

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES.

Subchapter C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES.

DIVISION 1. GENERAL.

§27.65. Definitions.

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

- (1) **Chief administrative officer** — The executive director of the commission or his/her designee.
- (2) **Claim** — A demand for damages by the contractor based upon the commission's alleged breach of the contract.
- (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 Texas 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 an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this subchapter.
- (7) **Event** — An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:
 - (A) Examples of events in the context of a contract for goods or services:
 - (i) the failure of the commission to timely pay for goods and services;
 - (ii) the failure of the commission to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the commission for work not performed under the contract or in substantial compliance with the contract terms;
 - (iii) the suspension, cancellation, or termination of the contract;
 - (iv) final rejection of the goods or services tendered by the contractor, in whole or in part;
 - (v) repudiation of the entire contract prior to or at the outset of performance by the contractor; or
 - (vi) withholding liquidated damages from final payment to the contractor.
 - (B) Examples of events in the context of a project:
 - (i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;
 - (ii) the failure to make timely progress payments required by the contract;
 - (iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the commission for work not performed under the contract or in substantial compliance with the contract terms;
 - (iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;
 - (v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;
 - (vi) suspension, cancellation or termination of the contract, other than by the terms provided for in the contract;

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- (vii) rejection by the commission, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;
 - (viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;
 - (ix) withholding liquidated damages from final payment to the contractor; or
 - (x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.
- (C) The lists in subparagraphs (A) and (B) of this paragraph should not be considered exhaustive but are merely illustrative in nature.
- (8) **Goods** — Supplies, materials or equipment.
 - (9) **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.
 - (10) **Project** — As defined in Texas 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.
 - (11) **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.
 - (12) **Unit of state government or unit** — The state or an agency, department, commission (including the Public Utility Commission), bureau, board, office, council, court, or other state entity that is in any branch of state government that is created by the Texas Constitution, or statute of this state, including a university system or institution of higher education. The term does not include:
 - (A) a county;
 - (B) municipality;
 - (C) court of a county or municipality;
 - (D) special purpose district; or
 - (E) other political subdivision of the state.