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**IDAPA 38
TITLE 01
Chapter 02**

**38.01.02 - RULES FOR HEARING PROCEDURE FOR DIVISION OF
PURCHASING SPECIFICATION CHALLENGES AND
RULES FOR NON-ADVERSARY HEARINGS**

000. LEGAL AUTHORITY.

Under authority of Section 67-5732, Idaho Code, the Department of Administration and its Division of Purchasing adopts the following rule. (7-1-93)

001. TITLE.

IDAPA 38.01.02, "Rules for Hearing Procedure for Division of Purchasing Specification Challenges and Rules for Non-Adversary Hearings". (7-1-93)

002. PURPOSE.

This rule of practice and procedure shall apply in all specification challenge(s) and cases where a party is afforded an opportunity for hearing before the Department of Administration's Division of Purchasing. All hearings will be conducted before a Hearing Officer appointed by the Director of the Department of Administration unless otherwise determined by the Director or by rules of the Department. (3-25-92)

010. DEFINITIONS.

01. Department. Department of Administration. (3-25-92)

02. Director. Director of the Department of Administration. (3-25-92).

03. Division. Division of Purchasing. (3-25-92)

04. Administrator. Administrator for the Division of Purchasing. (3-25-92)

05. Party. A person or corporation whose legal rights, duties or privileges, including the granting, denial or renewal of a vendor registration are affected by the Department and who is entitled to the opportunity for hearing by law or regulation. (3-25-92)

06. Determinations Officer Or Hearing Officer. A person designated and appointed by the Director to act pursuant to this Rule in accordance with the requirements of Section 67-5733 except for Section 67-5733(1)(c)(iii). (3-25-92)

07. Appeal. A written request addressed to the Director of the Department of Administration requesting the appointment of a Determinations Officer pursuant to Section 67-5733, Idaho Code. (3-25-92)

08. Adversary Hearing. A hearing authorized by Section 67-5733(1)(c)(iii). Adversary hearings shall be conducted pursuant to Rules of Practice, IDAPA 38.01.01. (3-25-92)

011. -- 119. (RESERVED).

120. NOTICE OF SPECIFICATION CHALLENGE.

There shall be beginning with the day of receipt of the specifications, a period of not more than ten (10) working days in which any registered vendor, registered as able to sell or supply the items to be acquired, must submit a written notice addressed to the Administrator of the Division of Purchasing addressed to 5569 Kendall Street, Statehouse Mail, Boise, Idaho 83720, which notice must state the exact nature of the challenge. The written challenge shall describe the challenged portion or clause in the specification document, unless the challenge concerns an omission, and the challenge shall explain why any provision should be struck, added or altered and the challenge should contain any suggested corrections. (3-25-92)

121. -- 129. (RESERVED).

130. NOTICE OF CHALLENGE TO ADMINISTRATOR'S DETERMINATION OF NON-RESPONSIVENESS.

A bidder whose bid is rejected for being non-responsive to the invitation for bids or request for proposals, or whose bid does not meet specifications may appeal the bid rejection. The bidder shall have five (5) working days from receipt of the notice of rejection to appeal such rejection to the director. The bidder shall state in writing the basis for the appeal and address the appeal to the Director of the Department of Administration, 650 West State Street, Statehouse Mail, Boise, Idaho 83720. (3-25-92)

131. -- 139. (RESERVED).

140. NOTICE OF CHALLENGE TO ADMINISTRATOR'S DETERMINATION OF LOWEST RESPONSIBLE BIDDER.

A vendor whose bid is considered must, within five (5) working days following receipt of the notice that the vendor is not the lowest responsible bidder apply in writing to the Director for the appointment of a Determination Officer and address the appeal to Director of the Department of Administration, 650 West State Street, Statehouse Mail, Boise, Idaho 83720. The application must state in specific terms the reasons why the Administrator's decision is erroneous. (3-25-92)

141. -- 149. (RESERVED).

150. APPOINTMENT OF DETERMINATIONS OFFICER.

The Director may appoint a Determinations Officer when required by Section 67-5733, Idaho Code. Any Determinations Officer appointed per Idaho Code Section 67-5733 and this rule may review the files of the Division of Purchasing, request additional information from vendors, or may rely upon the statements of individuals. The hearing, if any is allowed by the Determinations Officer, shall not be an adversary hearing. (3-25-92)

151. -- 199. (RESERVED).

