Table of Contents

38.05.02 - Rules Governing Contested Case Hearings on Bid Appeals at the Division of Purchasing

000. Legal Authority. 2
001. Title And Scope. 2
002. Written Interpretations. 2
003. Contested Case Hearings. 2
004. Exemption From Attorney General's Administrative Procedure Rules For Contested Cases. 2
005. Reasons For Exemption From Attorney General's Administrative Procedure Rules. 2
006. Incorporation By Reference. 2
007. Office -- Office Hours -- Mailing And Street Address. 2
008. Public Records Act Compliance. 2
009. (Reserved) 2
010. Definitions. 2
011. -- 030. (Reserved) 3
031. Filing Of Appeal. 3
032. Notice Of Contested Case Hearing. 3
033. Briefs And Memoranda. 3
034. Rules Of Evidence. 3
035. Admission Of Evidence. 3
036. Testimony. 3
037. Discovery. 3
038. Recording And Transcription. 3
039. Witnesses And Evidence. 3
040. Findings Of Fact And Conclusions Of Law. 3
041. Final Order. 4
042. Motions For Reconsideration. 4
043. Appeals. 4
044. -- 999. (Reserved) 4

IDAPA 38
TITLE 05
CHAPTER 02

38.05.02 - RULES GOVERNING CONTESTED CASE HEARINGS ON BID APPEALS AT THE DIVISION OF PURCHASING

000. LEGAL AUTHORITY.
The following rules are promulgated in accordance with Sections 67-9205(11), Idaho Code. (4-2-08)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.05.02, "Rules Governing Contested Case Hearings on Bid Appeals at the Division of Purchasing." (4-2-08)

02. Scope. Pursuant to Section 67-9232(3)(a)(iii), Idaho Code, the director may appoint a determinations officer to conduct a contested case hearing. These rules govern the contested case hearing process. (4-2-08)

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. Any such documents are available for public inspection and copying at the office of this agency. (4-2-08)

003. CONTESTED CASE HEARINGS.
The provisions found in Sections 031 through 043 of these rules shall govern contested case hearings. (4-2-08)

004. EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.
Pursuant to Section 67-5206(5), Idaho Code, except as provided in these rules, the procedures contained in Subchapter B, "Contested Cases," of the rules promulgated by the Attorney General as IDAPA 04.11.01, Sections 100 through 799, do not apply to contested case hearings. (4-2-08)

005. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.
To prevent unnecessary delays and increased costs in the acquisition of needed property by state agencies, the rules of procedure in this chapter are adopted to promote the speedy resolution of bid appeals. (4-2-08)

006. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter. (4-2-08)

007. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.
The Division of Purchasing is located at 650 W. State Street, Lower Level, Room B-15, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0075. Office hours are 8 a.m. to 5 p.m., Monday through Friday. (4-2-08)

008. PUBLIC RECORDS ACT COMPLIANCE.
All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 74, Chapter 1, Idaho Code). (4-2-08)

009. (RESERVED)

010. DEFINITIONS.

01. Administrator. The administrator of the Division of Purchasing. (4-2-08)

02. Bidder. The person or entity appealing in the contested case hearing. (4-2-08)

03. Determinations Officer. The person designated by the director to conduct a contested case hearing

pursuant to Section 67-59232(3)(a)(iii), Idaho Code. (4-2-08)

04. **Director**. The director of the Department of Administration. (4-2-08)

011. -- 030. **(RESERVED)**

031. FILING OF APPEAL.
The notice of appeal must be filed in accordance with Section 67-9232(3)(a)(iii), Idaho Code. (4-2-08)

032. NOTICE OF CONTESTED CASE HEARING.
A notice of a contested case hearing shall be provided to the bidder, giving at least ten (10) days' advance notice of the contested case hearing. The contested case hearing will be held in Ada County, at such place as may be designated in the hearing notice. Upon concurrence of the parties and the determinations officer, contested case hearings may be conducted telephonically. (4-2-08)

033. BRIEFS AND MEMORANDA.
Any party may make a request in writing to the determinations officer to file briefs, memoranda, proposed orders or statements of position and the determinations officer shall grant or deny such request as the determinations officer deems appropriate under the circumstances of a particular case. The determinations officer may request briefs, memoranda, proposed orders, or statements of position. (4-2-08)

034. RULES OF EVIDENCE.
The determinations officer shall control the hearing and direct the order or 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. (4-2-08)

035. ADMISSION OF EVIDENCE.
The admission of evidence at contested case hearings shall be governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 600 through 609. (4-2-08)

036. TESTIMONY.
Testimony to be considered by the determinations officer in the hearing shall be by sworn testimony, except for matters noticed or entered by stipulation. (4-2-08)

037. 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 determinations officer after an application has been filed and a showing that discovery is required to clarify issues, identify witnesses, or preserve testimony. The order may limit the scope of discovery and the method of discovery as the determinations officer deems appropriate under the circumstances of a particular case. (4-2-08)

038. RECORDING AND TRANSCRIPTION.
The hearing will be recorded by electrical device. A written transcript will be produced by the department upon request of either party. A bidder requesting such transcript shall be responsible for the cost of the transcript. Any party wishing to have the hearing recorded by a qualified court reporter must request such no less than five (5) business days in advance of the date set for hearing. The requesting party shall pay the cost of the reporter's fees and shall provide a copy to the determinations officer. The non-requesting party may pay for an additional copy for its own use. (4-2-08)

039. WITNESSES AND EVIDENCE.
The determination officer, on his own or upon application of the bidder or the Department of Administration, may issue subpoenas for the attendance of witnesses and production of documents. (4-2-08)

040. FINDINGS OF FACT AND CONCLUSIONS OF LAW.
Once the matter is fully submitted, the determinations officer shall issue findings of fact, conclusions of law and preliminary order. Copies shall be provided to all parties. (4-2-08)

041. FINAL ORDER.
Upon receipt of the determination officer's preliminary order, the director shall issue a final order affirming, modifying, or reversing the original selection determination. Copies shall be provided to all parties. (4-2-08)

042. MOTIONS FOR RECONSIDERATION.
Motions for reconsideration of the determination officer's preliminary order or of the Director's final order are not allowed. (4-2-08)

043. APPEALS.
Appeals from the final order shall be taken in accordance with Section 67-5270, Idaho Code. (4-2-08)

044. -- 999. (RESERVED)

Subject Index

A

Admission of Evidence 3
Appeals 4

B

Briefs & Memoranda 3

C

Contested Case Hearings 2

D

Definitions, IDAPA 38.05.02 2
- Administrator 2
- Bidder 2
- Determinations Officer 2
- Director 3

Discovery 3

E

Exemption From Attorney General's Administrative Procedure Rules for Contested Cases 2

F

Filing of Appeal 3
Final Order 4
Findings of Fact & Conclusions of Law 3

I

Incorporation by Reference 2

L

Legal Authority 2

M

Motions for Reconsideration 4

N

Notice of Contested Case Hearing 3

O

Office -- Office Hours -- Mailing & Street Address 2

P

Public Records Act Compliance 2

R

Reasons for Exemption From Attorney General's Administrative Procedure Rules 2
Recording & Transcription 3
Rules of Evidence 3

S

Scope 2

T

Testimony 3
Title 2
Title & Scope 2

W

Witnesses & Evidence 3
Written Interpretations 2