



**STATE OF WISCONSIN**  
**Department of Employee Trust Funds**  
 Robert J. Conlin  
 SECRETARY

Wisconsin Department  
 of Employee Trust Funds  
 PO Box 7931  
 Madison WI 53707-7931  
 1-877-533-5020 (toll free)  
 Fax 608-267-4549  
 etf.wi.gov

**Correspondence Memorandum**

**Date:** February 11, 2019

**To:** Deferred Compensation Board

**From:** Laura Patterson, Policy Analyst  
 Lucas Strelow, Policy Advisor  
 Office of Policy, Privacy & Compliance

**Subject:** Non-Substantive Changes to Existing Policies

**This memorandum is for informational purposes only. No Deferred Compensation Board (Board) action is required.**

The following policies have been recently reviewed by the Department of Employee Trust Funds (ETF) for compliance, errors and consistency. Changes have been made to non-substantive elements. These include: 1) document formatting, for better tracking and consistency of appearance; 2) typos and minor textual corrections; 3) hyperlink additions/corrections; 4) updates to statutory citations; and 5) corrections to updated statutory language.

Copies of the revised policies are attached. As ETF continues to update, coordinate, and make Board policies more consistent, it will keep the Board apprised of any changes.

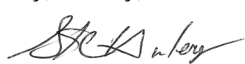
**Policies with non-substantive changes:**

Conduct of Board Meetings Policy (Attachments 1 & 2)

Changes were made to overall formatting, hyperlinks were added/corrected, and updates were made to statutory language, including that:

1. Notice of Board meetings must no longer be published in the official state newspaper, but in such a form as is reasonably likely to apprise members of the public and news media, and;

Reviewed and approved by Steve Hurley, Director, Office of Policy, Privacy, and Compliance



Electronically Signed 2/26/19

Board	Mtg Date	Item #
DC	3.7.19	8B

## Non-Substantive Changes to Existing Policies

February 11, 2019

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2. Notice of a Board meeting must be given at least 24 hours in advance, except for good cause where such notice is impossible or impractical, but notice may not be given less than 2 hours in advance of a meeting.

### Privacy of Personal Information Policy (Attachments 3 & 4)

The Privacy of Personal Information Policy requires Board members to safeguard from unauthorized use and disclosure all personal information of members, beneficiaries, dependents and other individuals encountered while in the performance of and in relation to Board duties, in accordance with the Board's fiduciary responsibility and privacy statutes. The policy was updated by changing some language to match the Group Insurance Board's version of this policy. The Retirement Boards' version of this policy is scheduled to be updated with similar changes.

### Vendor Procurement Appeals Policy (Attachments 5 & 6)

The Vendor Procurement Appeals Policy outlines the handling of vendor appeals of procurement awards made by the Board, as authorized under Chapter 40 and regarding any contracts awarded under authority delegated to ETF by the Deferred Compensation Board. The policy was updated to reflect current ETF staff roles and formatting changes were made.

Draft non-redline policies are included in the materials for ease of reading purposes.

Staff will be at the Board meeting to answer any questions.

Attachment 1: Redline Conduct of Board Meetings Policy

Attachment 2: Non-Redline Conduct of Board Meetings Policy

Attachment 3: Redline Privacy of Personal Information Policy

Attachment 4: Non-Redline Privacy of Personal Information Policy

Attachment 5: Redline Vendor Procurement Appeals Policy

Attachment 6: Non-Redline Vendor Procurement Appeals Policy



## DEFERRED COMPENSATION BOARD

*Adopted: March 12, 2015*

### CONDUCT OF BOARD MEETINGS POLICY

#### **Selection of Board Officers: Chairperson, vice Chairperson and Secretary**

[Wis. Stat. § 15.07 \(2\)](#) provides that the Chairperson, Vice Chairperson, and the Secretary of the Deferred Compensation Board must be elected in the respective Board's first meeting each calendar year. Those having held office are eligible to be re-elected for successive terms.

#### **Frequency of Meetings**

[Wis. Stat. § 15.07 \(3\) \(b\)](#) requires that the Deferred Compensation Board meet at least once per year. The Board may meet at other times on the call of the chairperson or a majority of its members.

