

129—11.3(8B) Filing an appeal.

11.3(1) Notice of intent to appeal. Any vendor that filed a timely bid or proposal and that is aggrieved or adversely affected by an award (“appellant”), including a decision of the purchasing entity to disqualify a vendor, may appeal the decision by filing a notice of intent to appeal with the entity issuing the competitive selection documents or other applicable solicitation documents (“purchasing entity”) to the purchasing entity’s address as identified in the competitive selection documents or other applicable solicitation documents. The purchasing entity must actually receive the notice of intent to appeal within the time frame specified in the competitive selection documents or other applicable solicitation documents for the notice of intent to appeal and thereby the appeal to be considered timely. If the competitive selection documents or other applicable solicitation documents are silent on the time frame to appeal, the time frame shall be five days from the date of the issuance of the notice of intent to award. Failure to timely file a notice of intent to appeal will result in dismissal.

11.3(2) Initial disclosures—public, redacted proposals and evaluation materials. Following the purchasing entity’s receipt of the notice of intent to appeal, the purchasing entity will transmit to the appellant a public copy from which claimed confidential or proprietary information has been excised of the awardee’s proposal and, to the extent applicable, evaluation committee materials, documentation, analysis, and results. Upon written request of the appellant, the purchasing entity will provide a public copy from which claimed confidential or proprietary information has been excised of unsuccessful vendors’ proposals. The appellant shall be entitled to no additional discovery, materials, or information in furtherance of the appellant’s appeal unless and until the proceedings advance to a second-tier review.

11.3(3) Notice of appeal. Within five days of the appellant’s receipt of the initial disclosures required by subrule 11.3(2), the appellant shall file a formal notice of appeal with the purchasing entity to the purchasing entity’s address as identified in the competitive selection documents or other applicable solicitation documents. Such notice of appeal shall conform to and comply with the form and format and content requirements set forth in subrules 11.3(4) and 11.3(5). The purchasing entity must actually receive the notice of appeal within the five-day time frame. Failure to timely file a notice of appeal will result in dismissal.

11.3(4) Form and format. Notices of appeal should be concise and logically arranged. No other technical forms of pleading are required.

11.3(5) Contents. Notice pleading is not permitted. The notice of appeal shall:

- a. Include the name, address, email address, and telephone and facsimile numbers of the vendor;
- b. Be signed by the vendor or the vendor’s authorized representative;
- c. Identify the specific award forming the basis of the vendor’s challenge;
- d. Set forth information establishing the timeliness of the appeal;
- e. State the specific legal and factual grounds upon which the vendor is appealing the award, in a manner that ties the underlying factual assertions to the legal grounds forming the basis of the appeal;
- f. Describe how the vendor is aggrieved or adversely affected by the award;
- g. If applicable, explain whether and why the vendor failed to raise the issue(s) raised in the appeal through a request for clarification process or other question and answer process available during the competitive selection process;
- h. State that the vendor agrees and consents to, and by submitting its notice of appeal to the purchasing entity stipulates to the entry of, a protective order as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information relevant to the vendor’s appeal should the matter proceed to a second-tier review; and
- i. Set forth the specific relief requested, i.e., whether the vendor is requesting that the award be reversed in its entirety or remanded back to the purchasing entity to correct any legal errors.

11.3(6) Public records. A notice of appeal shall be considered a public record and may be distributed to third parties, including to the vendor’s competitors, in accordance with rule 129—11.4(8B). If the vendor believes the notice of appeal contains information that should be maintained by the purchasing entity as proprietary or confidential in accordance with applicable law, the vendor must conspicuously identify such a request on the first page of the notice of appeal; mark each page upon which confidential or proprietary information appears; submit a public copy from which claimed confidential or proprietary

information has been excised (information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible); enumerate the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential in the notice of appeal; and explain why disclosure of the specific information would not be in the best interest of the public in the notice of appeal. Notwithstanding the foregoing, intervenors, including competitors of the vendor filing the notice of appeal, may still receive an unredacted copy of a notice of appeal subject to the protective order requirements and processes set forth in this chapter.

11.3(7) *Failure to comply.* An appeal may be dismissed for failure to comply with any of the requirements of this rule.

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