

Contract Services & Procurement

STATE SOVEREIGNTY

Private sector vendors and contractors often mistakenly assume that their own company terms & conditions, or their own State's laws, can prevail in instances where there are contractual conflicts between our State's terms & conditions stated in a CSU-issued contract, and the terms & conditions of the company or those of the company's State. To do business in California, the company must comply with the California statutes and requirements in general. The same would be true of a California-based company doing business with, say, an agency in Illinois. In that case, the Illinois laws would prevail, since that State is the sovereign entity. State sovereignty is a constitutional tenet, found in the tenth Amendment to the U.S. Constitution, and also within State constitutions. For California, its sovereignty statement is located in Article 3, Section 5. It reads, "Suits may be brought against the State in such manner and in such courts as shall be directed in law (meaning California law)." In other words, adjudication of lawsuits filed against the CSU, as an agency of the State, must take place in the California judicial system, not in that of another State, and therefore California laws shall prevail.

Whenever a contractor agrees to do business with a State agency, it must be understood by that contractor that the terms of the agreement may be quite different from those that apply in the private sector. State requirements may be completely different, and then it becomes a matter of choice, i.e., whether the contractor wishes to do business with the State or not. In essence, the State has a responsibility to both its taxpayers and its legislature that State appropriations are expended in a manner prescribed by law.

In some instances it may not be in the best interests of a campus to continue to contest the issue with a contractor, once the principle of State sovereignty has been explained and the contractor still persists in trying to have the laws of another State or the contractor's own provisions prevail in the contract language. In reality, however, if a dispute leading to a court claim should arise, California's Constitution would prevail and the matter would be adjudicated in a California court.

As a practical matter, the State Controller's Office will pay for court settlements only when there is documented evidence that the action leading to the claim has been adjudicated in a California State court or that the State has accepted another court system's ruling. This law is contained annually in the California Budget Act, under section 5.25. Out-of-court claims can be paid only when there is documented evidence that both parties have agreed to the amount to be paid as total and final settlement, and the agreement is formally accepted by an official agent of the State, such as counsel from the Attorney General's Office or other legal representation of the California State government.