#### **Open Meeting**

State law requires that the business of the Board be conducted in public. Therefore, during Board meetings, Board members shall exercise principles of good governance and refrain from communicating electronically (e.g. by e-mail, text or social media) with their fellow Board members regarding Board business (i.e. any matter that may come before the Board for action).

Board members are not required to be physically present to attend a Board or committee meeting. Any or all Board members may attend a Board meeting and vote via a communication platform – including teleconference – that provides, at a minimum, simultaneous aural communication between those present, provided:

1. The meeting is properly noticed;
2. The meeting is accessible to the public consistent with statutory requirements; and
3. There is a physical location that accommodates any member of the public who wishes to attend.

#### **Quorum and Voting**

[A quorum is the minimum number of Board members that must be present in order to transact the Board's official business.](#) A majority of the Board's members (excluding vacant seats) constitutes a quorum. In the absence of a quorum, the only official action the Board may take is to adjourn the meeting to another time and/or date. Two Board members shall constitute a quorum for the transaction of business at an advisory subcommittee meeting such as the Investment Committee.

Unless a more restrictive provision is adopted by the Board, a quorum may act in any matter within the jurisdiction of the Board. All official actions of the Board shall be taken by a majority vote with a quorum present. A roll call vote shall be taken upon the request of any Board member.

### **Agenda**

Board members shall submit any recommended agenda topics to the Board chairperson. The agenda for each meeting is prepared by the Department for approval of the Board chairperson. The agenda is made available to the public and to Board members in advance of the meeting.

### **Notice of Meetings**

The Wisconsin Open Meetings Law provides that public notice of all Board meetings must be given to the official state newspaper and to any news media that have filed a written request for such notice. -Under [Wis. Stat. § 19.84 \(2\)](#), the notice must contain the time, date, place and subject matter of the meeting, including subjects intended to be considered in any contemplated closed session.

In 2007, the Wisconsin Supreme Court declared that meeting notices must conform to a “reasonableness” standard in describing the subject matter of the public meeting. The net result is that generic descriptions of subject matter are prohibited and notices must be detailed enough such that a citizen interested in a specific subject would be aware from the meeting notice that the subject might be discussed. (State ex rel. Buswell v. Tomah Area Sch. Dist., 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.)

Regarding notices for meetings that include closed sessions, the law provides that if the presiding officer or the officer’s designee knows at the time he or she gives notice of the meeting that a closed session is contemplated, the notice must contain the subject matter to be considered in closed session. The notice “must contain enough information for the public to discern whether the subject matter is authorized for closed session under [§ 19.85 \(1\)](#).”

Notice must be given at least 24 hours in advance of the meeting, except for good cause where such notice is [impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.](#) ~~impractical. The Open Meetings Law permits two hours notice.~~ Sundays and legal holidays are disregarded in calculating the 24-hour notice.

### **Closed Sessions**

A “closed session” is a meeting from which the public is excluded. Every Board meeting must initially be convened in open session. All Board business must be initiated, discussed, and acted upon in open session unless one of the exemptions in [Wis. Stat. § 19.85 \(1\)](#) applies.

A closed session may be held only for those specific purposes listed in Wis. Stat. § 19.85 (1) (a) - (h) (See the reference section of this policy for a copy of Wis. Stat. § 19.85). To go into closed session, Wis. Stat. § 19.85 (1) provides that a motion must be made and carried by a majority vote. The vote of each member on a motion to go into closed session must be ascertained and recorded in the minutes.

The subject matter to be discussed and the specific provisions in Wis. Stat. § 19.85 (1) authorizing the closed session must be announced by the presiding officer to those present at the meeting in which the motion is made. No business may be taken up at the closed session except that which relates to the matters contained in the presiding officer's announcement of the closed session.

### **Public Participation**

Members of the public may attend any open session of any Board meeting. Members of the public may not have the floor unless specifically allowed by the Chairperson, with the consent of a majority of the Board members.

### **Determination of Presiding Officer**

1. If present, the Chairperson presides.
2. If the Chairperson is absent, the Vice Chairperson presides.
3. If the Chairperson and Vice Chairperson are absent, the Secretary presides.
4. If all officers are absent, the Board shall designate a presiding officer.

