

129—11.5(8B) First-tier review.

11.5(1) *Internal review.* Following the receipt of a notice of appeal in accordance with rule 129—11.3(8B) and written justification or expiration of the period for intervention in accordance with rule 129—11.4(8B), the purchasing entity shall conduct an internal review of the grounds upon which the vendor challenges the award and the facts and circumstances involved. The purchasing entity shall issue a brief written decision affirming, modifying, or reversing, in whole or in part, the award and order any relief as determined appropriate by the purchasing entity.

11.5(2) *Consultation with office.* The office may consult with and assist other purchasing entities in conducting the review required by this rule.

11.5(3) *Waiver.*

a. An issue that is not raised in the original notice of appeal shall be deemed waived for purposes of any first-, second-, or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such issues may not be raised for the first time at a second-tier review hearing.

b. If a competitive selection document or other solicitation document contains a request for clarification process, or other similar question and answer process, failure of a vendor to raise an issue (including but not limited to related to the bid specifications) that could have been raised as part of that process shall constitute a waiver of any objection or argument as part of any first-, second-, or third-tier review or judicial review; such waiver is intended to ensure that purchasing entities are able to correct material issues or errors with competitive selection documents or award processes as early as possible in an orderly and efficient fashion, in a manner that is fair to all prospective vendors, and in a manner that avoids costly and time-consuming litigation to purchasing entities and the state.

11.5(4) *Final decision and request for second-tier review.* The purchasing entity's written decision shall become final unless within five days of the issuance thereof a vendor that is aggrieved or adversely affected by such decision files a request for second-tier review. A request for second-tier review shall generally conform, to the extent applicable, to the filing, form and format, and content requirements, and be subject to the same public records requirements and limitations, set forth in rule 129—11.3(8B) applicable to notices of appeal. An issue that was raised in the original notice of appeal but that is not again raised in a request for second-tier review shall be deemed waived for purposes of any second- or third-tier review or judicial review proceeding or appeal therefrom. For the avoidance of doubt, such unraised issues may not be raised for the first time at a second-tier review hearing.

11.5(5) *Nonparticipation of agency head or designee.* The head of the purchasing entity or that person's designee who will serve as final decision maker in the event of a third-tier review, as applicable, shall not participate in the internal review or formulation of the written decision required by this rule.

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