

CHAPTER 103. AGENCY ADMINISTRATION

SUBCHAPTER A. EMPLOYEE TRAINING AND EDUCATION PROGRAM

§103.1. General Provisions.

- (a) The Commission may use state funds to provide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.044-656.049).
- (b) The training or education shall be related to the duties or prospective duties of the employee.
- (c) The Commission's training and education program will be designed to benefit both the Commission and the employees participating by:
 - (1) preparing for technological and legal developments;
 - (2) increasing work capabilities;
 - (3) increasing the number of qualified employees in areas for which the Commission has difficulty in recruiting and retaining employees; and
 - (4) increasing the competence of Commission employees.
- (d) A Commission employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.
- (e) Approval to participate in a training or education program is not automatic and is subject to the availability of funds within the Commission's budget.

The provisions of this §103.1 adopted to be effective October 3, 1999, 24 TexReg 8189.

§103.2. Employee Training and Education Program.

- (a) The employee training and education program for the Commission shall include:
 - (1) agency-sponsored training provided in-house or by contract;
 - (2) seminars and conferences;
 - (3) technical or professional certifications and licenses; and
 - (4) tuition reimbursement for degree and non-degree program courses.
- (b) The executive director shall develop policies for administering each of the components of the employee training and education program. These policies shall include:
 - (1) eligibility requirements for participation;
 - (2) designation of appropriate level of approval for participation; and
 - (3) obligations of program participants.

The provisions of this §103.2 adopted to be effective October 3, 1999, 24 TexReg 8189.

§103.3. No Effect on At-Will Status.

- (a) Approval to participate in any portion of the Commission's training and education program shall not in any way affect an employee's at-will status.
- (b) Participation in the training and education program shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

The provisions of this §103.3 adopted to be effective October 3, 1999, 24 TexReg 8189.

SUBCHAPTER B. AGENCY CONTRACTS

§103.100. Historically Underutilized Businesses.

- (a) The Commission adopts by reference the rules of the Texas General Services Commission in 1 Texas Administrative Code, Part 5, Chapter 111, Subchapter B (relating to Historically Underutilized Business Program). Certification of a business as a historically underutilized business remains the responsibility of the General Services Commission.
- (b) The adoption of this rule is required by Texas Government Code, §2161.003 (as added by the 76th Legislature, effective September 1, 1999).

The provisions of this §103.100 adopted to be effective June 7, 2000, 25 TexReg 5352.

§103.101. Vendor Protest Procedures.

- (a) Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation, evaluation or award of a contract may formally protest to the commission. All such protests must be in writing and received in the commission's office within 10 calendar days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to all other interested parties. For purposes of this section, "interested parties" means all vendors who have submitted bids, offers, or proposals for the contract involved and any protesting party.
- (b) In the event of a timely protest or appeal under this section, the commission shall not proceed further with the solicitation or award the contract unless the executive director of the commission or the executive director's designee makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.
- (c) All protests must be sworn to, notarized, and contain:
 - (1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
 - (2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;
 - (3) a detailed statement of the relevant facts;
 - (4) an identification of the issue or issues to be resolved;
 - (5) argument and authorities in support of the protest;
 - (6) the subsequent action the protesting party is requesting; and
 - (7) a statement that copies of the protest have been mailed or delivered to the commission and all other identifiable interested parties.
- (d) The commission has the authority to settle and resolve the protest. After receiving the protest, the commission shall immediately seek the advice of the commission's Office of Legal Services of the commission. The commission may solicit written responses to the protest from other interested parties. If

the protest is not resolved by mutual agreement, the commission will issue a written determination on the protest.

- (1) If the commission determines that no violation of any rule or statute has occurred, the commission shall so inform the protesting party and all other interested parties by letter, which sets forth the reasons for the determination.
 - (2) If the commission determines that a violation of a rule or statute has occurred in a case where a contract has not been awarded, the commission shall so inform the protesting party and all other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.
 - (3) If the commission determines that a violation of a rule or statute has occurred in a case where a contract has been awarded, the commission shall so inform the protesting party and all other interested parties by letter which sets forth the reasons for the determination. The determination may include termination of the contract.
- (e) Any interested party may appeal the commission's determination on a protest to the executive director. An appeal of the commission's determination must be in writing and must be received in the executive director's office no later than 10 working days after the date of the commission's determination. The appeal shall be limited to review of the commission's determination. Copies of the appeal must be mailed or delivered by the appealing party to the commission and all other interested parties.
- (f) The Office of Legal Services shall review the protest, the commission's determination, and the appeal, and prepare a written opinion with recommendation to the executive director.
- (g) Unless the executive director or the executive director's designee in his/her sole discretion determines that there is good cause, a protest or appeal that is not filed timely will not be considered.
- (h) A decision issued in writing by the executive director or the executive director's designee shall be the final administrative action of the commission./
- (i) In the event of a protest, all documents collected by the commission as part of a solicitation, evaluation, and/or award of a contract shall be retained by the commission for a period of four years.

