

# CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

[Created by 2013 Iowa Acts, chapter 129]

## TITLE I

### GENERAL OFFICE PROCEDURES

#### CHAPTERS 1 to 7

Reserved

#### CHAPTER 8

##### INFORMATION TECHNOLOGY GOVERNANCE

- 8.1(8B) Definitions
- 8.2(8B) Purpose and applicability
- 8.3(8B) Advisory groups
- 8.4(8B) Information technology governance requirements
- 8.5(8B) Assessment and enforcement of information technology governance requirements
- 8.6(8B) Waivers from information technology governance requirements
- 8.7(8B,22) Public availability
- 8.8(8B) Appeals

#### CHAPTER 9

Reserved

#### CHAPTER 10

##### PROCUREMENT OF INFORMATION TECHNOLOGY

- 10.1(8B) General provisions
- 10.2(8B) Definitions
- 10.3(8B) Methods of procurement
- 10.4(8B) Master information technology agreements
- 10.5(8B) Prequalification of vendors
- 10.6(8B) Method of procurement, how determined
- 10.7(8B) Approval process for participating agencies
- 10.8(8B) Consultation
- 10.9(8B) Delegated procurement authority
- 10.10(8B) Duration of master information technology agreements
- 10.11(8B) Duration of information technology contracts
- 10.12(8B) Requirements applicable to competitive selection process
- 10.13(8B) Performance reviews and suspension/debarment
- 10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements
- 10.15(8B) Confidential information in a solicitation response

#### CHAPTERS 11 to 19

Reserved

## TITLE II

### BROADBAND

#### CHAPTER 20

##### BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

- 20.1(8B,427) Definitions
- 20.2(8B,427) Scope
- 20.3(8B,427) Broadband availability maps and data sources
- 20.4(8B,427) Targeted service area determination
- 20.5(8B,427) Appeals
- 20.6(8B,427) Contested cases

#### CHAPTER 21

##### BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

- 21.1(8B,427) Definitions
- 21.2(8B,427) Scope
- 21.3(8B,427) Application for certification
- 21.4(8B,427) Time of filing
- 21.5(8B,427) Notice of decision and issuance of certificate
- 21.6(8B,427) Contents of certification
- 21.7(8B,427) Targeted service areas subject to challenge
- 21.8(8B,427) Certification of completion and field testing

CHAPTER 22

BROADBAND GRANTS PROGRAM

- 22.1(8B) Definitions
- 22.2(8B) Purpose and scope
- 22.3(8B) Notice accepting grant funds
- 22.4(8B) Applications for grant funds
- 22.5(8B) Application review process and award of grant funds
- 22.6(8B) Administration of award
- 22.7(8B) Reallocation of grant funds
- 22.8(8B,427) Targeted service areas subject to challenge

TITLE I  
*GENERAL OFFICE PROCEDURES*

CHAPTER 1  
OFFICE ORGANIZATION

Rescinded **ARC 9989C**, IAB 1/21/26, effective 2/25/26

CHAPTER 2  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Rescinded **ARC 9990C**, IAB 1/21/26, effective 2/25/26

CHAPTER 3  
PETITIONS FOR RULE MAKING

Rescinded **ARC 9991C**, IAB 1/21/26, effective 2/25/26

CHAPTER 4  
DECLARATORY ORDERS

Rescinded **ARC 9992C**, IAB 1/21/26, effective 2/25/26

CHAPTER 5  
OFFICE PROCEDURE FOR RULE MAKING

Rescinded **ARC 9993C**, IAB 1/21/26, effective 2/25/26

CHAPTER 6  
CONTESTED CASES

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

CHAPTER 7  
WAIVERS

Rescinded **ARC 9994C**, IAB 1/21/26, effective 2/25/26



CHAPTER 8  
INFORMATION TECHNOLOGY GOVERNANCE

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**129—8.1(8B) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“Chief information officer” or “CIO” means the state chief information officer or the CIO’s designee.

“Information technology governance document(s)” or “information technology governance requirement(s)” means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

“Information technology waiver” or “waiver” means, as applied to a participating agency on the basis of the particular circumstances of that agency, any action by the office that suspends, in whole or in part, the requirements of any information technology governance requirement.

“Participating agency” shall have the meaning ascribed to it under Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.2(8B) Purpose and applicability.**

**8.2(1) Purpose.** The office is created for the purpose of leading, directing, managing, coordinating, and providing accountability for the information technology resources of state government. In furtherance of this role, the office is, among other things, required or authorized to:

- a. Develop and implement an information strategic plan for the enterprise.
- b. Establish an enterprise strategic and project management function for oversight of all information technology-related projects and resources of participating agencies. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.
- c. Develop information technology governance requirements that apply to participating agencies, including but not limited to:
  - (1) Standards of or related to cybersecurity, geospatial systems, application development, and information technology and procurement, including but not limited to system design and systems integration, and interoperability.
  - (2) Policies of or related to security to ensure the integrity of the state’s information resources and to prevent the disclosure of confidential records, while still fostering transparency and data sharing.
  - (3) Statewide standards for information technology security to maximize the functionality, security, and interoperability of the state’s distributed information technology assets, including but not limited to communications and encryption technologies.
  - (4) Standards for the implementation of electronic commerce, including standards for electronic signatures, electronic currency, and other items associated with electronic commerce.
  - (5) Guidelines for the appearance and functioning of applications.
  - (6) Standards for the integration of electronic data across state agencies.
  - (7) Standards, policies, and procedures of or applicable to the procurement of information technology.

*d.* Require all information technology security services, solutions, hardware, and software purchased or used by a participating agency to be subject to approval by the office in accordance with security standards. In exercising this power and duty, the office will endeavor to collaborate and coordinate with participating agencies to the maximum extent possible.

*e.* Develop and implement effective and efficient strategies for the use and provision of information technology and information technology staff for participating agencies and other governmental entities.

*f.* Manage and oversee the LowAccess program.

This chapter outlines the office's process for achieving such objectives with appropriate stakeholder input, including the process by which the office establishes information technology governance requirements; related assessment and enforcement processes and procedures; and a uniform process for the granting of information technology waivers requested by a participating agency from such information technology governance requirements.

**8.2(2) *Applicability.***

*a.* Information technology governance requirements established by the office, unless waived in accordance with the waiver process set forth herein, shall apply to all participating agencies.

*b.* The office of the governor and the offices of elective constitutional or statutory officers are not required to comply with information technology governance requirements established by the office. However, as required by Iowa Code section 8B.23, they must:

(1) Consider the information technology governance requirements adopted by the office; and

(2) In the case of any acquisition of information technology, consult with the office prior to making any such acquisition and provide a written report to the office relating to any decision regarding such acquisitions.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.3(8B) Advisory groups.** The office may establish advisory groups and related policies and procedures to organize and effectively and efficiently utilize such advisory groups. Advisory groups may be comprised of information technology leaders from agencies across state government to advise and assist the CIO and office in accomplishing the objectives, duties, and responsibilities outlined herein and in Iowa Code chapter 8B. Advisory groups established by the office shall be solely advisory to the CIO and office, and the CIO and office retain all final decision-making authority as conferred by Iowa Code chapter 8B.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.4(8B) Information technology governance requirements.**

**8.4(1) *Proposing information technology governance requirements.*** Anyone may recommend the development or adoption of an information technology governance requirement to the CIO or office or advisory committee created and designated by the CIO for such purpose.

**8.4(2) *Development of information technology governance requirements.*** Where the CIO, office, or advisory committee created and designated by the CIO for such purpose is of the opinion that a proposed information technology governance requirement has merit, the CIO, office, or advisory committee created and designated by the CIO for such purpose may work with the individual proposing the information technology governance requirement to develop the requirement. In developing information technology standards, the CIO, office, or advisory committee created and designated by the CIO for such purpose may consider, by way of example only:

*a.* Whether and how such requirement furthers the objectives of the enterprise;

*b.* Current industry standards or best practices;

*c.* Whether and how the requirement would help avoid the duplication of services, resources, or support;

*d.* Whether and how the requirement would further the state's information technology strategic plan, enterprise architecture, security plans, or any other information technology governance requirements;

*e.* Whether and how the requirement would affect expenditures across the enterprise;

*f.* Existing technology deployments;

*g.* The impact on state resources;

*h.* Acquisition, development and deployment time frames associated with implementing the requirement.

**8.4(3)** *Types of information technology governance requirements.* Information technology governance requirements may include any of the following:

*a.* “Policy(ies)” means a high-level statement of intent applicable to the acquisition, utilization, or provision of information technology designed to facilitate an enterprisewide goal or objective.

*b.* “Standard(s)” means a specific, minimum requirement(s) applicable to the acquisition, utilization, or provision of information technology, typically designed to facilitate the uniform application or implementation of one or more policies. Standards may set forth required or prohibited technical approaches, solutions, methodologies, products or protocols which must be adhered to in the design, development, implementation, or upgrade of systems architecture, including hardware, software and services. Standards are intended to establish uniformity in common technology infrastructures, applications, processes or data, and may define or limit the tools, proprietary product offerings or technical solutions which may be used, developed or deployed by participating agencies.

*c.* “Process(es)” means a high-level overview of required tasks, approvals, procedures, or other processes, typically designed to operationalize one or more policies or standards in a manner that leads to consistent results.

*d.* “Procedure(s)” means an in-depth set of instructions for the completion of a specific process, task, or action, typically designed to operationalize one or more processes or standards in a manner that leads to consistent results.