200. CONDUCT OF PERMISSIVE HEARING.

After the appointment of a Determination Officer, a party may request a hearing; the written request for hearing shall be addressed to the Determinations Officer. The request shall contain a statement of the factual or legal grounds upon which the party is contesting the departmental action. Upon receipt of a request for hearing, the Determinations Officer shall either deny the request, or grant the request for hearing; and if a hearing is granted, provide the party a notice of hearing that substantially complies with Section 67-5242, Idaho Code. All requests for hearings shall be denied or set within a reasonable time after the request for hearing has been received by the Determination Officer. (3-25-92)

201. NOTICE OF HEARING.

The notice of hearing will be served at least ten (10) calendar days before the time set for hearing unless otherwise provided by law or by agreement between the party and the division. A hearing will be held in Ada County at such place as may be designated by the Determination Officer in the hearing notice. This provision does not prohibit the conduct of a telephonic hearing upon concurrence of the parties and the Determinations Officer. (3-25-92)

202. SERVICE OF DOCUMENTS.

All notices, findings, opinions, orders or other documents required to be served upon a party may be served by mail. Service shall be deemed complete when a true copy of such document is deposited in the U.S. Mail with proper postage and addressed to the last known address of the party as shown by the records of the Department or Division. (3-25-92)

203. -- 249. (RESERVED).

250. TRANSCRIPTION.

01. Electronic Recordings. Hearings will be electronically recorded upon request of a party, the Department or the Hearing Officer. A request from a party must be in writing and be received by the department at least five (5) calendar days prior to the date of the hearing. A written transcript will be produced by the department at the request and at the expense of the party desiring the transcript. (3-25-92)

02. Stenographic Notes. Any party desiring the taking of stenographic notes by a qualified court

reporter must request such within five (5) calendar days before the date set for hearing and must submit to the Determinations Officer the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees and if the reporter's transcript is deemed by the Determinations Officer as the official transcript of the hearing, the party requesting the reporter shall furnish the Department a transcript free of charge. (3-25-92)

251. CONTINUANCE.

The Determinations Officer may, in her discretion on proper showing, grant continuances for submission of further or additional proof of any subject matter. (3-25-92)

252. -- 299. (RESERVED).

300. FAILURE TO APPEAR.

At the time and place set for hearing, if a party fails to appear, the Determinations Officer may with or without prejudice, dismiss the petition or may, upon good cause shown, recess said hearing for a further period to be set by the Determinations Officer to enable said party to attend. And, any and all costs incurred by reason of a party's nonappearance shall be assessed against such nonappearing party and no proceeding or action instigated by such nonappearing party shall be entertained by the determination officer until such assessed costs are paid. (3-25-92)

301. -- 309. (RESERVED).

310. APPEARANCE BY ATTORNEYS.

The appearance and representation of a party by another will be limited to attorneys admitted to the practice of law in the state of Idaho. An attorney admitted to practice before the highest court of any other state or federal court may appear when associated with attorney admitted to practice in the state of Idaho. If a party is a corporation, it may appear through an agent. (3-25-92)

311. -- 319. (RESERVED).

320. CONDUCT OF HEARING.

The Determinations Officer shall control the hearing and direct the order of presentation. A party shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings. (3-25-92)

321. -- 329. (RESERVED).

330. EVIDENCE AND TESTIMONY.

The admission of evidence at the hearing and matters subject to official notice shall be governed by Section 67-5251, Idaho Code. Testimony to be considered by the Determinations Officer in the hearing, except matters noticed officially or entered by stipulation shall be by sworn testimony. (3-25-92)

331. -- 339. (RESERVED).

340. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

01. Procedure. Except as otherwise provided in these rules a party shall have exhausted their administrative remedies when the matter has been heard or examined by the Determination Officer and a final decision has been rendered by the Director, or the appeal has been denied by the Director. (3-25-92)

02. Inclusion. The decision, recommendation or order of the Determination Officer may include findings of fact and conclusions of law. (3-25-92)

341. -- 349. (RESERVED).

350. APPEALS

Appeals from the decision or orders of the Department shall be taken in accordance with Section 67-5270, et sequence, Idaho Code. (3-25-92)

351. -- 999. (RESERVED).

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