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**IDAPA 38
TITLE 01
CHAPTER 01**

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

**38.01.01 - OTHER CONTESTED CASE OR ADVERSARY HEARINGS BEFORE
THE DEPARTMENT OF ADMINISTRATION**

Subchapter A - General Provisions

000. LEGAL AUTHORITY.

This rule, governing practice and procedure for administrative hearings before the Idaho Department of Administration, is adopted under the authority of Sections 67-5202(1). (3-25-92)

001. TITLE.

IDAPA 38.01.01, "Other Contested Case or Adversary Hearings Before the Department of Administration". (3-25-92)

002. PURPOSE.

This rule shall govern practice and procedure before the department and all its divisions in all contested cases as defined by Section 67-5201, Idaho Code. This rule shall not govern contractual matters or other matters involving: (3-25-92)

01. Division Of Public Works. Bid protests, specification challenges, contract awards, lease agreements, design professional selections, contract claims or contractual disputes of any kind, including plan and specifications reviews, design disputes, and contractor disputes; (3-25-92)

02. Division Of Purchasing. Specification challenges per Section 67-5733(1)(a), Idaho Code; Determination(s) of nonresponsive bids; challenges to determination of lowest responsible bidder; (3-25-92)

03. Division Of Insurance. Determination(s) relating to employee benefits; (3-25-92)

04. Division Of Insurance. Determination(s) relating to tort claims. (3-25-92)

05. Division Of Purchasing. Contract disputes or contract claims. (3-25-92)

06. Employee Personnel Matters, Including Grievances, Are Exempt. (3-25-92)

003. -- 009. (RESERVED).

010. DEFINITIONS.

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

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

03. Hearing Officer. Such person as shall be designated by the Director to act in its place for the purpose of conducting proceedings under this rule. (3-25-92)

04. Adversary Hearing. A hearing authorized by Section 67-5733(1)(c)(iii). Adversary hearings shall be conducted pursuant to this Rule. (3-25-92)

011. -- 019. (RESERVED).

120. COMMUNICATIONS.

All written communications to the Department of Administration shall be delivered to the Office of the Director at 650 West State Street, Boise, Idaho 83720 or mailed unless otherwise directed by the Department or rule. (3-25-92)

121. -- 129. (RESERVED).

130. PROCEDURE.

Insofar as applicable, proceedings under this rule shall be conducted in accordance with the Idaho Rules of Evidence unless otherwise modified by this rule, by order of the Hearing Officer or agreement of the parties. (3-25-92)

131. -- 139. (RESERVED).

140. FORMER EMPLOYEES.

No former employees of the Department may appear as a representative of, or an expert witness for, other parties in any proceeding in which they had once been a representative of the Department, or in which they had previously taken a part in the investigation or preparation of technical information, except a former employee may testify to factual matters or otherwise with the written permission of the Director. (3-25-92)

141. -- 149. (RESERVED).

150. PRACTICE BY ATTORNEYS AND APPEARANCE.

Practice and Appearance before the Department will be limited to Attorneys admitted to practice in the state of Idaho, except that an Attorney not admitted in the State of Idaho but admitted to practice before the highest court of any other state or Federal Court may appear and practice when associated with an attorney admitted to practice in the state of Idaho. (3-25-92)

151. -- 199. (RESERVED).

200. NOTICE OF APPEAL.

Where a petitioner is appealing a decision or determination of the Department, the petitioner may file with the Director a written notice of appeal. The notice of appeal must describe or identify, with reasonable specificity, the matter being appealed. Filing of the notice of appeal with the Director within the time to appeal provided by statute shall satisfy that time requirement. (3-25-92)

201. PETITION.

The petitioner shall file a petition with the Director within fifteen (15) days of the notice of appeal, if one has been filed. In no case shall a hearing on the merits of the matter be set until a petition has been filed. The petition shall set forth a claim for relief in the manner of a complaint as set out in the Idaho Rules of Civil Procedure (IRCP). All pleadings, joinder of parties and service of process shall occur in compliance with the IRCP. (3-25-92)

202. ANSWER.

The Department shall file an answer or responsive pleading within twenty (20) days of the service of the petition. Failure to plead shall not be grounds for default. (3-25-92)

203. AMENDMENTS.

A petition may be amended as a matter of right any time prior to the filing of an answer. Thereafter, a petition may only be amended by leave of the Hearing Officer. (3-25-92)

204. -- 249. (RESERVED).

250. SERVICE ON THE DIRECTOR.

An original of all pleadings shall be filed with the Director and a copy served on the Department through the Department's Legal Counsel. Upon the designation of a Hearing Officer a copy shall be served upon the Hearing Officer at the address indicated by the Director. All pleadings, notices, findings of fact, opinions may be served by mail, service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail or similar service. (3-25-92)

251. SERVICE BY THE DEPARTMENT.

All pleadings, notices, findings of fact, opinions required to be served by the Director may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail or similar service. (3-25-92)

252. -- 299. (RESERVED).

300. CONDUCT OF HEARING.

The Hearing 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)

301. -- 309. (RESERVED).

310. EVIDENCE.

01. Admission Of Evidence. The admission of evidence at hearings shall be governed by the Idaho Rules of Evidence and Section 67-5251, Idaho Code. (3-25-92)

02. Testimony. Testimony to be considered by the Hearing Officer in the hearing, except matters noticed officially or entered by stipulation shall be by sworn testimony. (3-25-92)

311. -- 319. (RESERVED).

320. NOTICE OF HEARING.

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

321. -- 329. (RESERVED).

330. TRANSCRIPTION.

01. Electronic Recording. 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 three (3) 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. A party desiring the taking of stenographic notes by a qualified court report must request such within five (5) calendar days before the date set for hearing and must submit to the Hearing 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 Hearing 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)

331. -- 339. (RESERVED).

340. DISCOVERY.

Discovery may be conducted in the manner and to the extent allowed by the Idaho Rules of Civil Procedure only if first formally agreed to by the parties, or by order of the Hearing Officer after an application has been filed with the Hearing Officer and a showing that discovery is required to clarify issues, identify witnesses or to preserve testimony. The order may limit the scope of discovery, and the method of discovery as the Hearing Officer deems appropriate under the circumstances of a particular case. Any right of the Department under any regulation, statute or contract to audit or examine the records shall not be limited by this rule. (3-25-92)

341. -- 349. (RESERVED).

350. SUBPOENAS.

Upon application, the Hearing Officer may issue subpoenas for the attendance of witnesses and the production of documents. (3-25-92)

351. -- 359. (RESERVED).

360. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Once the matter is fully submitted, the Hearing Officer shall issue findings of fact and conclusions of law. Copies of the findings and conclusions shall be served on all parties. (3-25-92)

361. -- 369. (RESERVED).

370. RECONSIDERATION.

Any party may, within fourteen (14) calendar days of the date of the findings of fact and conclusions of law, request a reconsideration of the findings of fact and conclusions of law. Such request must state specifically the grounds for requesting a reconsideration. At the discretion of the Hearing Officer, additional oral or written argument may be allowed. (3-25-92)

371. -- 379. (RESERVED).

380. DECISION OF DIRECTOR.

The Director shall take up and consider the findings of fact and conclusions of law at the first available time at which the matter can be considered. Thereafter, the Director shall issue a decision adopting, rejecting or modifying the findings and conclusions. The Director may also remand the matter back to the Hearing Officer for additional findings. (3-25-92)

381. -- 389. (RESERVED).

390. APPEALS.

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

391. -- 999. (RESERVED).

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