*e.* “Guideline(s)” or “best practices” means a recommended policy, process, task, or action related to the acquisition, utilization, or provision of information technology, typically designed to support related policies or standards. Guidelines or best practices are not required but are intended to aid participating agencies in assessing risks associated with technology decisions, facilitate knowledge transfer, and communicate lessons learned from past experience.

**8.4(4)** *Goals for information technology governance requirements.* The underlying purpose of information technology governance requirements is, by way of example only:

*a.* To promote collaboration and consistency in the automation of systems;

*b.* To eliminate duplicative development efforts and promote efficiencies for improved services to citizens and businesses;

*c.* To ensure continuity of ongoing state operations;

*d.* To ensure system security and the confidentiality, integrity, and availability of confidential or sensitive information stored or processed by state information systems;

*e.* To promote administrative efficiencies relating to development and maintenance of systems; and

*f.* To enable the state to realize its full purchasing power from the use of a statewide, enterprise approach to the selection of technology solutions.

**8.4(5)** *Adopting of information technology governance requirements and taking effect.*

*a.* Following the development of a proposed information technology governance requirement, the CIO may adopt the information technology governance requirement. The CIO shall solicit stakeholder input and feedback, including feedback from participating agencies to which the information technology governance requirement would apply, prior to adopting an information technology governance requirement.

*b.* The effective date of an information technology governance requirement shall be as stated in the applicable information technology governance document.

*c.* Upon taking effect, an information technology governance requirement shall apply to all participating agencies.

*d.* Participating agencies may request additional time to comply with information technology governance requirements. Such requests shall be considered a request for temporary waiver and must be submitted in accordance with rule 129—8.6(8B).

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

## **129—8.5(8B) Assessment and enforcement of information technology governance requirements.**

**8.5(1)** *Compliance assessments and requests for information.* The office may periodically assess participating agencies’ compliance with information technology governance requirements. In so doing,

the office will coordinate and collaborate with participating agencies. Participating agencies shall provide appropriate information, access, and assistance to complete such assessments, or as is otherwise necessary for the office to carry out its duties and responsibilities under Iowa Code chapter 8B. As part of such assessments, participating agencies may be required to, by way of example only:

*a.* Provide the office with information as required by Iowa Code section 8B.21(1)“*k*” and “*l*,” or as otherwise required pursuant to Iowa Code chapter 8B or 22. Such information may include, but not be limited to:

- (1) An inventory of information technology used by the participating agency.
- (2) Budget or spending information of or related to information technology.
- (3) Competitive selection documents, acquisition documents, internal procurement policies adopted by the participating agency, and other documents relied on, issued by, or executed by the participating agency related to the acquisition of information technology.
- (4) Information about any security incidents.
- (5) Security logs and reports, such as latency statistics, user access summaries, user access Internet protocol (IP) address summaries, user access history and security logs for information technology systems of the participating agency or its vendors.

(6) Security processes and technical limitations of the participating agency or its vendors, such as those related to virus checking and port sniffing.

*b.* Permit the office or its third-party designee to conduct security testing and compliance audits on a participating agency’s or its vendor’s information systems. Such testing and compliance audits may include but not be limited to unannounced penetration and security tests as they relate to the receipt, maintenance, use or retention of the state of Iowa’s sensitive or confidential information.

Failure of a participating agency to provide the office with information or submit to compliance audits as requested by the office may be considered a violation of these rules and Iowa Code chapter 8B.

**8.5(2)** *Alternative assessment methods.* Participating agencies may request the acceptance of results of like assessments conducted by third parties in lieu of an assessment by the office. Whether to accept such alternative assessment methods shall be determined in the discretion of the CIO in coordination with the applicable participating agency.

**8.5(3)** *Determination of noncompliance.*

*a.* If the office determines that a participating agency is noncompliant with an information technology governance requirement, the office shall send a report to the head of the noncompliant participating agency, which report shall outline:

- (1) The specific information technology governance requirement(s) forming the basis of a violation or ground for noncompliance;
- (2) The relevant facts and corresponding reasoning supporting the office’s findings and conclusions;
- (3) The office’s recommendations for remedying the violations or noncompliance.

*b.* Within 30 calendar days of receipt of the noncompliance notification, the participating agency shall submit to the office a written plan describing the actions the agency will take to achieve compliance or submit a written request for waiver in accordance with rule 129—8.6(8B). The office may, on its own motion or at the request of the participating agency, schedule a meeting between the participating agency and the office. Based on the participating agency’s response and outcome of any meeting between the participating agency and the office, or office’s decision with respect to any request for waiver submitted by the participating agency, the office may modify, alter, or amend its original report and recommendations.

**8.5(4)** *Emergency remediation.* When noncompliance with information technology governance requirements is determined by the CIO to be a threat to critical state information resources or information resources outside state government, the CIO may order the immediate shutdown or disconnection of the agency technology services that are contributing to the threat. If the agency does not immediately comply, the office, Iowa communications network, or other body may disconnect the agency from all shared services. The agency will be reconnected to shared services when the CIO determines there is no longer a critical threat.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.6(8B) Waivers from information technology governance requirements.**

**8.6(1)** *Requests for waiver.* A participating agency may file a request for waiver from an information technology governance requirement, in whole or in part, in accordance with the following form, manner, and content requirements.

*a.* Form and manner. A request for waiver shall be made on forms provided by the office and may be submitted by email to [cio@iowa.gov](mailto:cio@iowa.gov). A request for waiver must be signed by the head of the participating agency seeking the waiver.

*b.* Content. The request shall:

(1) Include the name and address of the participating agency and a telephone number and email address for the point of contact at the participating agency to whom inquiries and notices regarding the request for waiver may be directed;

(2) Include a reference to the specific information technology governance requirement for which the waiver is submitted;

(3) Include a statement of facts, including a description of the problem or issue prompting the request;

(4) Describe the participating agency's preferred solution;

(5) Outline an alternative approach to be implemented by the participating agency intended to satisfy the waived information technology governance requirement;

(6) Describe the business case for the alternative approach;

(7) Include a copy of a third-party audit or report that compares the participating agency's preferred solution to the information technology solution that can be provided by the office;

(8) Outline the economic justification for the waiver or a statement as to why the waiver is in the best interests of the state;

(9) Specify the time period for which the waiver is requested and, to the extent a permanent waiver is requested, explain why a temporary waiver would be impracticable; and

(10) Include or be accompanied by any other information, including supporting evidence or documentation, deemed relevant by the participating agency, including information that would aid the office in applying the factors outlined in Iowa Code section 8B.21(5) "b" or determining whether granting the request, in whole or in part, is in the best interests of the state of Iowa.

*c.* The office and participating agency shall collaborate on both determining the need for a waiver and, if a waiver is determined to be necessary, the development of request for waiver.

**8.6(2)** *Notice, additional information, and opportunity for meeting.*

*a.* Notice. The office may notify other participating agencies that may be interested in or affected by the office's decision regarding a request for waiver and may allow other participating agencies to review the request for waiver and related materials submitted in connection therewith.

*b.* Additional information.

(1) The office may request, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," additional information, evidence, or documentation from the participating agency submitting the request that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

(2) The office may permit, or require in accordance with Iowa Code section 8B.21(1) "k" and "l," other participating agencies that may be interested in or affected by the office's decision to submit supporting or competing viewpoints, evidence, or documentation that would aid the office in assessing the request in accordance with the factors outlined in Iowa Code section 8B.21(5) "b" and in determining whether granting the request, in whole or in part, is ultimately in the best interests of the state of Iowa.

*c.* The office shall coordinate and schedule a meeting with the participating agency submitting the request or any other participating agency that may be interested in or affected by the office's decision.

**8.6(3)** *Granting a waiver.* In response to the office's receipt of a request for waiver under and in accordance with this chapter, the CIO may issue an order waiving, in whole or in part, an information technology governance requirement. The CIO may only grant a waiver if the participating agency shows that the waiver would be in the best interests of the state. In determining whether to grant a waiver, in whole or in part, the CIO shall consider the factors outlined in Iowa Code section 8B.21(5) "b." The final

decision on whether the circumstances justify the grant of a requested waiver, in whole or in part, shall be in the sole discretion of the CIO.