### **Rules of Order**

The rules contained in the current edition of *Robert's Rules of Order, Newly Revised* shall govern meetings in all cases to which the rules are applicable and when such rules are not inconsistent with any special rules of order the Board may adopt. A copy of the latest volume is available from the [Department](#) Board Liaison.

### **Committees**

Upon adoption of a motion to establish an advisory committee by a vote of a majority of a quorum of the Board, the chairperson shall appoint members of the committee and may designate appointees to serve as committee chair and vice chair.

- Committees shall have a minimum of two members.
- The Board chair shall promptly fill vacancies on committees.
- Committees shall meet on the call of the committee chairperson. Any motion before a committee may be passed by a unanimous vote of the committee.
- A committee may only act within the scope of the committee charter adopted by the Board.
- Committees shall report to the full Board on their activities at the next meeting of the full Board. This report may be made in open or closed session, depending on the subject matter.

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- Any Board member may attend any committee meeting, although only committee members may be counted for quorum or voting purposes.
- Unless otherwise provided, the provisions of this policy document pertaining to agendas, notices, closed sessions, public participation, determination of presiding officer, and rules of order shall also apply to committee meetings, with references to the officers being to the respective officers of the committee.

## REFERENCE MATERIAL – CLOSED SESSIONS

### SAMPLE STATEMENTS FOR ENTERING INTO CLOSED SESSION

- “The Board will convene in closed session, pursuant to the exemptions contained in Wis. Stats. 19.85 (1) (a) for quasi-judicial deliberations.”
- “The Board will convene in closed session, pursuant to the exemptions contained in Wis. Stat. § 19.85 (1) (e) to deliberate or negotiate the investing of public funds.”

### CLOSED SESSION STATUTES

**Wis. Stat. § 19.85 Exemptions. (1)** Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session. A closed session may be held for any of the following purposes:

- (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- (b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a Board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.
- (c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

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- (d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.
- (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
- (ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (em) Deliberating under s. [157.70](#) if the location of a burial site, as defined in s. [157.70 \(1\) \(b\)](#), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (h) Consideration of requests for confidential written advice from the [elections commission under s. 5.05 \(6a\) or the ethics commission under s. 19.46 \(2\), or from any county or municipal ethics board under s. 19.59 \(5\).government accountability Board under s. 5.05 \(6a\), or from any county or municipal ethics Board under s. 19.59 \(5\).](#)
- ~~(i) Consideration of requests for confidential written advice from the government accountability Board under s. 5.05 (6a), or from any county or municipal ethics Board under s. 19.59 (5).~~



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For ETF internal use:

<b>Adopted*</b>	<b>Deferred Compensation Board Reviewed or Revised</b>	<b>Group Insurance Board Reviewed or Revised</b>	<b>Retirement Boards (ETF, TR, WR) Reviewed or Revised</b>
3/12/2015	3/12/2015	6/16/2018	6/21/2018

\*Individual Board Policies may vary.



## DEFERRED COMPENSATION BOARD

*Adopted: March 12, 2015*

**Revised: xx/xx/xx**

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DC Board  
Conduct of Board Meetings Policy  
March 2019

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- (a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- (b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a Board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.
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- (d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.
- (e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
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- (em) Deliberating under s. [157.70](#) if the location of a burial site, as defined in s. [157.70 \(1\) \(b\)](#), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- (f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- (h) Consideration of requests for confidential written advice from the elections commission under s. [5.05 \(6a\)](#) or the ethics commission under s. [19.46 \(2\)](#), or from any county or municipal ethics board under s. [19.59 \(5\)](#).

For ETF internal use:

Adopted*	Deferred Compensation Board Reviewed or Revised	Group Insurance Board Reviewed or Revised	Retirement Boards (ETF, TR, WR) Reviewed or Revised
3/12/2015	xx/xx/xxxx	6/16/2018	6/21/2018

\*Individual Board Policies may vary.



## DEFERRED COMPENSATION BOARD

*Adopted: November 3, 2015*

**Revised: xx/xx/xx**

### PRIVACY OF PERSONAL INFORMATION POLICY

#### STATEMENT OF POLICY

Board members will safeguard from unauthorized use and disclosure all personal information<sup>1</sup> of members, beneficiaries, dependents and other individuals, encountered while in the performance of and in relation to Board duties, in accordance with the Boards' fiduciary responsibility and state and federal privacy statutes.

