

Opinion No. 87-72

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OPINION OF: HAL STRATTON, Attorney General

BY: Sarah E. Alley, Assistant Attorney General

TO: Stephanie Fallcreek, Director, State Agency on Aging, 224 E. Palace Avenue, Santa Fe, New Mexico 87501

QUESTIONS

The State Agency on Aging designated four Area Agencies on Aging ("AAA") for sole source status under the Procurement Code. Do these Agencies need to qualify for sole source status?

CONCLUSIONS

No.

ANALYSIS

Since its inception, the State Agency on Aging ("SAoA") has been the designated recipient of Federal Older American Act funds in New Mexico and empowered to develop a state plan for providing funds and service to the elderly. 42 U.S.C. §§ 3001-3058 (Supp. 1987). New Mexico's plan, which the United States Commissioner on Aging has approved, divides the State into four Planning Service Areas ("PSAs"). 42 U.S.C. § 3025 (1973). Within each PSA, the SAoA selects a public or nonprofit agency, designated as an Area Agency on Aging, which is required to develop an area plan to provide nutritional service to the elderly and establish, where appropriate, multipurpose senior centers. 45 U.S.C. § 305(a)(2), § 307; 45 C.F.R. § 1321.71, 3121.65 (1985). In addition, the AAA's coordinate service for aging within the community. In developing its plan, the SAoA is required to develop a formula that follows guidelines that the Federal Commission on Aging issues, for the distribution of funds within the state and publish the formula for the public's general review and comment. The SAoA also must submit the formula to the Commissioner for his review and comment. 42 U.S.C. § 302(a)(2)(c).

The SAoA must limit its choice of AAA's to the following entities: (i) a designated and established Office of Aging unit that already is operating within a PSA; (ii) a local government's office or agency that the local government's chief elected official designates to serve as an AAA; (iii) any Office of Aging designated by the appropriate elected officials of any combination of local governments to act on behalf of such combination; or (iv) any public or nonprofit agency in a PSA that is under the SAoA's supervision and can plan or provide a broad range of supportive services. 42 U.S.C. § 3025(c) (Supp. 1987). Among the four entities, the SAoA must give the right of first

refusal to a local government. If it chooses not to exercise the right, the SAoA then must give preference to an established Office of Aging. 42 U.S.C. § 3025; 45 C.F.R. § 1321.45 (1985).

These federal statutes and regulations conflict with New Mexico's Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, which generally requires the awarding of contracts after competitive bids. Section 13-1-30 NMSA (1978) provides:

When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory, applicable federal laws or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulation shall be in compliance with the Procurement Code.

Therefore, federal law governs the SAoA's designation of AAA's, and AAA's need not qualify for sole source status under the Procurement Code.

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