- a. An order granting or denying a waiver, in whole or in part, shall be in writing and shall:
    - (1) Identify the participating agency(ies) to which the order applies;
    - (2) Identify the specific information technology governance requirements involved;
    - (3) Include a statement of the relevant facts and reasons for the decision, including an application of the factors outlined in Iowa Code section 8B.21(5) “b” and an explanation as to how the waiver is or is not in the best interests of the state; and
    - (4) To the extent a waiver is granted, describe the precise scope of the waiver including its duration and any conditions associated therewith.
  - b. A waiver, if granted, shall provide the narrowest exception possible to the information technology governance requirements involved.
  - c. The CIO may place any condition on a waiver that the CIO finds desirable to protect the best interests of the state.
  - d. A waiver shall not be permanent unless the requestor can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.
  - e. The CIO shall grant or deny a request for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the CIO, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days.
  - f. Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the participating agency by email to the contact at the participating agency identified in the request for waiver. The office may also transmit a copy of the order to other participating agencies that may be interested in or affected by the office’s decision.
  - g. Consolidation. In the event the CIO receives similar requests for waivers from multiple participating agencies concerning the same information technology governance requirements, the CIO may consolidate the requests and issue a single ruling granting or denying the requests, in whole or in part.
- 8.6(4) Cancellation of a waiver.** A waiver issued by the CIO pursuant to this chapter may be withdrawn, canceled, or modified after appropriate notice and fact-finding. Failure of a participating agency to cooperate in any fact-finding process initiated by the CIO to determine whether a waiver previously issued pursuant to this chapter should be withdrawn, canceled, or modified is grounds to cancel or modify a previously granted waiver.
- 8.6(5) Violation of a waiver.** Violation of a condition in a waiver order shall be treated as a violation of the information technology governance requirement for which the waiver was granted.
- 8.6(6) Defense.** After the CIO issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the participating agency to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.7(8B,22) Public availability.** Reports issued by the office, or orders granting or denying waivers, under this chapter shall be indexed, filed, and made available for public inspection as provided in Iowa Code section 17A.3. Such reports, orders, and related materials may be considered public records under Iowa Code chapter 22; provided, however, that such reports, orders, and related materials may contain information the office is authorized or required to keep confidential. The office may accordingly redact confidential information from petitions or orders prior to public release or inspection.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

**129—8.8(8B) Appeals.** A participating agency may appeal a final decision of the CIO regarding the participating agency’s noncompliance with information technology governance requirements under rule 129—8.5(8B), or a denial, in whole or in part, of a request for waiver under rule 129—8.6(8B), to the director of the department of management within seven calendar days following the service of the decision. The director of the department of management shall respond within 14 days following the receipt of the appeal.

[ARC 4824C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 8B.

[Filed ARC 4824C (Notice ARC 4712C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]



CHAPTER 9  
Reserved



CHAPTER 10  
PROCUREMENT OF INFORMATION TECHNOLOGY

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**129—10.1(8B) General provisions.**

**10.1(1) *Applicability.*** This chapter governs:

- a. The process for participating agencies and other governmental entities to obtain approval from or consult with, as applicable, the office in connection with the acquisition of information technology; and
- b. The procurement of information technology by and for the office; by the office for the benefit or use of participating agencies or other governmental entities; and by a participating agency directly, to the extent the participating agency possesses the procurement authority to make such purchases.

**10.1(2) *Funding.*** The office and participating agencies shall follow these procurement policies and information technology governance requirements promulgated by the office regardless of the funding source supporting the procurement. However, when these rules or information technology governance requirements promulgated by the office prevent the state from obtaining and using a federal grant, these rules and information technology governance requirements may be suspended pursuant to and in accordance with Iowa Code section 8B.21(5) and 129—Chapter 8 to the extent required to comply with the federal grant requirements.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.2(8B) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, the following definitions shall also apply:

“*Acquisition*” or “*acquire*” means the same as “procurement,” “procure,” or “purchase.”

“*Acquisition document*” or “*procurement document*” means any document or instrument that effectuates an acquisition of information technology, including but not limited to a contract, agreement, purchase order, statement of work, bill of sale, invoice, or other similar document.

“*Agency*” or “*state agency*” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“*American-based business*” means an entity that has its principal place of business in the United States of America.

“*American-made product*” means product(s) produced or grown in the United States of America.

“*Award*” means the selection of a vendor to receive a contract, master information technology agreement, or order for information technology as the outcome of a competitive selection process.

“*Chief information officer*” or “*CIO*” means the state chief information officer or the state chief information officer’s designee.

“*Competitive bidding procedure*” or “*competitive selection process*” means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, evaluated, accepted, rejected, or awarded. A “competitive bidding procedure” or “competitive selection process” includes but is not limited to a reverse auction as permitted by subrule 10.3(4), any competitive selection process outlined in 11—Chapter 118, or any prequalification process or subsequent solicitation outlined in subrule 10.5(6). When used to refer to a competitive selection process administered by another governmental entity, a “competitive bidding procedure” or “competitive selection process” includes any competitive bidding procedure or competitive selection process the other governmental entity is authorized to use pursuant to its laws, rules, and regulations.

*“Competitive selection documents”* means documents prepared and issued that solicit information technology to be purchased through a competitive selection process. A competitive selection document may be an electronic document.

*“Contract let by another governmental entity”* means either:

1. A contract entered into by another governmental entity under which the office may order information technology on its own behalf or on the behalf of a participating agency or other governmental entity, or approve a participating agency’s or other governmental entity’s request to procure information technology in the same manner; or

2. A contract entered into by another governmental entity as the outcome of a competitive selection process conducted by that other governmental entity which contract the office, or a participating agency or other governmental entity as authorized by the office, may leverage by entering into a separate contract for the purchase of information technology based thereon (also referred to as a “leveraged contract”), other than a contract entered into by the state board of regents or an institution under the control of the state board of regents. When the leveraged contract is the result of a competitive process administered by another governmental entity, such process may serve as a substitute for or in lieu of the office, or a participating agency or other governmental entity as authorized by the office, administering its own competitive selection process.

*“Emergency”* includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety;
2. In which immediate action must be taken to preserve critical services or programs;
3. That compromises the security of information systems or lifeline critical infrastructure, or otherwise poses a substantial risk or threat to the security, confidentiality, or integrity of sensitive or confidential information; or
4. In which the need is a result of events or circumstances not reasonably foreseeable.

*“Emergency procurement”* means an acquisition resulting from an emergency need.

*“Enterprise”* means most or all state agencies acting collectively.

*“Fair and reasonable price”* means a price that is commensurate with the extent and complexity of the information technology to be provided and is comparable to the price paid by other entities for projects of similar scope and complexity.

*“Formal competition”* means a competitive selection process other than informal competition, including without limitation a request for proposals or request for bids, and which results in the procurement of information technology.

*“Governmental entity”* means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

*“Informal competition”* means a streamlined competitive selection process in which the purchasing entity makes an effort to contact at least three prospective vendors identified by the purchasing entity as qualified to perform the necessary work to request that vendors provide bids or proposals for the information technology the purchasing entity needs.

*“Information technology governance documents”* or *“information technology governance requirements”* means compulsory information technology statutes, rules, policies, standards, processes, or procedures which are promulgated, administered, or enforced by the office and which govern participating agencies’ acquisition, utilization, or provision of information technology.

*“Information technology services”* shall mean the same as defined in Iowa Code chapter 8B. In addition, the term “information technology services” shall include:

1. Cloud services, including software, platform, or infrastructure services delivered or accessed from a remote location through an Internet- or web-based interface. Such delivery or access models are commonly referred to as “software-as-a-service,” “platform-as-a-service,” “infrastructure-as-a-service,” or other variations of “as-a-service.”
2. Service provided in connection with the provisioning of broadband.
3. Value-added services.

*“Intergovernmental agreement”* means an agreement for information technology between a state agency and any other governmental entity, whether federal, state, or local, or any department, division, unit or subdivision thereof.

*“Iowa-based business”* means an entity that has its principal place of business in Iowa.

*“Iowa product”* means a product(s) produced in Iowa.

*“Life cycle cost”* means the expected total cost of ownership during the life of a product, including disposal costs.

*“Master information technology agreement”* means a contract entered into by the office which establishes prices, terms, and conditions for the purchase of information technology. These contracts may involve the needs of one or more state agencies or other governmental entities.

*“Material modification,”* as it relates to a previously approved information technology procurement, means a change in the procurement of 10 percent or \$25,000, whichever is less, or a change of sufficient importance or relevance so as to have possible significant influence on the outcome. Participating agencies shall not break purchasing into smaller increments in order to avoid the thresholds in this rule.

*“Negotiated contract”* means an agreement that meets the requirements of Iowa Code section 8B.24(5) “b.”

*“Order”* means a direct purchase or a purchase from a state contract, master information technology agreement, or contract let by another governmental entity.

*“Participating agency”* shall mean the same as defined in Iowa Code chapter 8B but does not include state agencies that are excluded from the definition of state agency as defined in this chapter or that are otherwise exempt pursuant to their specific enabling acts.

*“Procurement,” “procure,”* or *“purchase”* means the acquisition of information technology through lease, lease/purchase, acceptance of, contracting for, obtaining title or license to, use of, or any other manner or method for acquiring information technology or an interest therein.

*“Procurement authority”* means a state agency authorized by statute to purchase information technology directly; or a state agency that has been delegated the authority to or has otherwise been authorized to procure information technology directly by the office, including but not limited to as such procurement authority is delegated to a participating agency or such procurement is otherwise authorized by the office by and pursuant to this chapter.

*“Responsible bidder”* or *“responsible respondent”* means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the purchasing entity may consider various factors, including but not limited to the vendor’s competence and qualification for the type of information technology required, the vendor’s integrity and reliability, the past performance of the vendor relative to the information technology to be provided, the past experience of the purchasing entity or other governmental entities in relation to the vendor’s performance, the relative quality of the information technology as compared with similar information technology available from other sources, the proposed terms of delivery, and the best interests of the state.

*“Reverse auction process”* or *“reverse auction”* means a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid.

*“Sole source”* includes, but is not limited to, a circumstance in which a purchasing entity determines that:

1. One service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the information technology;
2. The information technology being purchased involves work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the information technology;
3. The federal government or other provider of funds for the information technology being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the purchasing entity’s use of the funds in a way that restricts the state agency to only one information technology provider;
4. Applicable law requires, provides for, or permits use of a sole source procurement;

5. The procurement is for an upgrade, or compatibility is the overriding consideration, or the procurement would prevent avoidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation;

6. Any other circumstance as the office may identify from time to time.

“*Sole source procurement*” means an acquisition occurring when one of the circumstances set forth in the definition of “sole source” in this chapter is satisfied.

