submit the electronic certification form beginning with the submission of the 2017-18 Annual Update as part of the Contractor Roster process. In addition, each contract that is entered into during the year with a new for-profit contractor will require the AAA to revise and submit the Contractor Roster and For-Profit Certification Form (Form) in the Budgeting and Reporting System.

Response Date: Electronic versions of this Form will be present in the Contractor Roster pages of the 2017-18 Annual Update and must be completed in order to submit the 2017-18 Annual Update. In addition, electronic certification Forms will be required beginning April 1, 2017 that cover for-profit contracts with either entities or individuals.

This requirement covers both new contracts and renewals of existing contracts for any AAA service.

Background: Section 212(a) of the Older Americans Act (OAA) requires that agreements entered into with a profit-making organization for the provision of services under the Act must confirm that: local agencies may only purchase such services at their fair market rate and must certify that the rates are consistent with the prevailing market rate for the provision of such services in the relevant geographic area as determined by the State agency [Unit on Aging] or area agency on aging.

Section 212 (b) of the OAA – Ensuring Appropriate Use of Funds – requires that an agreement described in section 212(a) above may NOT be made without prior approval of the State Agency – (1) after timely submission of all relevant documents related to the agreement including information on all costs incurred; and, (2) that such agreement may not directly or indirectly provide for, or have the effect of, paying, reimbursing, subsidizing, or otherwise compensating an individual or entity in an amount that exceeds the fair market value of the services subject to such agreement; and (3) result in the displacement of services otherwise available to an older individual with greatest social need, an older individual with greatest economic need, or an older individual who is at risk for institutional placement; or (4) in any other way compromise, undermine, or be inconsistent with the objective of serving the needs of older individuals, as determined by the Assistant Secretary.

In addition, State Regulations (9 NYCRR section 6652.10) entitled “Contract approval by State office” state the following:

- (a) An area agency may not execute a subcontract with a profitmaking entity for the delivery of OAA or CSE services until the Office [NYSOFA] has approved the subcontract.
- (d) The Office [NYSOFA] will not reimburse an area agency for services under a subgrant or subcontract until such subgrant or subcontract has been submitted to the Office for approval. No Subcontractor or subgrantee expenditures shall be reimbursed by the Office except pursuant to such approval; additional expenditures may be reimbursed only pursuant to Office approval of a revision entered into and submitted to the Office by the area agency within 30 days of its execution.

Detail of Change: Beginning with the 2016-20 Four-Year Plan, AAAs were asked to designate each contract provider on the Contractor Roster as either: **For-Profit; Not-For-Profit; or Other Gov’t.** In the 2017-18 Annual Update, AAA’s who are contracting with for-profit entities will result in the AAA submitting the For-Profit Certification Form. AAAs will be required to complete the Form and certify that they have taken the necessary steps to confirm that the contract they have entered into meets the requirements of both state and Federal regulations. The Form must be completed

before the Annual Update can be submitted. Fiscal staff at NYSOFA will record receipt of the Form for each for-profit contract submitted.

In addition, contracts entered into during the year which result in a modification to the Contractor Roster will also require completion of this form.

Instructions for Completing the Electronic Form: (paper form is attached for reference only)

- In Section 1 please provide information on the contractor
- Section 2 please enter contractor contact information. Please complete all of the items.
- Section 3 requires that the AAA certify that they have met the requirements as outlined in 9 NYCRR 6652.10, Section 212 of the OAA regarding contracting with a for-profit organization or individual, and targeting and equal access requirements set for in 12-PI-08 and 13-TAM-01.
- Section 4 – Certification. This certification must be completed by someone from the Area Agency on Aging that has the authority to ‘legally bind the Agency’ to these certifications. The box must be checked and the name, title, and date that the certification was made provided.

Definitions of key terms:

Fair Market Rate: Is the most competitive price a buyer is willing to pay - and the lowest price a seller would be willing to accept - for a particular item/service. This idea is tied to the basic economic notion of supply and demand ... if there are only a few providers for the item/service in a particular area, the price may go up because the price a typical buyer is willing to pay will increase due to demand.

