

11—117.20(8A) Vendor appeals.

117.20(1) *Filing an appeal.* Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame for it to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

117.20(2) *Procedures for vendor appeal.* The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the department's administrative rules governing contested case proceedings, unless the provisions of this rule provide otherwise.

a. Notice of hearing. Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors.

The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

b. 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.

c. 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. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

d. Amendments to notice of appeal. The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.

e. If the hearing is conducted by telephone or on the Iowa communications network, 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.

f. The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to all parties by first-class mail.

g. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

(1) Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that certified shorthand reporters record the hearing shall bear the costs.

(2) Transcription. A party may request that oral proceedings in connection with a hearing in a case or any portion of the oral proceedings be transcribed. A party requesting transcription shall bear the expense of the transcription.

(3) Tapes. Parties may obtain copies of tapes of oral proceedings from the presiding officer at the requester's expense.

(4) Retention time. The department shall file and retain the recording or stenographic notes of oral proceedings or the transcription for at least five years from the date of the decision.

117.20(3) *Stay of agency action for vendor appeal.*

a. When available.

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

b. When granted. In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

117.20(4) *Review of proposed decision.*

a. The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the proposed decision in accordance with the provisions of this subrule.

b. A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. Failure to request review will preclude judicial review unless the department reviews the proposed decision on its own motion. If the department reviews the proposed decision on its own motion, it will send notice of the review to all parties participating in the appeal.

c. A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties. Any party may submit to the department exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a notice of appeal or of a request for review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will issue a final decision not less than 30 days after the notice of appeal is filed.

d. The department shall review the proposed decision based on the record and issues raised in the hearing. The department shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues for review shall be specified in the party’s notice of appeal. The party appealing the proposed decision shall be responsible for transcribing any tape of the proceeding before the presiding officer and filing the transcript as part of the record for review. The party appealing the proposed decision shall bear the cost of the transcription regardless of the method used to transcribe the tape.

e. Each party shall have the opportunity to file exceptions to the proposed decision and present briefs in support of or in opposition to the proposed decision. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The department in its sole discretion may schedule oral arguments regarding the appeal. The department shall notify all parties in advance of the scheduled time and place for oral arguments.

f. The director shall issue a final decision by the department. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

[ARC 0952C, IAB 8/21/13, effective 9/25/13]