“*Targeted small business*” or “*TSB*” means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

“*Upgrade*” means additional hardware or software enhancements, extensions, features, options, or devices to support, enhance, or extend the life or increase the usefulness of previously procured information technology.

“*Vendor*” means a person, firm, corporation, partnership, business or other commercial entity that offers or provides information technology for sale, lease, or license.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

### **129—10.3(8B) Methods of procurement.**

**10.3(1) *Methods.*** The office may procure information technology on its own behalf or on behalf of participating agencies or other governmental entities using any of the methods set forth in Iowa Code section 8B.24(5) or authorize participating agencies to procure information technology in a similar manner (including but not limited to subject to applicable approval processes and requirements, as such procurement authority is delegated to a participating agency by the office elsewhere in this chapter). Such methods include but are not limited to:

- a. A cooperative procurement agreement pursuant to Iowa Code section 8B.24(5) “a.”
- b. A negotiated contract under any of the circumstances set forth in Iowa Code section 8B.24(5) “b” (1) to 8B.24(5) “b”(3).
- c. A contract let by another governmental entity pursuant to Iowa Code section 8B.24(5) “c” if:
  - (1) The contract authorizes other governmental entities to procure information technology therefrom or leverage the contract by entering into a separate contract based on the contract, as applicable;
  - (2) The purchasing entity notifies the other governmental entity of the purchasing entity’s intent to use or leverage the other governmental entity’s contract;
  - (3) The purchasing entity follows applicable procedures under the contract required for other governmental entities to purchase therefrom or leverage the contract; and
  - (4) The vendor provides written assurances to the purchasing entity that any contemplated purchases or resulting leveraged contract would not adversely impact the governmental entity which was the original signatory to the contract.
- d. A reverse auction process in accordance with the requirements of Iowa Code section 8B.24(5) “d.”
- e. A competitive selection process in the same manner as outlined in 11—Chapter 118 and in accordance with the requirements identified in rule 129—10.12(8B).
- f. Other agreements for the purchase, disposal, or other disposition of information technology, including but not limited to the following:
  - (1) Intergovernmental agreement. An intergovernmental agreement with a governmental entity which has the resources available to supply the information technology sought.
  - (2) Emergency procurement. An emergency procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “emergency” as set forth in this chapter is satisfied. The following requirements shall apply to an emergency procurement:
    1. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the purchasing entity should consider price and availability of the information technology so that the purchasing entity obtains the best value for the funds spent under the circumstances.
    2. Justification for the emergency procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the

reasons the purchase is an emergency. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

3. The head of the purchasing entity shall sign all emergency justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign an emergency contract or amendment.

4. Use of an emergency procurement does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

(3) Sole source procurement. A sole source procurement in lieu of any other procurement method set forth in this rule when the purchasing entity determines the definition of “sole source” as set forth in this chapter is satisfied. The following requirements shall apply to a sole source procurement:

1. Justification for the sole source procurement shall be documented and, in the case of participating agencies, submitted to the office in connection with the approval required by rule 129—10.7(8B). The justification shall include a description of the information technology to be purchased, the cost, and the reasons the purchase qualifies as a sole source. The justification and any corresponding approval shall be maintained by the purchasing entity initiating the action.

2. The head of the purchasing entity shall sign all sole source justification forms, contracts, and amendments regardless of value or length of term. If the head of the purchasing entity is not available, a designee may sign a sole source contract or amendment.

3. Use of a sole source procurement method does not relieve the purchasing entity from negotiating a fair and reasonable price and documenting the procurement action.

**10.3(2) Request for information (RFI).** A request for information (RFI) is a nonbinding method the office or a participating agency may use to obtain market information from interested parties for a possible upcoming purchase. Information may include but is not limited to best practices, industry standards, technology issues, qualifications and capabilities of potential suppliers, current pricing, or existing contract vehicles. Agencies considering the use of an RFI may contact the office for information and guidance in using this process.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

#### **129—10.4(8B) Master information technology agreements.**

**10.4(1) Master information technology agreements.** In furtherance of the office’s duty to cooperate with other governmental entities in the procurement of information technology and in an effort to make such procurements in a cost-effective, efficient manner, the office may enter into master information technology agreements to procure information technology for participating agencies and other governmental entities, or may authorize participating agencies and other governmental entities to procure information technology thereunder, pursuant to any of the methods set forth in rule 129—10.3(8B). The office may procure information technology for participating agencies and other governmental entities from such master information technology agreements or may authorize participating agencies and other governmental entities to procure information technology directly therefrom. Master information technology agreements for particular information technology or a particular class of information technology may be awarded to a single vendor or to multiple vendors, in the sole discretion of the office, irrespective of the procurement method utilized.

##### **10.4(2) Use of master information technology agreements.**

a. If the office has entered into a master information technology agreement, a participating agency shall procure information technology through the master information technology agreement, unless:

- (1) The contract states that use of the master information technology agreement is optional;
- (2) An information technology governance document provides otherwise; or
- (3) The participating agency has obtained a waiver from the office pursuant to Iowa Code section 8B.21(5) and corresponding information technology waiver rules in 129—Chapter 8.

b. Unless otherwise stated in the master information technology agreement, any governmental entity may purchase from a master information technology agreement held by the office.

c. All governmental entities must notify the office of their intent to utilize a master information technology agreement held by the office and consult with the office about any proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations,

restrictions, requirements, or obligations found in the master information technology agreement, of which the governmental entity should be aware. A participating agency that obtains approval from the office for an acquisition as required by rule 129—10.7(8B) does not need to separately consult with the office as required by this paragraph before making a purchase under a master information technology agreement held by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.5(8B) Prequalification of vendors.** In accordance with Iowa Code section 8B.24(4), using an invitation to qualify, the office may prequalify a list of vendors capable of delivering particular information technology or a class of information technology. The office, in its sole discretion, may determine for what information technology or classes of information technology it would be appropriate to use an invitation to qualify.

**10.5(1) Purpose.** The purpose of an invitation to qualify for information technology acquisitions includes but is not limited to the following:

- a. Standardizing the terms and conditions relating to all information technology provided by vendors, thereby avoiding repetition and duplication of efforts.
- b. Accomplishing information technology assignments in a manner consistent with information technology governance requirements prescribed by the office.
- c. Reducing the time required for the solicitation of proposals from vendors for individual projects.

**10.5(2) Evaluation criteria.** The office shall develop the evaluation criteria for vendor prequalification based upon its expertise, information and research, and the needs of the office, participating agencies, and other governmental entities. The office shall develop evaluation criteria for each invitation to qualify. Examples of evaluation criteria include but are not limited to:

- a. Affirmative responses to mandatory agreement questionnaires.
- b. Ratings on professional/technical personnel questionnaires.
- c. Scoring in a specified range on client reference surveys.
- d. Competitive cost data by type of service.
- e. Acceptable vendor financial information.
- f. Ability to comply with information technology governance requirements, other applicable industry standards, regulatory requirements, or any combination thereof.
- g. Willingness and ability to submit personnel to background checks.

**10.5(3) Issuance and time to respond.** The office may issue invitations to qualify as needed. The office shall provide notice of the issuance of an invitation to qualify pursuant to rule 129—10.12(8B). In addition to the applicable evaluation criteria and other substantive requirements contained within the invitation to qualify, the office shall specify in the invitation to qualify:

- a. The date and time at which vendors may begin submitting responses.
- b. The form and manner in which responses shall be submitted to the office.
- c. The date and time at which vendor responses will no longer be accepted.

**10.5(4) Response and evaluation.** Vendors may apply for eligibility on a continuous basis during the time period the invitation to qualify remains open. The office will not accept vendor responses after the response window has closed but may extend or reopen the window if the best interests of the state would be served. The office may evaluate vendor responses for placement on a prequalified vendor list during the period that the invitation to qualify remains open or after the response window has closed. Vendors seeking to qualify must meet all the evaluation criteria established by the office for a particular category or type of solicitation. The office retains the sole discretion to determine whether vendors that submit responses meet the evaluation criteria established by the office and to weigh the evaluation criteria in the manner it deems appropriate to determine whether such vendors are responsible bidders and able to provide the particular information technology or class of information technology sought. An approved vendor shall remain prequalified for the period specified by the office in the invitation to qualify, unless the vendor fails to meet any minimum acceptable performance levels established by the office as permitted by subrule 10.5(7) or breaches any terms and conditions included in any contract agreed to by the vendor.

**10.5(5) Not an award and execution of contracts.** Vendor prequalification is not an award and does not create an obligation on the part of the office. However, prior to conducting subsequent solicitations

pursuant to subrule 10.5(6), prequalified vendors may be required to negotiate and agree to general terms and conditions which may be applicable to subsequent solicitations conducted pursuant to subrule 10.5(6).

**10.5(6) *Subsequent solicitations.*** Following the completion of the prequalification process, the office or governmental entities may select a prequalified vendor to provide specific information technology pursuant to a scaled-down competitive selection process without public notice. Such solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by paragraph 10.12(1) “d.” Prequalified vendors receiving an award may be required to negotiate and agree to additional terms and conditions applicable to the specific information technology acquired.