#### BACKGROUND

The [DC Board members](#), as fiduciaries of the Trust provided authority under Chapter 40 of the Wisconsin Statutes, ~~and governing bodies for the Department of Wisconsin Employee Trust Funds~~, are subject to the privacy restrictions under Wis. Stat. 40.07 Records relating to release of Individual Personal Information. Section 40.07 of the statutes states that Individual Personal Information in the records of the department is not a public record and shall not be disclosed except as provided in the section. Individual Personal Information held by the Department and encountered by Board members is not a public record and must remain confidential unless an exception applies.

In addition, the department is required under federal law to protect member medical information under the Health Insurance Portability and Accountability Act (HIPAA). Protected Health Information under HIPAA is a subset of Individual Personal Information already protected under 40.07, but noncompliance in the disclosure of Protected Health Information is subject to federal penalties.

#### EXAMPLE DUTIES WITH POTENTIAL PERSONAL INFORMATION

Member information is most often encountered during the appeals process, but may potentially arise under other closed session meetings. Member personal information should never be provided in open session.

#### EXAMPLE PERSONAL INFORMATION

Personal information covered under this policy is any information that can be used alone or in addition to other available information to identify an individual, including relatives, employers, dependents, beneficiaries or household members. Example identifiers include: name, ETF ID, Social Security Number, birth date, address, event dates, telephone number and disability status.

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<sup>1</sup> "Personal Information" includes Individual Personal Information (ETF 10.70) and Medical Records (ETF 10.01 (3m)) under Wis. Stat. 40.07, and Protected Health Information under HIPAA's Privacy Rule 45 CFR 160.103



For ETF internal use:

<b>Adopted*</b>	<b>Deferred Compensation Board Reviewed or Revised</b>	<b>Group Insurance Board Reviewed or Revised</b>	<b>Retirement Boards (ETF, TR, WR) Reviewed or Revised</b>
11/3/2015	11/3/2015	5/16/2018	3/1/2019

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# DEFERRED COMPENSATION BOARD

*Adopted: November 3, 2015*

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### STATEMENT OF POLICY

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### BACKGROUND

The DC Board members, as fiduciaries of the Trust provided authority under Chapter 40 of the Wisconsin Statutes, are subject to the privacy restrictions under Wis. Stat. 40.07 Records relating to release of Individual Personal Information. Section 40.07 of the statutes states that Individual Personal Information in the records of the department is not a public record and shall not be disclosed except as provided in the section. Individual Personal Information held by the Department and encountered by Board members is not a public record and must remain confidential unless an exception applies.

In addition, the department is required under federal law to protect member medical information under the Health Insurance Portability and Accountability Act (HIPAA). Protected Health Information under HIPAA is a subset of Individual Personal Information already protected under 40.07, but noncompliance in the disclosure of Protected Health Information is subject to federal penalties.

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11/3/2015	Xx/xx/xxx	5/16/2018	3/1/2019

\*Individual board policies may vary.



## DEFERRED COMPENSATION BOARD

*Adopted: February 19, 2013*  
*Revised: **November 15, 2015***

### VENDOR PROCUREMENT APPEALS POLICY

CONTRACTING AUTHORITY: WIS. STAT. §§ 40.80 (1), (2)

#### **PHASE ONE: Notice of Intent to Appeal Received by the Deferred Compensation Board c/o ETF Secretary**

1. The Deferred Compensation (Board) authorizes ETF staff to issue the “Intent to Award” to the successful bidder.
2. ETF staff issue the Intent to Award to the successful bidder and notify all firms who submitted a bid.
3. A vendor who wants to appeal the award **MUST** send a written notice indicating that the vendor intends to appeal the decision. The vendor must send the notice to the Board, c/o the Secretary of ETF, within five business days after the Intent to Award notice is sent.
4. Upon receiving the written intent to appeal from the vendor, the ETF Secretary will forward the notice to all Board members.

