

**751—5.18(8D) Procedures for vendor appeal.** The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with 751 IAC 4, unless the provisions of this rule provide otherwise.

**5.18(1) Hearing.** Upon receipt of a notice of vendor appeal, the commission 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 45 days of the date the notice of appeal was received by the commission.

**5.18(2) Discovery.** The parties shall serve any discovery requests upon the other parties at least 20 days prior to the date set for hearing. The parties must serve responses to discovery at least 10 days prior to the date set for the hearing.

**5.18(3) Witnesses and exhibits.** The parties shall contact each other regarding witnesses and exhibits at least ten days prior to the time 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.

**5.18(4) Evidence for a telephone or network hearing.** If the hearing is conducted by telephone or on the fiberoptic network, the parties must deliver all exhibits to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

**5.18(5) Contents of decision.** The administrative law judge 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 with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

**5.18(6) Record requirements.** The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

*a. 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 the hearing be recorded by certified shorthand reporters shall bear the costs.

*b. Transcription.* Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

*c. Tapes.* Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

*d. Retention time.* The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the commission for at least five years from the date of the proposed decision.

**5.18(7) Dismissal.** A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

**5.18(8) Stay of agency action for vendor appeal.**

*a. When available.*

(1) Any party appealing the issuance of a notice of intent to award a contract may petition the presiding officer for a stay of the award pending its review. The petition for stay shall be filed with the notice of appeal and shall state the reasons justifying a stay.

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

*b. When granted.* The presiding officer or commission, as appropriate, shall grant a stay when it concludes that the movant has satisfied the standards for the grant of a stay included in 751—subrule 4.29(2).

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