**10.5(7) *Acceptable performance levels.*** The office may establish and notify prequalified vendors of minimum acceptable performance levels and institute performance tracking mechanisms on prequalified vendors. If a vendor’s performance falls below the minimum acceptable level, the vendor may be removed from the prequalified list.

**10.5(8) *Approval/consultation required.***

*a.* In addition to the requirements of paragraph 10.5(8)“b,” before a participating agency may acquire information technology from a prequalified vendor, the participating agency must receive the approval(s) required by rule 129—10.7(8B).

*b.* All governmental entities must notify the office of their intent to acquire information technology from a vendor prequalified by the office pursuant to the office’s processes hereunder and consult with the office about the proposed acquisition. Such consultation shall include but not be limited to whether any circumstances exist, such as limitations, restrictions, requirements, or obligations found in any applicable contracts, of which the governmental entity should be aware.

**10.5(9) *Appeal rights.*** A vendor that does not prequalify or that is removed from the prequalified list due to the vendor’s performance has the right to appeal pursuant to 129—Chapter 11.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.6(8B) Method of procurement, how determined.** In determining which of the procurement methods set forth in Iowa Code section 8B.24(5) and rule 129—10.3(8B) to utilize or to authorize a participating agency to utilize in acquiring information technology, whether to establish a master information technology agreement pursuant to rule 129—10.4(8B), or whether to prequalify vendors pursuant to the prequalification process outlined in rule 129—10.5(8B), the office may consider the following nonexclusive list of factors:

1. The manner in which such decision would further the state’s information technology strategic plan.
2. The manner in which such decision would enhance the security of state information-technology systems, and the immediacy of the need to do so.
3. The manner in which such decision would improve compatibility, interoperability, and connectivity between state agencies.
4. The manner in which such decision would further improve statewide efforts to standardize data elements and better encourage or facilitate the sharing of data across state agencies.
5. The manner in which such decision would likely affect the cost to the state for the information technology.
6. The need to standardize the terms and conditions relating to the information technology provided by vendors with respect to a specific information technology or a class of information technology.
7. The administrative costs/overhead associated with pursuing an alternative method.
8. The likelihood that an alternative method would result in a different or better outcome.
9. The likely willingness and ability of state agencies to follow the office’s decision and leadership with respect to a particular information technology acquisition.
10. The needs of all state agencies.
11. The need to avoid repetition and duplication.
12. Whether such decision would improve compliance with the information technology standards and policies prescribed by the office, other applicable industry standards, state or federal regulatory requirements related to information security, or any combination thereof.
13. Whether such decision would reduce the time required to solicit proposals from vendors to obtain the required information technology.

14. Whether there is an emergency or other pressing need.
15. The competitiveness of the market for the particular information technology sought and the likelihood vendors would supply thorough and meaningful proposals in response to a solicitation as part of a competitive selection process.
16. Any other factors deemed relevant by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.7(8B) Approval process for participating agencies.**

**10.7(1) *Approval, when required.*** Any procurement of information technology, an information technology project, or information technology outsourcing satisfying any or all of the following conditions must receive prior approval from the office before a participating agency issues a competitive selection document; issues any order or other acquisition document, including an order under a master information technology agreement; or otherwise seeks to procure information technology through the office or on its own procurement authority (including but not limited to where such procurement authority is delegated by the office to a participating agency elsewhere in this chapter). Prior approval is required when the information technology acquisition, project, or outsourcing satisfies any or all of the following conditions:

- a. Costs \$25,000 or more; or
- b. Is projected to involve 750 agency staff hours or more; or
- c. Involves substantial information-security concerns, including but not limited to the sensitivity or confidentiality of the data involved; the location of the system, data to be stored therein, or both; or the data involved is subject to state or federal regulatory requirements governing data security, confidentiality, or integrity; or
- d. Involves significant compatibility, interoperability, or connectivity concerns.

The participating agency's approval request shall be submitted in the form and manner identified by the office. Participating agencies shall not break purchasing into smaller increments in order to avoid the threshold requirements of this rule.

**10.7(2) *Office's review of proposed procurement.*** When the office's prior approval is required by subrule 10.7(1), the office will review a proposed information technology procurement regardless of funding source, method of procurement, or agency procurement authority. The office will review a proposed procurement, without limitation:

- a. To determine whether the proposed procurement complies with applicable information technology governance requirements prescribed by the office, including but not limited to those of or relating to information security.
- b. To determine whether the proposed procurement method is advisable, considering the factors set forth in rule 129—10.6(8B), including but not limited to whether an established master information technology agreement may be utilized to procure the proposed information technology.
- c. To determine whether the proposed procurement is a necessary purchase or in the best interests of the state, considering, without limitation, the factors set forth in rule 129—10.6(8B).

**10.7(3) *Conditions.*** The office may place any condition the office finds desirable on an approval to protect the best interests of the state. For example, the office may condition its approval on:

- a. The incorporation of contractual protections or implementation of compensating controls to safeguard sensitive or confidential data to be stored, processed, or transmitted by or through the information technology.
- b. The ability of vendors to comply with state or federal regulatory requirements governing data security, confidentiality, integrity, or other similar requirements.
- c. The ability to achieve the necessary compatibility, interoperability, or connectivity with enterprise systems.
- d. Any other condition deemed desirable to protect the best interests of the state.

**10.7(4) *Outcome of review and requests for waiver.***

- a. If the office approves a procurement proposed by a participating agency, in whole or in part, the procurement may proceed, subject to any conditions imposed by the office in accordance with subrule 10.7(3).

b. If the office denies a procurement proposed by a participating agency, the office will notify the participating agency of the available options, which may include modifying and resubmitting the request, canceling the request, or requesting an information technology waiver from the office pursuant to 129—Chapter 8.

c. A participating agency may not appeal or otherwise complain about an adverse decision rendered by the office unless or until the participating agency has requested a waiver from the office's decision pursuant to 129—Chapter 8.

**10.7(5) Ongoing approval—when required.** Once a procurement proposed by a participating agency is approved by the office, ongoing approval is not required, unless:

- a. There is a material modification to a previously approved procurement; or
- b. Communicated by the office to the participating agency in writing.

If additional approval is required pursuant to this rule, such approval shall follow the same process outlined in subrules 10.7(1) to 10.7(4).

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

### **129—10.8(8B) Consultation.**

**10.8(1) When required for nonparticipating agencies.** The office of the governor and the offices of elective constitutional or statutory officers are not required to obtain prior approval from the office before acquiring information technology pursuant to rule 129—10.7(8B). However, pursuant to Iowa Code section 8B.23(2), the office of the governor and the offices of elective constitutional or statutory officers must consult with the office prior to procuring information technology, consider the information technology standards adopted by the office, and provide a written report to the office relating to decisions regarding such acquisitions upon request by the office.

**10.8(2) Encouraged for non-information technology acquisitions.** Even where an information technology acquisition is not appropriately deemed an information technology acquisition, the office may provide advice to or consult with any governmental entity regarding the acquisition of goods, services, or an outsourcing of state functions when the acquisition includes a substantial information-technology component, includes a substantial information-security component, or would grant a third party access to the state's sensitive or confidential information. Such consultation is generally encouraged to ensure, by way of example only:

- a. Appropriate contractual protections or compensating controls are incorporated or implemented to safeguard sensitive or confidential data or information.
- b. The chosen vendor is able to comply with any applicable state or federal regulatory requirements governing data security, confidentiality, integrity, or otherwise.
- c. The vendor's information-technology systems comply with applicable information technology governance requirements.
- d. The vendor's information-technology systems are adequately designed or architected in a manner that will adequately safeguard the state's sensitive or confidential information.
- e. The vendor's information-technology systems will be capable of adequately and securely connecting to or interfacing with state information-technology systems, to the extent necessary.

**10.8(3) Master information technology agreements and invitations to qualify.** In accordance with and as further set forth in paragraphs 10.4(2)"c" and 10.5(8)"b," all governmental entities must notify the office of their intent to utilize master information technology agreements or to acquire information technology from a vendor prequalified by the office in accordance with the office's prequalification and subsequent solicitation processes and to consult with the office about any such proposed acquisition.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.9(8B) Delegated procurement authority.** Subject to the approval and consultation processes and requirements set forth in rules 129—10.7(8B) and 129—10.8(8B), participating agencies may procure information technology through a competitive selection process administered by the participating agency consistent with the purchasing thresholds and requirements established by this rule.

**10.9(1) Agency direct purchasing—basic tier.** For information technology purchases that do not exceed the following dollar thresholds, participating agencies may procure information technology without competition:

*a.* Non-master-information-technology-agreement information technology devices costing less than \$1,500.

*b.* Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is less than \$5,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is less than \$15,000.

*c.* Non-master-information-technology-agreement information technology devices or services from a TSB for purchases of less than the amount determined by the department of administrative services by rule, but not to exceed \$25,000. Participating agencies shall search the TSB directory on the web and purchase directly from a TSB if it is reasonable and cost-effective to do so. A participating agency must confirm that the vendor is certified as a TSB by the department of inspections and appeals prior to making a purchase pursuant to this subrule.

**10.9(2) Agency direct purchasing—middle tier.** For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using either formal or informal competition:

*a.* Non-master-information-technology-agreement information technology devices costing greater than or equal to \$1,500 but less than \$5,000.

*b.* Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$5,000 but less than \$50,000, or when the estimated value of the multiyear information technology service contract in the aggregate, including any extensions or renewals, is greater than or equal to \$15,000 but less than \$150,000.