No diminishment in quality/quantity: Diminution refers to the act or process of diminishing or lessening/reducing the number of items being purchased. Contractors should be bidding on service levels necessary for the client base of the AAA – and inherent in the contracts would be the notion that the AAA is contracting for similar services/projects at the best possible price each time – without a significant reduction in quantity and quantity of services delivered.

Program Design Authority: The contractor agrees to conformity with the design of the services – as contracted – and does not have the ability to alter them in any significant way without approval of the AAA.

As an example, if the AAA is contracting for hot home delivered meals, the contractor would not have the ability to change to frozen or chilled meals without the express written consent of the contractor (the AAA). The most significant benefits are the control the AAA retains over the projects' design and the AAA's ability to rely on the contractor to protect the AAA's interest in the overall success of the program/services being provided under the contract.

Approval Process: Because the form is submitted electronically, the information will be reviewed by NYSOFA Fiscal Teams as they review the Annual Update Contractor Roster ensuring that each for-profit contract has a completed Certification Form.

Compliance: In the event that the AAA is unable to certify that it has met each of the attestations on the Form the AAA will be contacted by NYSOFA Staff for additional information regarding their contract. Upon receiving that information, NYSOFA will determine what steps must be taken by the AAA to certify that it has met each of the attestations.

If NYSOFA determines that the AAA is unable to certify that it has met each of the attestations on the Form, the AAA may be directed to implement a corrective action plan with regard to future contracts for specific services. Completion of the corrective action plan will be required in order to ensure reimbursement by NYSOFA for costs incurred by the AAA under such contracts.

PROGRAMS AFFECTED:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Title III-B | <input checked="" type="checkbox"/> Title III-C-1 | <input checked="" type="checkbox"/> Title III-C-2 |
| <input checked="" type="checkbox"/> Title III-D | <input checked="" type="checkbox"/> Title III-E | <input checked="" type="checkbox"/> CSE |
| <input checked="" type="checkbox"/> WIN | <input type="checkbox"/> Energy | |
| <input checked="" type="checkbox"/> EISEP | <input checked="" type="checkbox"/> NSIP | <input type="checkbox"/> Title V |
| <input checked="" type="checkbox"/> HIICAP | <input type="checkbox"/> LTCOP | |
- Other: CSI;
State
Transportation;

CONTACT PERSON: Fiscal Teams

TELEPHONE: (518) 473-4808

Attachment: For-Profit Certification Form

CERTIFICATION FORM – AAA CONTRACT/AGREEMENT WITH FOR-PROFIT ENTITY

Instructions

This form must be completed for all new or existing contracts with for-profit entities.

Please see 16 PI XX for further instructions with regard to completing this form.

Section 1

NYSOFA Contractor Code: _____	New Contract <input type="checkbox"/> Existing Contract <input type="checkbox"/>
Number of contracts with this entity: _____	
Name of AAA:	AAA Contact Person:
Contractor Name:	Contract Total:
Services to be provided:	Employer ID:
Contract Period Start Date:	Contract Period End Date:

Section 2

Contractor Contact Information:		
Business Address: _____		
City : _____	State: _____	Zip: _____
Mailing Address: _____		
City: _____	State: _____	Zip: _____
Attention: _____	Phone #: _____	Fax #: _____

CERTIFICATION FORM – AAA CONTRACT/AGREEMENT WITH FOR-PROFIT ENTITY

Section 3

Rates for contracted services will be provided at the “prevailing market rate” (Fair Market Rate) for provision of such services in the relevant AAA geographic area? If no, please provide an explanation: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
This contract will continue the same level or increase the level of quality/quantity of services offered by the AAA? If no, please provide an explanation: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
This contract is consistent with the objective of serving the needs of older individuals? If no, please provide an explanation: _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
This contract contains appropriate targeting and language accessibility provisions? If no, provide an explanation: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO
AAA has retained “program design authority”? If no, please provide an explanation: _____ _____	<input type="checkbox"/> YES <input type="checkbox"/> NO

Section 4

Certification

By checking this box, the AAA certifies that this contract with a for-profit entity complies with the requirements of 9 NYCRR 6652.10, Section 212 of the Older Americans Act, 12-PI-08 and 13-TAM-01.

Name _____ Title _____ Date _____

For Office Use Only:

Form reviewed by: _____ *Title:* _____

Date Reviewed: _____

Certification Form Approved: _____

Corrective Action Plan Approved: _____