The provisions of this §103.101 adopted to be effective July 17, 2001, 25 TexReg 5260

SUBCHAPTER C. RESOLUTION OF CONTRACT CLAIMS

§103.300. Purpose.

This subchapter governs the negotiation and mediation of a claim of breach of contract asserted by a contractor against the Texas Workers' Compensation Commission (commission) under Government Code Chapter 2260.

The provisions of this §103.300 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.301. Applicability.

- (a) This subchapter does not apply to an action of the commission for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.
- (b) This subchapter does not apply to contracts:
 - (1) between the commission and the federal government or its agencies, another state or another nation;
 - (2) between two or more units of state government;
 - (3) between the commission and a local governmental body, or a political subdivision of another state;
 - (4) between a subcontractor and a contractor;
 - (5) subject to §201.112 of the Transportation Code;
 - (6) within the exclusive jurisdiction of state or local regulatory bodies;
 - (7) within the exclusive jurisdiction of federal courts or regulatory bodies; or
 - (8) that are solely and entirely funded by federal grant monies other than for a project defined in §103.302 of this title (relating to Definitions);

The provisions of this §103.301 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.302. Definitions.

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

- (1) Claim - A demand for damages by the contractor based upon the commission's alleged breach of a contract.
- (2) Commission - Texas Workers' Compensation Commission
- (3) Contract - A written contract between the commission and a contractor by the terms of which the contractor agrees either:
 - (A) to provide goods or services, by sale or lease, to or for the commission; or
 - (B) to perform a project as defined by Government Code, §2166.001.

- (4) Contractor - Independent contractor who has entered into a contract directly with the commission. 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 the commission; or
 - (C) a student at an institution of higher education.
- (5) Counterclaim - A demand by the commission based upon the contractor's claim.
- (6) Day - A calendar day. If the last day of any period is not a working day, the period is extended to include the next day that is a working day.
- (7) Event - An act or omission or a series of acts or omissions giving rise to a claim.
- (8) Executive Director - Executive Director of the Texas Workers' Compensation Commission.
- (9) Goods - Supplies, materials or equipment.
- (10) Parties - The contractor and the commission that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.
- (11) Project - As defined in Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:
 - (A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and
 - (B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.
- (12) Services - The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the commission.

The provisions of this §103.302 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.303. Prerequisites to Suit.

The procedures contained in this subchapter are exclusive and required prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

The provisions of this §103.303 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.304. Sovereign Immunity.

The provisions of this subchapter do not waive the commission's sovereign immunity to suit or liability.

The provisions of this §103.304 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.305. Notice of Claim of Breach of Contract.

- (a) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.
- (b) The notice of claim shall:
 - (1) be in writing and signed by the contractor or the contractor's authorized representative;
 - (2) be delivered by hand, by certified mail return receipt requested, or by other verifiable delivery service, to the person or employee of the commission designated in the contract to receive a notice of claim of breach of contract under the Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the Executive Director; and
 - (3) state in detail:
 - (A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;
 - (B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and
 - (C) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.
- (c) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

The provisions of this §103.305 adopted to be effective July 17, 2001, 25 TexReg 5260

§103.306. Agency Counterclaim.

- (a) To assert a counterclaim under the Government Code, Chapter 2260, the commission shall file notice of the counterclaim as provided by this section.
- (b) The notice of counterclaim shall:
 - (1) be in writing;
 - (2) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and
 - 3) state in detail:
 - (A) the nature of the counterclaim;
 - (B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and
 - (C) the legal theory supporting the counterclaim.
- (c) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the commission's receipt of the contractor's notice of claim.

- (d) Nothing herein precludes the commission from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

The provisions of this §103.306 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.307. Duty to Negotiate.

The parties shall negotiate in accordance with the timetable set forth in §103.308 of this subchapter (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

The provisions of this §103.307 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.308. Timetable.

