



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

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: August 29, 2012
TO: Employee Trust Funds Board
FROM: Steve Hurley, Director
Office of Policy, Privacy and Compliance
SUBJECT: Draft Board Policy on Vendor Procurement Appeals

Staff recommends the Board approve the Vendor Procurement Appeals Policy as presented.

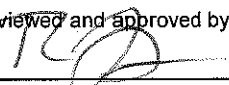
The Vendor Procurement Appeals Policy (Attachment 1) is intended to guide the handling of vendor appeals of procurement awards made by the Employee Trust Funds (ETF) Board, as authorized under Chapter 16 and Chapter 40.¹ Solicitations for requests for bids and requests for proposals include provisions that instruct bidders on the process for appealing a contract award.

REQUIREMENTS AND ACTION STEPS

- The vendor has five days from the issuance of the Intent to Award to notify ETF of an intention to appeal.
- Appeals for procurements under Chapter 16 will not be received for transactions of \$50,000 or less. Also, subjective judgment of evaluators is not appealable.
- The vendor has ten days from issuance of the Intent to Award to submit a formal appeal to ETF.
- The vendor can only submit an appeal once per award.
- ETF will review and submit the appeal to the ETF Board with a recommendation.
- For procurements under Chapter 16, the decision of the ETF Board may be appealed to the Secretary of the Department of Administration within five working days of issuance if the appeal alleges violation of a Wisconsin statute or section of Wisconsin Administrative Code.
- For procurements under Chapter 40, the decision of the ETF Board is final.

ETF staff will be available at the meeting to answer questions you may have.

¹ (The Board) [s]hall appoint the secretary of the department and may employ or select any medical, legal and other independent contractors as are required for the administration of the fund. Wis. Stat. § 40.03(1)(c).

Reviewed and approved by Robert Marchant, Deputy Secretary

Signature _____ Date 9-10-12

Board	Mtg Date	Item #
ETF	9.20.12	5

Employee Trust Funds Board Policy Vendor Procurement Appeals

Authority: Wis. Stat. § 16.705(2)
Wis. Stat. § 40.03(1)(c)
Wis. Adm. Code § Adm 10.15
State Procurement Manual DOA-3449

Phase One: Notice of Intention to Appeal Received by the Department of Employee Trust Funds (ETF)

1. ETF Board (Board) authorizes ETF staff to issue "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. Vendors who wish to appeal the award MUST send a written notice that they intend to appeal the decision to the Board, c/o the Secretary of ETF, within five business days after the Intent to Award notice is sent.
4. For procurements under Chapter 16, appeals will not be received for transactions \$50,000 or less. Also, subjective judgment of evaluators is not appealable.
5. 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 ETF

6. 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.
7. The appeal must state the contract number, detailed factual grounds for the objection to the contract award, and any statutes and/or administrative codes that were violated.
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. The Secretary forwards the formal appeal to the Board.
10. All communications and documentation will be maintained with the procurement file.
11. The ETF Secretary will direct ETF Legal Counsel and the ETF Director of Procurement to investigate the alleged violation of the statutes or administrative code.
12. The results of the investigation will be forwarded to the Board in writing and include a recommendation to the Board as well as legal and factual support for the recommendation.

Phase Three: Board Decision

- 13. The Board reviews the appeal and ETF’s recommendation.
- 14. The Board renders 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.
- 15. Following Board action, a written decision will be sent to the vendor appellant. The vendor appellant is allowed one appeal per procurement contract or process.
- 16. For appeals of procurement awards made under Chapter 40, the ETF Board’s decision is final.

Chapter 16 Procurement Awards: Protest Board Decision to Department of Administration (DOA)

The Board decision may be appealed to the Secretary of DOA if:

- 1. Filed within five working days of issuance;
- 2. A copy of such appeal is filed with ETF; and
- 3. The appeal alleges a violation of a Wisconsin statute or a section of the Wisconsin Administrative Code.

ETF will be notified and DOA will take necessary action to settle and resolve the appeal and will promptly issue a decision.

When a timely notice of either an intent to protest, a protest, or an appeal is received, ETF will not proceed further with the solicitation or with the award of the contract until a decision is rendered in response to the protest or appeal, or unless the Secretary of DOA, after consultation with ETF, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state