

Chapter: Agency Management and Operations Subchapter: Contracts Title: Negotiation and Mediation of Contract Disputes ACA: N/A Statutes: Gov't Code §2260.052(c)	Effective Date: 7/15/14 Page: 1 of 4 Replaces: GAP.385.1111, 7/15/11
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RULE

(a) **Purpose.**

In accordance with Texas Government Code Chapter 2260, the purpose of this rule is to establish procedures for the Texas Juvenile Justice Department (TJJJ) and its contractors to engage in negotiation and/or mediation procedures to resolve certain disputes involving claims of breach of a written contract. These procedures are not intended to replace the process to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

(b) **Applicability.**

- (1) This rule applies to TJJJ and its contractors, as defined in Texas Government Code §2260.001.
- (2) This rule does not apply to:
 - (A) a claim for personal injury or wrongful death arising from a breach of contract;
 - (B) an action of TJJJ for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute;
 - (C) a contract action proposed or taken by TJJJ for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Texas Government Code Chapter 2001;
 - (D) a contract that is solely and entirely funded by federal grant monies other than for a project defined in Texas Government Code §2166.001;
 - (E) a contract between TJJJ and the federal government or its agencies, another state, or another nation;
 - (F) a contract between TJJJ and another unit of state government;
 - (G) a contract between TJJJ and a local governmental body or a political subdivision of another state;
 - (H) a claim from a contractor's subcontractor, officer, employee, agent, or other persons furnishing goods or services to a contractor;
 - (I) a contract within the exclusive jurisdiction of state or local regulatory bodies; or
 - (J) a contract within the exclusive jurisdiction of federal courts or regulatory bodies.

(c) **Sovereign Immunity.**

- (1) To the extent allowed by law, this rule does not waive TJJJ's sovereign immunity to suit or liability.
- (2) The procedures contained in this rule are exclusive and required prerequisites to suit under Texas Civil Practice and Remedies Code Chapter 107, and Texas Government Code Chapter 2260.

(d) Contract Claims.**(1) Notice of Claim of Breach of Contract.**

- (A) A contractor asserting a claim for breach of contract under Texas Government Code Chapter 2260 must file notice of the claim as provided by this subsection.
- (B) The notice of claim must:
 - (i) be submitted no later than 180 days after the date of the event that the contractor asserts as the basis of the claim;
 - (ii) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the individual stated in the contract or to the executive director if no individual is identified;
 - (iii) state in detail:
 - (I) 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;
 - (II) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and
 - (III) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed;
 - (iv) provide supporting documentation or other tangible evidence to facilitate TJJJ's evaluation of the claim; and
 - (v) be signed by the contractor or the contractor's authorized representative.

(2) Counterclaim by TJJJ.

- (A) In order to assert a counterclaim, TJJJ must file notice of the counterclaim not later than 60 days after the date of the contractor's notice of claim.
- (B) The notice of counterclaim must:
 - (i) be submitted in writing;
 - (ii) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor;
 - (iii) state in detail:
 - (I) the nature of the counterclaim;
 - (II) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and
 - (III) the legal theory supporting the counterclaim recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed;
 - (iv) provide supporting documentation or other tangible evidence to facilitate the contractor's evaluation of TJJJ's counterclaim; and

(v) be signed by the executive director or his/her designee.

(C) Nothing in this rule precludes TJJJ from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(e) **Negotiation.**

- (1) The parties may conduct negotiations of claims and counterclaims within a reasonable period of time as long as the negotiations start prior to the 120th day following the date TJJJ receives the contractor's notice of claim.
- (2) The parties must complete the negotiations as provided by this rule as a prerequisite to a contractor's request for contested case hearing no later than 270 days after TJJJ receives the contractor's notice of claim unless the parties agree in writing to extend the time for negotiations.
- (3) The parties may conduct negotiations with the assistance of one or more neutral third parties.
- (4) 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.
- (5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor are handled pursuant to the requirements of the Public Information Act.
- (6) The agreement may resolve an entire claim or counterclaim or any designated and severable portion of a claim.
- (7) The agreement must be in writing and signed by representatives of the contractor and TJJJ who have authority to bind each respective party.
- (8) A partial settlement does not waive a party's rights under Texas Government Code Chapter 2260 to proceed on the parts of the claims or counterclaims that are not resolved.
- (9) Unless the parties agree otherwise, each party is 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.

(f) **Mediation.**

- (1) The parties may agree to mediate the dispute at any time before the 120th day after TJJJ receives the contractor's notice of claim or before the expiration of any written extension agreed to by the parties.
- (2) The parties may mediate the dispute even after the case has been referred to the State Office of Administrative Hearings (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.
- (3) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code Chapter 209. For purposes of this rule, mediation is assigned the meaning set forth in the Texas Civil Practice and Remedies Code §154.023.
- (4) To facilitate a meaningful opportunity for settlement, the parties must, to the extent possible, select representatives who are knowledgeable about the dispute and:
 - (A) who are in a position to reach agreement; or
 - (B) who can credibly recommend approval of an agreement.

- (5) Sources of mediators include governmental officers or employees who are qualified as mediators under Texas Civil Practice and Remedies Code §154.052, private mediators, SOAH, the Center for Public Policy Dispute Resolution at the University of Texas School of Law, an alternative dispute resolution system created under Texas Civil Practice and Remedies Code Chapter 152, or another state or federal agency or through a pooling agreement with several state agencies.
 - (6) The confidentiality of a final settlement agreement to which TJJD is a signatory that is reached as a result of the mediation is governed by Texas Government Code Chapter 552.
 - (7) Each party is 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 mediation process itself are divided equally between the parties.
- (g) **Settlement Agreement.**
- (1) A settlement agreement reached as a result of negotiation or mediation that resolves an entire claim or counterclaim or any designated and severable portion of a claim or counterclaim must be in writing and signed by the representatives of the contractor and TJJD who have authority to bind each respective party.
 - (2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement must identify the issues that are not resolved.
 - (3) A partial settlement does not waive a contractor's rights under Texas Government Code Chapter 2260, as to the parts of the claim that are not resolved.
- (h) **Referral to the State Office of Administrative Hearings.**
- (1) The contractor may request a contested case hearing before SOAH after the 270th day after TJJD receives the contractor's notice of claim or the expiration of any written extension.
 - (2) If a claim for breach of contract is not resolved in its entirety through negotiation or mediation in accordance with this rule on or before the 270th day after TJJD receives notice of claim, or after the expiration of any written extension agreed to by the parties, the contractor may file a request with TJJD for a contested case hearing before SOAH.
 - (3) A request for a contested case hearing must state the legal and factual basis for the claim, and must be delivered to the executive director of TJJD or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to by the parties.
 - (4) TJJD forwards the contractor's request for a contested case hearing to SOAH within a reasonable period of time, not to exceed 30 days after receipt of the request.
 - (5) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by TJJD 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.
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