- (a) Following receipt of a contractor's timely notice of claim, the Executive Director or other designated representative shall review the contractor's claim(s) and the commission's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).
- (b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:
 - (1) the date of termination of the contract;
 - (2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or
 - (3) the date the commission receives the contractor's notice of claim.
- (c) The commission may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:
 - (1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and
 - (2) delivering written notice to the contractor of the date on which the commission is ready to begin negotiations.
- (d) The parties may conduct negotiations according to an agreed schedule so long as they begin negotiations no later than the deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.
- (e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the commission receives the contractor's notice of claim.
- (f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the commission receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.
- (g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to §103.313 of this subchapter (relating to Request for Contested Case Hearing) after the

270th day after the commission receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

- (h) The parties may agree to mediate the dispute at any time before the 270th day after the commission receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by §103.315 of this subchapter (relating to Mediation of Contract Disputes).
- (i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

The provisions of this §103.308 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.309. Conduct of Negotiation.

- (a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties.
- (b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with §103.315 of this subchapter (relating to Mediation of Contract Disputes). Parties may choose an assisted negotiation process other than mediation.
- (c) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.
- (d) Material submitted pursuant to this section and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Texas Public Information Act.

The provisions of this §103.309 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.310. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

The provisions of this §103.310 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.311. Settlement Agreement.

- (a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.
- (b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the commission who have authority to bind each respective party.
- (c) A partial settlement does not waive a party's rights under the Government Code Chapter 2260 as to the parts of the claims or counterclaims that are not resolved.

The provisions of this §103.311 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.312. Costs of Negotiation.

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

The provisions of this §103.312 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.313. Request for Contested Case Hearing.

- (a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process (alternative dispute resolution) in accordance with this subchapter on or before the 270th day after the commission receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §103.308 of this subchapter (relating to Timetable), the contractor may file a request with the commission for a contested case hearing before SOAH.
- (b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the person or employee of the commission designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §103.308 (Timetable) of this subchapter.
- (c) The commission shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.
- (d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the commission if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

The provisions of this §103.313 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.314. Mediation Timetable.

- (a) The contractor and the commission may agree to mediate the dispute at any time before the 270th day after the commission receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.
- (b) A contractor and the commission may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for *mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.*

The provisions of this §103.314 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.315. Mediation of Contract Disputes.

- (a) The parties may agree to mediate a claim through an impartial third party. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code §154.023.
- (b) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

The provisions of this §103.315 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.316. Qualifications and Immunity of the Mediator.

The mediator shall possess the qualifications required under the Civil Practice and Remedies Code §154.052, be subject to the standards and duties prescribed by the Civil Practice and Remedies Code §154.053 and have the qualified immunity prescribed by the Civil Practice and Remedies Code §154.055, if applicable.

The provisions of this §103.316 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.317. Confidentiality of Mediation and Final Settlement Agreement.

- (a) A mediation conducted under this section is confidential in accordance with Government Code §2009.054.
- (b) The confidentiality of a final settlement agreement to which the commission is a signatory that is reached as a result of the mediation is governed by Government Code Chapter 552.

The provisions of this §103.317 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.318. Costs of Mediation.

Unless the contractor and the commission agree otherwise, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediator shall be divided equally between the parties.

The provisions of this §103.318 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.319. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

The provisions of this §103.319 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.320. Initial Settlement Agreement.

Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the commission, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

The provisions of this §103.320 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.321. Final Settlement Agreement.

- (a) A final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim shall be in writing and signed by representatives of the contractor and the commission who have authority to bind each respective party.

- (b) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.
- (c) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

The provisions of this §103.321 adopted to be effective July 17, 2001, 25 TexReg 5261

§103.322. Referral to the State Office of Administrative Hearings.

If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the commission. Nothing in this subchapter prohibits the contractor and the commission from mediating their dispute after the case has been referred for a contested case hearing, subject to the rules of SOAH.

The provisions of this §103.322 adopted to be effective July 17, 2001, 25 TexReg 5261

SUBCHAPTER D. FACILITIES AND PROPERTY MANGEMENT

§103.400. Fleet Vehicle Management Program.

- (a) Each commission vehicle, with the exception of a vehicle assigned to a field employee, shall be assigned to the commission motor pool and shall be available for check-out.
- (b) Commission vehicles may be assigned on a regular or everyday basis to an individual administrative or executive employee only if the commission makes a written finding that the assignment is critical to the needs and mission of the commission.
- (c) Any policy or procedure promulgated by the commission relating to the assignment and use of commission vehicles shall be consistent with the management plan adopted by the General Services Commission.

The provisions of this §103.400 adopted to be effective July 17, 2001, 25 TexReg 5261

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