**10.9(3) Agency direct purchasing—advanced tier.** For information technology purchases within the following dollar thresholds, participating agencies may procure information technology using only formal competition:

*a.* Non-master-information-technology-agreement information technology goods costing greater than or equal to \$5,000.

*b.* Non-master-information-technology-agreement information technology services when the estimated annual value of the information technology service contract is greater than or equal to \$50,000, or when the estimated value of the multiyear information technology services contract in the aggregate, including any extensions or renewals, is greater than or equal to \$150,000.

**10.9(4) Training, when required.** Participating agency personnel engaged in the purchase of information technology at the middle or advanced tier shall have completed enhanced procurement training identified by the office.

**10.9(5) Misuse of agency authority.**

*a.* Participating agencies shall not break purchasing into smaller increments for the purpose of avoiding the purchasing thresholds established by this rule.

*b.* Except as otherwise authorized or permitted by the office, purchasing authority delegated to participating agencies by this rule shall not be used to avoid the use of master information technology agreements.

**10.9(6) Other methods where authorized by office.** The office may authorize participating agencies to make direct purchases utilizing any other procurement methods outlined in rule 129—10.3(8B) on a case-by-case basis.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.10(8B) Duration of master information technology agreements.** The initial term of a master information technology agreement shall be as determined by the office. Following the initial term, a master information technology agreement may be extended or renewed by the office for a number of periods and in durations as determined by the office.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.11(8B) Duration of information technology contracts.** Each contract signed by the office or a participating agency shall have a specific starting and ending date and may be structured in a manner that includes an initial term and option(s) for renewal terms. The initial term, renewal term, and total term may be of a duration as determined by the office or participating agency making the purchase. Unless otherwise authorized or permitted by the office, information technology contracts entered into by the office or a participating agency shall not exceed ten years. Information technology contracts should be assessed on a regular basis so the enterprise obtains the best value for the funds spent; avoids inefficiencies, waste or duplication; and is able to take advantage of new innovations, ideas, and technologies.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.12(8B) Requirements applicable to competitive selection process.**

**10.12(1) Notice of competitive selection.**

*a. Opportunity posting.* The office and each participating agency shall provide public notice of solicitations by posting notice of every formal competitive selection opportunity to the official centralized procurement website operated by the department of administrative services. Alternatively, a participating agency may add a link to the centralized procurement website that connects to the website maintained by the agency on which requests for bids and proposals for that agency are posted. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state website operated by the department of administrative services.

*b. Other forms of notice.* In addition to the requirements and options set forth in paragraph 10.12(1) “a,” notice of competitive bidding opportunities and proposals may also be provided by print, telephone or fax, email or other electronic means, or by other means that give reasonable notice to vendors.

*c. Bids voided.* A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be reissued.

*d. Targeted small business notification.* Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa’s 48-hour procurement notice website for posting.

*e. Vendor intent to participate.* In the event the office elects to conduct any procurement electronically or otherwise, it may require that vendors prequalify or otherwise indicate their intention to participate in the procurement process.

**10.12(2) Specifications in competitive selection process.** Specifications shall be as set forth in the applicable competitive selection documents but shall generally comport with the following guidelines. Such guidelines shall not be construed or interpreted as limiting the office or participating agencies in developing specifications or terms and conditions in competitive selection documents that are necessary to effectively and efficiently procure information technology.

*a. Limitations on brands and models.* Specifications used in competitive selection documents shall generally be written in a manner that encourages competition. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item or a specific brand or model is necessary to maintain compliance with an information technology requirement; to maintain or improve compatibility, interoperability, or connectivity with or across state information-technology systems and equipment; or to adequately safeguard the confidentiality, integrity, or availability of confidential or sensitive data or information or information systems.

*b. Life cycle cost and energy efficiency.* The office or participating agencies shall consider life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

*c. Financial security.* The office or participating agencies may require bid, appeal, litigation, fidelity, or performance security or bond, or any combination thereof, as designated in the competitive selection documents or by rule. When required, a security may be by certified check, cashier’s check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the office or participating agency. When required, security shall not be waived.

**10.12(3) Award.**

*a. How determined.* In determining which vendor(s) should receive an award following a competitive selection process, the office or participating agency shall select a vendor(s) on the basis of criteria contained in the competitive selection documents.

*b. Intent to award.* After evaluating responses to a solicitation using formal competition, the office or participating agency shall notify each vendor that submitted a response to the solicitation of its intent to award to a particular vendor(s) subject to execution of a written contract(s). Such notice may be made by electronic means, including to the vendor's authorized representative and corresponding email address as identified in the vendor's proposal. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s).

*c. Rejection of bids or proposals.* The office and participating agencies reserve the right to reject any or all responses to solicitations at any time for any reason. New bids or proposals may be requested at a time deemed convenient to the office or participating agency involved.

*d. Minor deficiencies and informalities.* In addition to any waiver rights reserved or processes included in the competitive selection documents, the office and participating agencies reserve the right to waive minor deficiencies and informalities if, in the judgment of the office or participating agency, the best interest of the state will be served.

*e. Ties and preferences.* If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined as follows:

(1) Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor. Ties involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing process outlined in subparagraph 10.12(3)“e”(3) will be held among the Iowa vendors only.

(2) If a tie does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

(3) If a tie neither includes an Iowa vendor or Iowa-produced or Iowa-manufactured product nor a United States vendor or United States-produced or United States-manufactured product, a drawing may be held in the presence of the vendors that tied or in front of at least three noninterested parties. All drawings shall be documented.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

### **129—10.13(8B) Performance reviews and suspension/debarment.**

**10.13(1) Review of vendor performance.** The office, in cooperation with other governmental entities, may periodically review the performance of vendors. State agencies obtaining information technology from vendors are encouraged to document vendor performance throughout the duration of any contract and report any problems to the office as they are identified. Performance reviews shall be based on the specifications or service levels in the vendors' contract(s) or as set forth or identified in any applicable statement of work, order, or other applicable acquisition document. Performance reviews shall include but need not be limited to:

- a.* Compliance with applicable contract specifications or requirements;
- b.* On-time delivery; and
- c.* Accuracy of billing.

Performance reviews help determine whether vendors are responsible bidders for future projects.

**10.13(2) Suspension or debarment.** Prior performance on a state contract may cause a vendor to be disqualified or preclude a vendor from being considered a qualified or responsible bidder in future procurements. In addition, a vendor or subcontractor of a vendor may be suspended or debarred for any of the following reasons:

- a.* Failure to deliver within specified delivery dates without prior agreement of the office or applicable governmental entity;
- b.* Failure to deliver in accordance with contract specifications or requirements;
- c.* Attempts to influence the decision of any state employee involved in the procurement process;
- d.* Evidence of agreements by vendors to restrain trade or impede competitive bidding;

- e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation, executive orders, or contract terms of conditions;
- f. Evidence that a vendor has willfully filed or submitted a false certificate or information with or to the office or other governmental entities;
- g. Suspension or debarment by the federal government;
- h. Any other reason identified in the competitive selection documents or contract.

The office shall notify any vendor considered for suspension or debarment and provide the vendor an opportunity to respond to and cure any deficiencies prior to suspending or debarment any vendor. If the vendor fails to remedy the situation after receiving such notice, the office may suspend the vendor from eligibility for state information technology acquisitions for a period of time as specified by the office or debar the vendor from all future state business. The office may notify the department of administrative services of the office's final decision. The department of administrative services may, in its discretion, take reciprocal action as it relates to the acquisition of goods and services of general use.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.14(8B) Additional requirements and authorizations to information technology acquisitions and agreements.**

**10.14(1)** Information technology shall not be performed or obtained pursuant to a contract until all parties to the contract have signed a written contract. If an information technology contract requires the execution of orders or statements of work to effectuate individual transactions, information technology shall not be performed or obtained until the appropriate transactional document(s) is executed by both parties in a signed writing. A vendor that provides information technology to a governmental entity prior to the execution of a contract or appropriate transactional document shall not be entitled to any payment for the information technology.

**10.14(2)** Except to the extent of any conflict or inconsistency with this chapter, all information technology service contracts shall, to the extent applicable, comply with the requirements of 11—Chapter 119.

**10.14(3)** The office and participating agencies may enter into a contract for information technology in which a contractual limitation of vendor liability is provided for as authorized by and in accordance with 11—Chapter 120.

**10.14(4)** All information technology contracts shall comply with the requirements of 11—Chapter 121, which, among other requirements, requires state agencies entering into contracts to include a clause in every contract prohibiting employment discrimination and requiring compliance with applicable laws, rules, and executive orders governing equal opportunity in employment and affirmative action.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

**129—10.15(8B) Confidential information in a solicitation response.** Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with 129—Chapter 11, whichever occurs later. Aggrieved or adversely affected vendors may only obtain proposals or other relevant evidence or information in furtherance of an appeal pursuant to the disclosure/protective order processes set forth in 129—Chapter 11. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. State agencies will not release the subject material while the matter is being adjudicated.

[ARC 4825C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 8B.

[Filed ARC 4825C (Notice ARC 4711C, IAB 10/23/19), IAB 12/18/19, effective 1/22/20]



CHAPTER 11  
VENDOR APPEALS

Rescinded by 2026 Iowa Acts, Senate File 2463, section 4, effective July 1, 2026. See Uniform Rules on Agency Procedure at 7—Chapters 2500 through 2506 and any corresponding rules adopted by this agency.