#### **PHASE TWO: Formal Appeal Received by the Deferred Compensation Board c/o ETF Secretary**

5. Within ~~ten~~**40** days from the issuance of the Intent to Award, the vendor **MUST** submit the formal appeal in writing to the Board, c/o the Secretary of ETF.
6. The appeal must state the contract number, detailed factual grounds for the objection to the contract award, and any violations of Chapter 40, Wisconsin Statutes.
7. The Secretary will forward the formal appeal to the Board.
8. If the vendor withdraws the intention to appeal or does not follow up within ~~ten~~**40** business days with a formal appeal, the ETF Secretary will notify the Board that the matter is adjudicated and no Board action is required.
9. All communications and documentation will be maintained with the procurement file.
10. The ETF Secretary will direct ETF General Counsel and the ETF Director of the Bureau of Budget, Contract Administration & Procurement to investigate the alleged violation of Chapter 40.
11. The Secretary will forward the results of the investigation to the Board and include a recommendation to the Board as well as legal and factual support for the recommendation.

**PHASE THREE: Board Decision**

- 12. The Board will review the appeal and ETF’s recommendation.
- 13. The Board will render a decision. For most appeals, the options available to the Board are: rescind the original Intent to Award and direct staff to issue the award to a different bidder, rescind the original Intent to Award and direct staff to terminate the procurement, or deny the appeal and proceed with implementing the original decision.
- 14. Following Board action, a written decision will be sent to the vendor. The vendor is allowed one appeal per procurement contract or process.
- 15. For appeals of procurement awards made under Chapter 40, the ETF Board’s decision is final.

For ETF internal use:

<b>Adopted*</b>	<b>Deferred Compensation Board Reviewed or Revised</b>	<b>Group Insurance Board Reviewed or Revised</b>	<b>Retirement Boards (ETF, TR, WR) Reviewed or Revised</b>
2/19/2013	11/15/2015	6/16/2018	9/24/2015

\*Individual board policies may vary.



## DEFERRED COMPENSATION BOARD

*Adopted: February 19, 2013*

**Revised: xx/xx/xxxx**

### VENDOR PROCUREMENT APPEALS POLICY

CONTRACTING AUTHORITY: [WIS. STAT. §§ 40.80 \(1\), \(2\)](#)

#### **PHASE ONE: Notice of Intent to Appeal Received by the Deferred Compensation Board c/o ETF Secretary**

1. The Deferred Compensation Board (Board) authorizes ETF staff to issue the "Intent to Award" to the successful bidder.
2. ETF staff issue the Intent to Award to the successful bidder and notify all firms who submitted a bid.
3. A vendor who wants to appeal the award **MUST** send a written notice indicating that the vendor intends to appeal the decision. The vendor must send the notice to the Board, c/o the Secretary of ETF, within five business days after the Intent to Award notice is sent.
4. Upon receiving the written intent to appeal from the vendor, the ETF Secretary will forward the notice to all Board members.

#### **PHASE TWO: Formal Appeal Received by the Deferred Compensation Board c/o ETF Secretary**

5. Within ten days from the issuance of the Intent to Award, the vendor **MUST** submit the formal appeal in writing to the Board, c/o the Secretary of ETF.
6. The appeal must state the contract number, detailed factual grounds for the objection to the contract award, and any violations of Chapter 40, Wisconsin Statutes.
7. The Secretary will forward the formal appeal to the Board.
8. If the vendor withdraws the intention to appeal or does not follow up within ten days with a formal appeal, the ETF Secretary will notify the Board that the matter is adjudicated and no Board action is required.
9. All communications and documentation will be maintained with the procurement file.
10. The ETF Secretary will direct ETF General Counsel and the ETF Director of the Bureau of Budget, Contract Administration & Procurement to investigate the alleged violation of Chapter 40.
11. The Secretary will forward the results of the investigation to the Board and include a recommendation to the Board as well as legal and factual support for the recommendation.

**PHASE THREE: Board Decision**

- 12. The Board will review the appeal and ETF’s recommendation.
- 13. The Board will render a decision. For most appeals, the options available to the Board are: rescind the original Intent to Award and direct staff to issue the award to a different bidder, rescind the original Intent to Award and direct staff to terminate the procurement, or deny the appeal and proceed with implementing the original decision.
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