

SUBCHAPTER D: RESOLUTION OF CONTRACT CLAIMS
§§11.101 - 11.108
Effective September 11, 2014

§11.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Claim - A demand for damages by the contractor based upon the agency's alleged breach of the contract.

(2) Contract - A written contract between the agency and a contractor (including contract documents, work orders, purchase order change notices, and other documents amending, modifying, or supplementing the contract) by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the agency; or

(B) to perform a project as defined by Texas Government Code, §2166.001.

(3) Contractor - Independent contractor who has entered into a contract directly with a unit of state government. The term does not include:

(A) the contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(B) an employee of a unit of state government; or

(C) a student at an institution of higher education.

(4) Counterclaim - A demand by the agency relating to the contractor's claim.

(5) Deputy Director of OLS - the deputy director for the Office of Legal Services (OLS) or the director of a similar successor unit within the agency serving as legal counsel for the executive director and includes individuals designated to act for the deputy director of OLS or a similar unit.

§11.102. Applicability.

(a) This chapter does not apply to an action of the agency for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(b) This chapter does not apply to contracts:

(1) between the agency and the federal government or its agencies, another state, or another nation;

(2) between the agency and another unit of state government;

(3) between the agency and a local governmental body, or a political subdivision of another state;

(4) between a subcontractor and a contractor;

(5) subject to the Transportation Code, §201.112;

(6) within the exclusive jurisdiction of state or local regulatory bodies;

(7) within the exclusive jurisdiction of federal courts or regulatory bodies;

(8) for grants of funds from the agency to grantees or subgrantees; or

(9) for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services brought by a party to the written contract, in which the amount in controversy is not less than \$250,000.

(c) This subchapter applies to claims for breach of contract against the agency asserted by a contractor under Texas Government Code, Chapter 2260 and to counterclaims of the agency. No employee or agent of the commission is authorized to waive the requirements of this subchapter nor the sovereign immunity of the agency, whether by means of acceptance of goods and services or otherwise.

Adopted August 20, 2014

Effective September 11, 2014

§11.103. Other Rules and Statutes.

The requirements of the following statutes and rules also apply to claims filed under this subchapter:

(1) Texas Government Code, Chapter 2260, regarding contract claims, including without limitation the time limits for filing the notice of claim, counterclaim, and request for hearing; and

(2) Section 1.10 and §1.11 of this title (relating to Document Filing Procedures; and Service on Judge, Parties, and Interested Persons) except §1.11(a) of this title.

Adopted May 31, 2006

Effective June 21, 2006

§11.104. Filing Notice of Claim for Breach of Contract; Counterclaim.

A contractor asserting a claim that the agency has breached a contract must file a notice of claim as follows.

(1) The notice of claim must fully describe the claim in writing on a form to be determined by the agency and must be signed by the contractor or an authorized representative.

(2) The notice of claim must be filed with the agency's chief clerk no later than 180 days after the event that the contractor asserts as the basis of the claim. The contractor must reference the docket number assigned by the chief clerk in any documents subsequently filed which pertain to the notice of claim.

(3) Copies of the written notice of claim and all other documents filed with the chief clerk must be served on the executive director and the deputy director of Office of Legal Services no later than the day of filing.

(4) The executive director shall file any appropriate counterclaim with the chief clerk within 60 days after the filing of the notice of claim and provide a copy to the contractor.

Adopted May 31, 2006

Effective June 21, 2006

§11.105. Negotiation.

(a) The executive director is authorized to negotiate, mediate, and settle the claim, as appropriate, and may designate one or more employees of the agency to act.

(b) The executive director shall initiate negotiations with the contractor within 120 days after receiving the notice of claim.

(c) The executive director may also negotiate, mediate, or settle with a contractor concerning any assertion by a contractor which does not constitute either

a notice or a claim under Texas Government Code, Chapter 2260. Such actions by the executive director do not constitute a waiver of statutory or regulatory requirements for a notice or a claim.

Adopted May 31, 2006

Effective June 21, 2006

§11.106. Settlement of Claim.

Any agreement to settle all or a portion of the contractor's claim filed under this subchapter must be:

(1) in writing;

(2) signed by the executive director and the contractor or authorized representative; and

(3) filed with the chief clerk.

Adopted July 26, 2000

Effective August 20, 2000

§11.107. Mediation.

The contractor and the executive director may agree to mediate a claim made under this subchapter. Mediation must be conducted under Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure).

Adopted July 26, 2000

Effective August 20, 2000

§11.108. Request for Hearing.

(a) A contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) of any unsettled portion of the claim.

(b) A contractor must file the request for hearing with the chief clerk in writing on a form to be determined by the commission.

(c) A contractor may not file the request for hearing until the expiration of 270 days after the contractor files the notice of claim. This period may be extended or reduced by written agreement of the contractor and the executive director. The agreement must be filed with the chief clerk.

(d) A contractor must serve copies of the request for hearing on the executive director and the deputy director of Office of Legal Services no later than the day of filing.

(e) After a contractor files the request for hearing, the chief clerk shall refer the entire file on the claim and counterclaim to SOAH for a contested case hearing under Texas Government Code, Chapter 2001, as to the issues raised in the request for hearing. Referral of a request for hearing to SOAH does not constitute waiver by the commission of statutory or regulatory requirements for the notice of claim, the claim or the request for hearing.

(f) Other chapters of this title regarding requests for, and conduct of, contested case hearings of applications do not apply to hearings of contract claims brought under this subchapter.

(g) Contested case hearings brought under this subchapter must be conducted in compliance with the rules of SOAH applicable to hearings on contract claims and where those rules are silent, under the Texas Rules of Civil Procedure and the Texas Rules of Evidence.

Adopted May 31, 2006

Effective June 21, 2006