

Sanction Policy and Appeals Procedure for Contractors

Purpose The purpose of this procedure is to describe the process that AAA staff will implement in the event that a Contractor is out of compliance with the terms of a contract with AAA and the problem has not been remedied by the provision of technical assistance and support from AAA staff.

Policy The following is the sanction policy for contractors:

1. When a Contractor has materially failed to comply with the terms or conditions of a contract, the AAA may:
 - a. Suspend the contract.
 - b. Terminate the contract.
 - c. Take such other remedies (including the withholding of funds) as may be legally available and appropriate in the circumstance.
2. A Contract may be suspended or terminated for failure to comply with the AAA regulations, or for failure to submit a required report.
3. The following are standard operational fiscal actions and are NOT considered sanctions.
 - a. Withdrawal of funds awarded on the basis of the Contractor's underestimate of the unobligated balance in a prior period.
 - b. Refusal by the AAA to extend a contract, award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension, or supplemental award.
 - c. Withdrawal of unobligated balance as of the expiration of a contract.
 - d. Annulment, i.e., voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.
4. Conditions for which sanctions may be applied include but are not limited to:
 - a. A violation of the law or failure to comply with any conditions of the contract.
 - b. Failure to comply with finalized monitoring or assessment recommendations prepared by the AAA Program Coordinator or authorized staff.
 - c. A report is in question and:
 - i. The report has not been received by the AAA by the final filing date; or
 - ii. The report has been received but is found to be so incomplete or inaccurate that it is unusable
 - d. Failure to provide the AAA with copies of permits necessary for the operation of the site or facilities

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Sanction Policy and Appeals Procedure for Contractors, Continued

Policy (continued)

- e. Failure to receive prior approval through AAA for programmatic revisions in the narrative or budget portions of a program's current approved contract
 - f. Failure to submit documentation for vehicles purchased through the Older Americans Act grant funds, showing the AAA listed as lien holder (legal owner).
 - g. Failure to maintain appropriate insurance or licenses
-

Definitions

The following chart defines terms used:

| Term | Definition |
|----------------------|---|
| Early Warning Alert | The offering of technical assistance and support by AAA staff to a Contractor whose program is in noncompliance under the terms and conditions of contracts with the AAA. |
| Governing Board | Board of Supervisor-appointed members authorized to conduct business and affairs of the AAA |
| Management Team | Fiscal analyst and AAA Social Services Agency Management Staff of the AAA PSA 26 |
| Suspension | A formal action limiting the authority of a program to obligate or expend monies awarded to it under its contract(s) with the AAA |
| Termination | The withdrawal of authority to expend any funds or conduct any business under the terms and conditions of contracts with the AAA |
| Withholding of Funds | Temporary delay in honoring a Contractor's request for funds |

Process

When sanctions are considered necessary, and in the absence of immediately necessary corrective action, the following sequence of increasingly severe sanctions may be applied:

1. Early Warning Alert
 2. Withholding of Funds
 3. Suspension of the Contract
 4. Termination of the Contract
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Sanction Policy and Appeals Procedure for Contractors, Continued

Process
 (continued)

Note: In the case of threat to life, health, safety of the public or fiscal irregularity the withholding of funds, suspension of the contract or termination of the contract may take place immediately without implementing previous step.

Procedure

After site monitoring and/or program evaluation, if AAA Staff determines that a Contractor is not in compliance with one or more of the terms or conditions of their contract, AAA staff shall implement the following steps:

