



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  
etf.wi.gov

## CORRESPONDENCE MEMORANDUM

**DATE:** August 27, 2014  
**TO:** Employee Trust Funds Board  
**FROM:** Steve Hurley, Director, Office of Policy, Privacy and Compliance  
**SUBJECT:** Revised Vendor Procurement Appeals Policy

**Staff recommends the Employee Trust Funds Board (Board) approve the revised Vendor Procurement Appeals Policy (Attachment).**

The attached *Vendor Procurement Appeals Policy* guides the handling of vendor appeals of procurement awards made by the Employee Trust Funds (ETF) Board, as authorized under Chapter 40. Solicitations for requests for bids and requests for proposals include provisions that instruct bidders on the process for appealing a contract award. Appeals policy under Chapter 40 procurements is similar to Chapter 16, but is a separate process. This revision clarifies the appeals policy for procurements under Chapter 40 and deletes references to Chapter 16 procurements.

### SUMMARY OF 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.
- The vendor has ten days from issuance of the Intent to Award to submit a formal appeal to the Board c/o the ETF Secretary.
- The vendor can only submit an appeal once per award.
- ETF will review and submit the appeal to the Board with a recommendation.
- Subjective judgment of evaluators is not appealable.
- For procurements under Chapter 40, the decision of the Board is final.

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

Attachment: Vendor Procurement Appeals Policy

Reviewed and approved by Pamela Henning, Assistant Deputy Secretary

Electronically Signed 9/11/14

Board	Mtg Date	Item #
ETF	9.25.14	4C

Date Revised: ~~August 29, 2012~~ August 27, 2014

Date Approved:

## 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 ETF Board c/o ETF Secretary Department of Employee Trust Funds (ETF)

1. ETF 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 ~~Vendors who wish~~ to appeal the award MUST send a written notice indicating that they 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. For procurements under Chapter 16, appeals will not be received for transactions \$50,000 or less. Also, subjective judgment of evaluators is not appealable.~~
- 5.4. 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 ETF Board c/o ETF Secretary

- 6.5. 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.
- 7.6. 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.~~ violations of Chapter 40, Wisconsin Statutes.
- 8.7. The Secretary will forward the formal appeal to the Board.
- 9.8. 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.
- 10.9. All communications and documentation will be maintained with the procurement file.
- 11.10. The ETF Secretary will direct ETF ~~Legal~~ General Counsel and the ETF Director of Procurement to investigate the alleged violation of ~~the statutes or administrative code~~ Chapter 40.

~~12.11.~~ The Secretary will forward 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**

- ~~13.12.~~ The Board will ~~reviews~~ the appeal and ETF’s recommendation.
- ~~14.13.~~ The Board will ~~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.
- ~~15.14.~~ 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.
- ~~16.15.~~ 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~~