

7—2506.102(17A) Vendor appeal process. Rules 7—2506.101(17A) through 7—2506.105(17A) govern appeals of the agency's decisions regarding competitive solicitations for goods or services. These rules supplement standard contested case rules and control to the extent inconsistent with standard contested case rules. Not complying with these vendor appeal rules in any material respect will result in dismissal of the appeal and constitute a failure to exhaust administrative remedies.

2506.102(1) Notice of intent to appeal. A vendor who is aggrieved by the agency's issuance of a notice of intent to award following a competitive solicitation may appeal that notice of intent to award. The deadline for the vendor to submit a notice of intent to appeal is five days following issuance of the notice of intent to award. Late notices of intent to appeal will not be accepted.

2506.102(2) Initial disclosures. When an agency receives the vendor's notice of intent to appeal, the agency will respond by providing the public version of the winning vendor's proposal as submitted by the vendor during the solicitation process. In addition, the agency will provide all evaluation committee materials, documentation, analysis, and results. If requested by the vendor, the agency will also send the public versions of losing bids or proposals as those public copies were submitted during the solicitation process. The vendor is not entitled to any additional discovery, materials, or information unless the proceedings advance past the first-tier review stage.

2506.102(3) Notice of appeal. Following receipt of the initial disclosures, the vendor may file a formal appeal within either the time frame identified in the solicitation document or, if no time frame is identified, five days from the award. If the vendor does not file a formal appeal in a timely manner, the appeal is waived. The vendor is obligated to plead with particularity; notice pleading is inadequate. At minimum, the formal appeal will include:

- a. The vendor's contact information, including contact information for the individual filing the notice of appeal, the individual's association with the appealing vendor, and a showing of the individual's authority to appeal on behalf of the appealing vendor;
- b. Details of the award decision the vendor is challenging;
- c. Why and how the vendor is aggrieved by the decision;
- d. The legal and factual reasons for the vendor's appeal, including references to the relevant grounds of appeal as set forth in Iowa Code section 17A.19(10); and
- e. The relief the vendor is seeking.

2506.102(4) Appeal bond—notice of appeal, first-tier review. At the same time the vendor submits the notice of appeal, the appealing vendor must submit to the agency an appeal bond to the extent required in the solicitation document. An agency has discretion to require a bond in an amount up to 5 percent of the value of the contract that is the subject of the appeal, including all extension years available under the contract awarded. If the vendor does not submit the appeal bond, the agency will dismiss the appeal. The vendor forfeits the appeal bond if its claims are determined to be unreasonable, frivolous, or for purposes of delaying the award, in which case the vendor will also be ordered to pay all costs of the appeal of the agency and any intervening party. Those costs include but are not limited to the costs of the process, hearing costs, expert witness fees, and attorney's fees and costs. The appealing vendor may be disqualified from future competitive solicitations in accordance with applicable rules addressing vendor disqualification through debarment or suspension if the appeal is determined to be unreasonable, frivolous, or for the purpose of delay. Awarded costs may be extracted from the appeal bond.

2506.102(5) Public records.

a. To ensure fair evaluation of proposals and to make the vendor appeal process more efficient, solicitation-related information, such as proposals and evaluation materials, will remain confidential and will not be released to the public until the notice of intent to award is issued or any vendor appeals are fully and finally resolved, whichever comes later. Materials released in accordance with these vendor appeal rules or in a formal sealed bidding process controlled by Iowa Code section 72.3 are exceptions to this temporary prohibition on the release of confidential information.

b. By submitting materials for the bidding process, a vendor agrees that submitted documents and information can be shared with third parties, including competitors, in the event of an appeal. However, the agency will share confidential or proprietary information during an appeal process only in accordance with a protective order acceptable to the agency. Without a protective order, the agency will make available only

to litigants copies of proposals from which confidential and proprietary information have been redacted, and then to non-litigants only after finalization of the award process or all vendor appeals, whichever comes later.

c. A vendor's notice of appeal is a public document available for public inspection. If the vendor believes the notice contains any confidential information, the vendor must, when it submits the notice of appeal, explain why the notice should remain confidential. The vendor must also submit a redacted version of the notice of appeal so that the public and other vendors submitting proposals in response to the solicitation can view nonconfidential portions of the notice of appeal.

2506.102(6) *Notice to winning vendor and intervention.* Once the agency receives the notice of appeal, the issuing officer for the solicitation will notify the winning vendor. The winning vendor may intervene in the appeal by submitting a notice of intervention no later than five days after receiving the notice.

2506.102(7) *Initial disclosures to intervenors.* The agency will send the intervening vendor the same public documents sent to the appellant.

2506.102(8) *Waiver.* To facilitate an orderly and timely resolution of vendor appeals, claims are waived in each of these instances:

a. A vendor did not raise during the solicitation process, such as through a question-and-answer period, an issue that could have been addressed during that process;

b. The issue is not raised in the original notice of appeal; and

c. An argument that could have been raised at an earlier stage of the appeal was not raised at that earlier stage.

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