| Step | Action | | | | | | | | | | | | | | |
|---|---|----------------------|----------|--|---|---|---|---|---|----------------------|----------|--|--|---|--------------------------------|
| 1 | Implement Early Warning Alert: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Step</th> <th style="text-align: center;">Action</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">A</td> <td>Offer technical assistance to Contractor to enable them to comply with the terms of their contract during the site-monitoring visit or at an arranged meeting thereafter.</td> </tr> <tr> <td style="text-align: center;">B</td> <td> Notify Contractor and Chairperson of their governing board in writing: <ul style="list-style-type: none"> • That the Contractor is out of compliance with the contract terms • What action must take place to come into compliance • Date by which compliance must be achieved </td> </tr> <tr> <td style="text-align: center;">C</td> <td> Continue to honor requests for funds: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">If Contractor has...</th> <th style="text-align: center;">Then ...</th> </tr> </thead> <tbody> <tr> <td>demonstrated that compliance is achieved by required date,</td> <td>Notify Contractor and Chairperson of their governing board in writing that Early Warning Alert is lifted</td> </tr> <tr> <td>NOT demonstrated that compliance is achieved by required date,</td> <td>Implement Withholding of Funds</td> </tr> </tbody> </table> </td> </tr> </tbody> </table> | Step | Action | A | Offer technical assistance to Contractor to enable them to comply with the terms of their contract during the site-monitoring visit or at an arranged meeting thereafter. | B | Notify Contractor and Chairperson of their governing board in writing: <ul style="list-style-type: none"> • That the Contractor is out of compliance with the contract terms • What action must take place to come into compliance • Date by which compliance must be achieved | C | Continue to honor requests for funds: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">If Contractor has...</th> <th style="text-align: center;">Then ...</th> </tr> </thead> <tbody> <tr> <td>demonstrated that compliance is achieved by required date,</td> <td>Notify Contractor and Chairperson of their governing board in writing that Early Warning Alert is lifted</td> </tr> <tr> <td>NOT demonstrated that compliance is achieved by required date,</td> <td>Implement Withholding of Funds</td> </tr> </tbody> </table> | If Contractor has... | Then ... | demonstrated that compliance is achieved by required date, | Notify Contractor and Chairperson of their governing board in writing that Early Warning Alert is lifted | NOT demonstrated that compliance is achieved by required date, | Implement Withholding of Funds |
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Sanction Policy and Appeals Procedure for Contractors, Continued

Procedure (continued)

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Sanction Policy and Appeals Procedure for Contractors, Continued

Procedure (continued)

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| | | payments or by not allowing the Contractor credit for disbursements made in payment of authorized obligations incurred during the suspension period. | | | | | | |
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| | C | <p>Determine if compliance is achieved:</p> <table border="1"> <thead> <tr> <th>If...</th> <th>Then ...</th> </tr> </thead> <tbody> <tr> <td>Contractor has demonstrated that compliance is achieved</td> <td> <ol style="list-style-type: none"> 1. Notify Contractor and Chairperson of their governing board in writing that Suspension of the contract is Lifted 2. Honor requests for funds concurrent with lifting. </td> </tr> <tr> <td> <ul style="list-style-type: none"> • Contractor has NOT demonstrated that compliance is achieved after three consecutive months of suspension, or • Management Team determines failure to comply is deemed sufficiently critical, as in the case of threat to public welfare, or • There is clear evidence of fraud or other malfeasance, or • Failure to comply is deemed flagrant and deliberate </td> <td>Implement Termination of Contract</td> </tr> </tbody> </table> | If... | Then ... | Contractor has demonstrated that compliance is achieved | <ol style="list-style-type: none"> 1. Notify Contractor and Chairperson of their governing board in writing that Suspension of the contract is Lifted 2. Honor requests for funds concurrent with lifting. | <ul style="list-style-type: none"> • Contractor has NOT demonstrated that compliance is achieved after three consecutive months of suspension, or • Management Team determines failure to comply is deemed sufficiently critical, as in the case of threat to public welfare, or • There is clear evidence of fraud or other malfeasance, or • Failure to comply is deemed flagrant and deliberate | Implement Termination of Contract |
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Sanction Policy and Appeals Procedure for Contractors, Continued

Procedure (continued)

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Sanction Policy and Appeals Procedure for Contractors, Continued

Procedure (continued)

| Step | Action | |
|-------------|---|---|
| 5 | Process Appeal Requests: | |
| | If ... | Then ... |
| | Within 15 days, the Contractor files an appeal of the Withholding of Funds, Suspension of the Contract, or Termination of the Contract, | The Management Team will consider the merits of the appeal, conduct any investigation necessary, and issue a decision in writing to the Contractor within fifteen (15) days of the receipt of the appeal. |
| | Within 30 days of receipt of the appeal decision, the Contractor files a request with the Governing Board for either an oral or written hearing regarding decision issued by the Management Team, | <ol style="list-style-type: none"> 1. The Governing Board shall set a date for the hearing not later than 20 days following the receipt of the request at a time and place convenient to the parties. 2. At Contractor’s own expense, Contractor may have a representative of their choice at the hearing. 3. Contractor or their representative may be present reasonably related testimony and evidence at the hearing regarding the negative action. 4. A recording of the hearing will be made. 5. The Governing Board will issue a written decision within 10 days of the close of the hearing. 6. The decision will be final. 7. Within 30 days after receiving the decision, Contractor may file a petition with the California Department of Aging for a review of the record. Such review, if granted, shall be the exclusive remedy available to Contractor of the Governing Board decision. |

Authority This document is written under the authority of Title 22, Division 1.8, Chapter 2, Article 6