CHAPTERS 12 to 19  
Reserved



TITLE II  
BROADBAND  
CHAPTER 20  
BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**129—20.1(8B,427) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply.

*“As of date”* means the as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider facilitates broadband service in a particular broadband block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427).

*“Broadband block”* means:

1. Until the Federal Communications Commission (FCC) adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), a census block.

2. If the FCC adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), for purposes of the next iteration of the statewide map published in accordance with rule 129—20.4(8B,427) following the FCC’s adoption of such unit of measurement(s), such unit of measurement(s) as adopted by the FCC and which is located in this state.

*“Broadband unit”* or *“broadband units”* means a home, farm, school, or business within a broadband block as of the as of date. The number of broadband units within a broadband block shall be as represented on the statewide map published in accordance with rule 129—20.4(8B,427).

*“Census block”* means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

*“Chief information officer”* or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

*“Installation of the broadband infrastructure”* means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

*“Materially underserved”* means a broadband block within which less than 10 percent of the geographic area comprising the broadband block is facilitated with broadband service exceeding tier 1 upload and download speeds.

*“Meaningfully available”* means broadband service that is facilitated to consumers on a commercially reasonable basis and without significant interruption or delay. In determining whether broadband service is meaningfully available on a commercially reasonable basis, the office may consider product or delivery attributes or characteristics such as availability in terms of average uptime and downtime or latency or delays in the transmission of data.

*“Tier 1 targeted service area”* or *“tier 1 TSA”* means a targeted service area within which broadband speeds do not exceed tier 1 speed levels.

*“Tier 2 targeted service area”* or *“tier 2 TSA”* means a targeted service area within which broadband speeds do not exceed tier 2 speed levels, but are greater than tier 1 speed levels.

*“Tier 3 targeted service area”* or *“tier 3 TSA”* means a targeted service area within which broadband speeds do not exceed tier 3 speed levels, but are greater than tier 2 speed levels.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—20.2(8B,427) Scope.** This chapter interprets relevant provisions of Iowa Code sections 8B.1, 8B.10, and 8B.11; implements Iowa Code section 427.1(40); and applies to the office’s determinations of whether

a broadband block is a targeted service area and to persons who wish to challenge the office's finding on whether a broadband block is a targeted service area. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—20.3(8B,427) Broadband availability maps and data sources.**

**20.3(1)** To determine whether a communications service provider facilitates broadband service in a particular broadband block at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date, the office may utilize the following data sources:

*a.* Fixed broadband availability maps and corresponding data sources made available by the FCC online.

*b.* Broadband availability maps and corresponding data sources developed or produced by contractors or third parties retained or utilized by the office for such purpose.

*c.* For purposes of identifying or verifying the number and location of broadband units within a broadband block, next generation (NG) 911 structure data, statewide address location data, or United States census data.

*d.* Other data sources made available by or through federal or state agencies, directly or indirectly.

**20.3(2)** In accordance with Iowa Code section 8B.10(3), all data sources relied on by the office in making the determination(s) contemplated by this rule and rule 129—20.4(8B,427) shall exclude mobile wireless or satellite data, capabilities, and delivery mediums.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—20.4(8B,427) Targeted service area determination.**

**20.4(1)** The office will create a statewide map divided into broadband blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate broadband blocks that qualify as tier 1, tier 2, or tier 3 targeted service areas as of the as of date. The office will publicize the statewide map, which may include publishing online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband).

**20.4(2)** In accordance with Iowa Code section 8B.10(1), the office shall periodically make renewed determinations of whether a communications service provider facilitates broadband service at or above the tier 1, tier 2, or tier 3 download or upload speeds specified in the definition of targeted service area by publishing an updated version of the statewide map. Such updates shall be made, to the extent updated maps and data sources are available at the time, no less frequently than prior to each round of grant applications solicited by the office pursuant to Iowa Code section 8B.11. The office is not required to make renewed determinations of whether a communication service provider offers or facilitates broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area more frequently than once per year.

**20.4(3)** As of the date of the office's publication of each version of the statewide map online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband), targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular broadband block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular broadband block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular broadband block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

**20.4(4)** The office will designate all projects as addressing difficult to serve targeted service areas based on the office's determination, made in its sole discretion, of whether a proposal will result in the installation of broadband infrastructure in areas meeting the conditions set forth in Iowa Code section 8B.11(7). For the sake of clarity, the office will identify all tier 1 TSAs as difficult to serve targeted service areas.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

### **129—20.5(8B,427) Appeals.**

**20.5(1)** *Notice of appeal.* Within 20 days after the office makes its final determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

*a.* The notice of appeal shall set forth:

- (1) The name, address, telephone number, and email address of the person or party;
- (2) The particular broadband block(s) designation the person or party is challenging by stating:
  1. The broadband block number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427);
  2. The county in which the broadband block(s) is located as provided on the statewide map referenced in rule 129—20.4(8B,427);
  3. The manner in which the person or party is aggrieved or adversely affected by the office's determination; and
  4. The grounds upon which the appeal is based.

*b.* Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

**20.5(2)** *Filing.* Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by email at [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov). To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

**20.5(3)** *Notification of and input from affected persons or parties.* Within ten calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by email to [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov). To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

**20.5(4)** *Internal review.* At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same broadband block(s) and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office.

**20.5(5)** *Final agency decision.* Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the broadband block(s) in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office. The final agency decision will be posted online

at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

**20.5(6)** *Time of filing.* In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

**20.5(7)** *Public records.* The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

*a.* A person or party requesting confidential treatment of evidence or information submitted must:

- (1) Fully complete and submit to the office Form 22 (available online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband));
- (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal email or the written explanation of why electronic filing was not feasible;
- (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;
- (4) Mark each page upon which confidential evidence or information appears; and
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

*b.* Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;
- (2) Justifies why the specific evidence or information should be maintained in confidence;
- (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

*c.* Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

**20.5(8)** *Probative evidence and information.* Examples of evidence and information the office would consider particularly probative of broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office's determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 TSA include:

*a.* Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable broadband block(s) was or was not served as of the as of date with broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area.

b. Bills or invoices provided to or received by customers in the applicable broadband block(s) which identify the specific download and upload speeds provided or received as of the as of date.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—20.6(8B,427) Contested cases.** A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

**20.6(1) Notice of hearing.** Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the broadband block(s) forming the basis of the contested case, or appealed the office's determination of the broadband block(s) forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the broadband block(s) forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

**20.6(2) Consolidation.** In the event any contested cases concerning the same broadband block(s) are initiated separately, such matters shall be consolidated.

**20.6(3) Discovery.** The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

**20.6(4) Witnesses and exhibits.** The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

**20.6(5) Telephone hearing.** If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, and 427.1(40).

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]



CHAPTER 21  
BROADBAND INFRASTRUCTURE—PROJECT CERTIFICATION

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**129—21.1(8B,427) Definitions.** The definitions in rule 129—20.1(8B,427) shall apply to this chapter.  
[ARC 2782C, IAB 10/26/16, effective 11/30/16]

**129—21.2(8B,427) Scope.** This chapter applies to communications service providers who request certification pursuant to Iowa Code section 427.1(40) from the office that an installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in a targeted service area(s).

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

**129—21.3(8B,427) Application for certification.** Applications for certification shall be completed and submitted by the means specified online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). In order to receive certification from the office, applications must be filled out in their entirety. Communications service providers making application to the office will be required to certify that all of the information contained in the application is accurate. If it is later determined that any of the information contained in the application is inaccurate, the office may revoke the certification, in whole or in part. An application for certification shall include without limitation the following information:

1. The communications service provider's legal and business name(s) and address(es) and the name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application for certification;

2. The broadband block number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application (i.e., the targeted service area(s) in which the installation of the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area);

3. A description and overview of the specific technologies to be deployed (e.g., fixed wireless) that will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area;

4. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area; and

5. Any other information as requested in the application.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

**129—21.4(8B,427) Time of filing.** Applications for certification must be received by the office at least ten days prior to the closure of the next applicable assessment deadline to be considered by the office for purposes of that reporting cycle. If the office does not receive an application within that time frame, the office may deny the application or consider the application as part of the next assessment cycle. Except as otherwise authorized by the office, an application for certification shall be deemed filed on the date of its actual receipt by the office. Notwithstanding the foregoing, except as otherwise authorized by the office, when an application for certification is filed during an open 20-day appeal period specified in 129—subrule 20.5(1) following the publication of an updated statewide map in accordance with rule 129—20.4(8B,427), an application for certification will not be deemed filed prior to the expiration of the 20-day appeal period.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

**129—21.5(8B,427) Notice of decision and issuance of certificate.** Following the timely filing of an application for certification and before the closure of the next assessment cycle, the office shall notify

the communications service provider by electronic means of its decision regarding the application for certification. If the decision is to deny the application or part of the application, such notice shall include a concise statement of the office's reasons for such denial, in whole or in part. A determination by the office to deny an application for certification, in whole or in part, may be appealed pursuant to 129—Chapter 6.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

**129—21.6(8B,427) Contents of certification.** The certification shall state the communications service provider for which the certification is being issued, the broadband block number(s) (as provided on the map referenced in rule 129—21.4(8B,427)) of the targeted service area(s) for which the certification is being issued and county(s) in which such targeted service area(s) resides, that the office has determined the broadband block(s) in which the installation will facilitate broadband service are targeted service area(s), that the broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area, and the date on which the certification is issued by the office. Such certification shall be signed by the CIO.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

**129—21.7(8B,427) Targeted service areas subject to challenge.** To the extent an application for certification satisfies all other requirements of this chapter, if at the time such application is filed the office's determination of whether a particular broadband block forming the basis of such application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the judicial review and appeal procedures outlined in Iowa Code sections 17A.19 and 17A.20, the office will issue a certification. Notwithstanding the foregoing, the aspect(s) of the office's certification concerning broadband blocks forming the basis of the application for certification that is currently subject to such challenge shall be purely contingent and valid only to the extent the office's original determination is ultimately upheld at the end of the entire appeals process once final, including judicial review and any subsequent appeal. For purely administrative purposes, if a portion of an application for certification is later deemed invalid by operation of this rule, the office may require the communications service provider to file a new application pursuant to rule 129—21.3(8B,427).

