

129—11.8(8B) Third-tier review. The proposed decision from a second-tier review shall become the final decision of the purchasing entity within ten days after the presiding officer has mailed the proposed decision to the parties unless prior to that time a party submits a request for third-tier review of the proposed decision in accordance with the provisions of this rule or the purchasing entity initiates review of the proposed decision on its own motion.

11.8(1) A party appealing the proposed decision to the head of the purchasing entity shall mail or deliver a request for third-tier review to the purchasing entity's headquarters and to the office's headquarters. A request for third-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 and again raised in a request for second-tier review but not raised in the request for third-tier review shall be deemed waived for purposes of any 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 any oral proceedings held in connection with a request for third-tier review.

11.8(2) The party appealing the proposed decision shall be responsible for causing the transfer of and otherwise submitting the record forming the basis of prior stages to the presiding officer, including filing the recording and transcript generated as part of the second-tier review. The party appealing the proposed decision shall bear the cost of such transfer and submission, including the cost of obtaining the recording and transcript generated as part of the second-tier review.

11.8(3) Any party may submit to the purchasing entity exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a request for third-tier review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The head of the purchasing entity shall notify the parties if the head of the purchasing entity deems oral arguments by the parties to be appropriate.

11.8(4) When the head of the purchasing entity consents or on the head of the purchasing entity's own motion, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The head of the purchasing entity shall notify all parties in advance of the scheduled time and place for oral arguments. An oral argument may be either recorded by mechanized means or transcribed by a certified shorthand reporter at the request of a party. A party requesting that a certified shorthand reporter transcribe an oral argument shall bear the costs. Parties may obtain copies of recordings or transcriptions of proceedings from the head of the purchasing entity or certified shorthand reporter, as applicable, at the requester's expense.

11.8(5) The head of the purchasing entity shall review the proposed decision based on the record developed and issues properly raised and decided in all prior stages. The issues for review shall be those specified in the party's request for third-tier review and which were properly raised or decided during all prior stages. The head of the purchasing entity shall not take any further evidence. The head of the purchasing entity shall issue a final decision of the purchasing entity. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

11.8(6) The office may consult with and assist another purchasing entity in conducting a third-tier review.

11.8(7) Any party may file an application for rehearing in accordance with Iowa Code section 17A.16(2) and rule 129—6.30(8B,17A).

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