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 5173C, IAB 9/9/20, effective 10/14/20]

**129—21.8(8B,427) Certification of completion and field testing.** To the extent applicable, after an installation of broadband infrastructure certified by the office is fully installed in a targeted service area, the communications service provider for which a certification was issued must certify to the office that such installation facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code section 427.1(40) "b" at any time after broadband service is available in a targeted service area. Such field tests may include but not be limited to speed tests from any location in a targeted service area in which the project was deployed or, in the case of wireline installations, the communications service provider's network operation center or central office. As applicable, noncompliance may be reported to the attorney general, the department of revenue, or applicable county board of supervisors.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19]

These rules are intended to implement Iowa Code sections 8B.1 and 427.1(40) as amended by 2019 Iowa Acts, House File 772.

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

CHAPTER 22  
BROADBAND GRANTS PROGRAM

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**129—22.1(8B) Definitions.** The definitions in Iowa Code section 8B.1 and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11(1)“*a*” or “*b*” or 8B.11(6), whichever is applicable, in one or more targeted service areas.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.2(8B) Purpose and scope.** This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. This chapter interprets relevant provisions of Iowa Code sections 8B.1 and 8B.11 and establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by awarding grants to communications service providers that reduce or eliminate targeted service areas by installing broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11 and this chapter. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.3(8B) Notice accepting grant funds.**

**22.3(1)** The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at [iowagrants.gov](http://iowagrants.gov) and [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband).

**22.3(2)** Such NOFA shall:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. Identify allowable and not disallowed expenditures which may be included in an applicant’s total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.
- g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

[ARC 4098C, IAB 10/24/18, effective 11/28/18]

**129—22.4(8B) Applications for grant funds.**

**22.4(1) *Application process.*** Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

**22.4(2) *Contents of application.*** In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider's legal and business name(s) and address(es);
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The broadband block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- e. Unless a specific cost allocation methodology is identified or required by the office as set forth in the NOFA, the specific methods or formulas the communications service provider will utilize in allocating the costs of and for broadband infrastructure for which reimbursement may be sought in proportion to such infrastructure's actual facilitation of broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in the targeted service areas forming the basis of the project;
- f. An anticipated project completion date in accordance with paragraph 22.6(3) "b." An applicant's anticipated project completion date may be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4) "b" (2).

**22.4(3) *Deadlines.*** The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

**22.4(4) *Confidentiality of contents of applications.*** The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

- (1) Fully complete and submit to the office Form 22 as provided by the office.
- (2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.
- (3) Conspicuously mark the outside of any submission as containing confidential information.
- (4) Mark each page upon which confidential evidence or information appears.
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

(1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.

(2) Justifies why the specific information should be maintained in confidence.

(3) Explains why disclosure of the specific information would not be in the best interest of the public.

(4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

**22.4(5)** *Limited exception for broadband infrastructure installed outside of targeted service areas.* Rescinded IAB 8/14/19, effective 9/18/19.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

### **129—22.5(8B) Application review process and award of grant funds.**

**22.5(1)** and **22.5(2)** Rescinded IAB 6/2/21, effective 5/7/21.

**22.5(3)** *Office final decision.* The office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA, affording the greatest weight to the factors in subparagraphs 22.5(3)“a”(1), 22.5(3)“a”(2), and 22.5(3)“a”(3), and Iowa Code section 8B.11(4)“a”(6):

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds, including whether the project serves a rural area(s). Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The applicant’s total proposed budget for the project, including all of the following:

1. The amount or percentage of local or federal matching funds, if any, and any funding obligations shared between public and private entities.

2. The percentage of funding provided directly from the applicant, including whether the applicant requested from the office an amount less than the maximum amount the office could award pursuant to Iowa Code section 8B.11 and, if so, the percentage of the project cost that the applicant is requesting.

(3) The relative download and upload speeds of proposed projects for all the applicants.

(4) The specific product attributes resulting from the proposed project, including technologies that provide higher qualities of service, such as service levels, latency, and other service attributes as determined by the office.

(5) The percentage of broadband units in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project. The number of broadband units in a targeted service area shall be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). Considering this factor is the means by which the office ensures underserved areas within targeted service areas are, to the extent possible, reduced or eliminated.

(6) The proportion of proposed projects that will result in the installation of broadband infrastructure in a targeted service area within which the only broadband service available provides the tier 1 download and upload speeds specified in the definition of targeted service area.

(7) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not make an award that exceeds the following percentages identified in Iowa Code section 8B.11(5) “a,” “b,” or “c” or 8B.11(6) “b,” whichever is applicable, of any communications service provider’s total estimated allowable project costs for a proposed installation of broadband infrastructure; or meeting the buildout speeds referenced in Iowa Code section 8B.11(1) or 8B.11(6), whichever is applicable.

c. In determining whether a project serves difficult to serve areas and thus qualifies for the 20 percent allocation identified in Iowa Code section 8B.11(7), the office will solely consider whether the project serves one or more targeted service areas within which no provider offers or facilitates broadband service that provides download and upload speeds less than or equal to the tier 1 download and upload speeds specified in Iowa Code section 8B.1(13) “a”(1). In such cases, any funds awarded to the project will be assigned to the 20 percent allocation made by the office. In the event that the 20 percent allocation in Iowa Code section 8B.11(7) is not fully subscribed, the office will be permitted to reallocate any unspent funds to projects that do not serve difficult to serve areas.

**22.5(4) Notice to applicants of decision and right to appeal.** The office shall notify each communications service provider awarded a grant by the office of the office’s decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at [iowagrants.gov](http://iowagrants.gov) and [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office’s decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office’s administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—22.6(8B) Administration of award.**

**22.6(1) Grant agreement required.** The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

**22.6(2) Mapping data required.** Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form acceptable to the office demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific broadband units within each targeted service area forming the basis of the project have access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project.

**22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment.** In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. *Reimbursement.*

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 within targeted service areas forming the basis of the project; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

*b. Performance/certification.* After the completion of a project and not less than 60 days prior to four years from the date of issuance of the NOFA, or 60 days prior to four years from the appropriation of grant funds, whichever is earlier, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in each of the applicable targeted service areas identified in the original application, and identify the total number of broadband units actually receiving broadband service in each of the targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

*c. Performance testing.* The office may, in its discretion, conduct performance tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3)“*b.*” The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3)“*b.*” Such performance tests may include but not be limited to:

(1) Speed tests anywhere between a grantee’s central office and the demarcation at any customer’s location in a targeted service area or broadband block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or broadband block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

*d. Disbursement/repayments.*

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds the amount determined by Iowa Code section 8B.11(5) or 8B.11(6) of the grantee's estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

*e. Notice of default.* If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3) "d," the office may issue the grantee a "Notice of Default," which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the "Notice of Default."

**22.6(4) Remedies for noncompliance.** In addition to issuing a "Notice of Default" and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3) "e" and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

*a.* At the office's sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

*b.* Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee's failure to complete a project in a timely manner;

(3) A grantee's failure to comply with any applicable state or federal laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed exceeds amounts allowed by the grant agreement or statute;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

**22.6(5)** *Office's decision and right to appeal.*

*a.* Any decision of the office entitled “proposed decision,” “final decision,” or other like caption as relating to any issues described in subparagraphs 22.6(5) “a”(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) “b” or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

*b.* Failure to challenge the office’s decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.7(8B) Reallocation of grant funds.** Subject to applicable law, including but not limited to Iowa Code section 8B.11(2) “c,” if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or applicants or open additional rounds for applications. If the office awards additional grant funds to other grantees or applicants, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.8(8B,427) Targeted service areas subject to challenge.** If at the time a grantee is awarded grant funds the office’s determination of whether a particular broadband block forming the basis of the grantee’s application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the office’s administration of the award process is subject to challenge pursuant to subrule 22.5(4), including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, the office may proceed to enter into a grant agreement with the grantee pursuant to subrule 22.6(1). Notwithstanding the foregoing or any contract executed between the parties to the contrary, the aspect(s) of the office’s award(s) that is subject to such challenge at the time of such execution shall be valid and enforceable only to the extent the office’s original determination or award process, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal. If a broadband block is ultimately determined to not constitute a targeted service area, or a portion of an award is later deemed invalid, in whole or in part: the grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the office may require the grantee to amend the grant agreement to reflect such result; and the grantee will be required to reimburse the office for any corresponding funds previously distributed by the office.

[ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10(1), and 8B.11.

[Filed ARC 4098C (Notice ARC 3728C, IAB 4/11/18), IAB 10/24/18, effective 11/28/18]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]