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An Audit Report on

# **Selected Contracts at the Department of Criminal Justice**

February 2014

Report No. 14-019

## *Selected Contracts at the Department of Criminal Justice*

### **Overall Conclusion**

The Department of Criminal Justice (Department) sufficiently complied with applicable criteria in its planning, procurement, and formation of two contracts audited related to the operation of two private facilities. Those facilities are:

- East Texas Treatment Facility (East Texas Facility).
- Lockhart Work Program (Lockhart Program).

Those two private facility contracts audited were awarded in fiscal years 2008 and 2009; renewed during their option periods; and totaled \$161,145,898 and \$49,328,510, respectively, through fiscal year 2013.

For the two contracts audited, the Department generally monitored vendor performance and properly processed payments for those facilities. In addition, the Department developed tools, such as on-site review checklists and monthly desk reviews, to monitor compliance with the facility operational requirements and treatment program requirements. However, it should strengthen those processes to ensure that (1) its monitoring reviews adequately address all contract requirements, including those from contract modifications; (2) it performs scheduled reviews; and (3) it reports all identified noncompliance to ensure that contractors meet the operational and performance requirements of the contracts. Specifically:

- The Department should align its monitoring tools for operational compliance reviews, such as on-site compliance checklists, with the contract requirements for the East Texas Facility and the Lockhart Program and use the results of those compliance reviews to hold contractors accountable for meeting contract terms. The Department's on-site contract monitors also should verify self-reported information from the contractors during their compliance reviews.

#### **Contract Management Framework**

- **Plan** - Identify contracting objectives and contracting strategy.
- **Procurement** - Fairly and objectively select the most qualified contractor(s).
- **Contract Formation/Rate/Price Establishment** - Ensure that the contract contains provisions that hold the contractor(s) accountable for producing desired results, including all relevant terms and conditions, and establish processes that are cost-effective and aligned with the cost of providing goods and services.
- **Contract Oversight** - Monitor and enforce the terms of the contract.

Source: *State of Texas Contract Management Guide*.

- The Department should review all treatment program requirements, report all instances of noncompliance to the contractor, periodically verify self-reported performance measure<sup>1</sup> information from the contractors, and enforce payment sanctions when applicable.

Auditors also reviewed the Department's oversight of the statewide fuel contract totaling \$13.4 million in fiscal year 2012 and \$13.0 million in fiscal year 2013. The Department sufficiently coordinated efforts with the Office of the Comptroller of Public Accounts' Texas Procurement and Support Services (TPASS) division to issue blanket purchase orders<sup>2</sup> for that contract. In addition, it conducted oversight of the contract in accordance with applicable statutes and rules and its policies and procedures.

Auditors communicated a less significant issue related to contract procurement to the Department separately in writing.

## ***Summary of Management's Response***

The Department concurred with the recommendations in this report. The Department's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were:

- To determine whether the Department procured selected contracts for goods and services in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts requirements, and state entity policies and procedures to help ensure that the State's interests were protected.
- To determine whether the Department managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts requirements, and state entity policies and procedures.

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<sup>1</sup> This report refers to performance measures that are listed in the contracts audited. Those are not the same as the Department's key performance measures that it reports to the Automated Budget and Evaluation System of Texas (ABEST).

<sup>2</sup> The Office of the Comptroller of Public Accounts' Texas Procurement and Support Services division planned, formed, and procured the statewide fuel contract. The Department was responsible for the oversight of the blanket purchase orders. Auditors did not audit TPASS's planning, forming, and procuring of the statewide fuel contract.

The scope of this audit covered the Department's active contracts and blanket purchase orders of more than \$1.0 million in fiscal year 2012 and fiscal year 2013. Auditors selected two private prison contracts and a procurement of fuel services made under a statewide contract.

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Department staff; reviewing statutes, rules, Office of the Comptroller of Public Accounts requirements, and Department policies and procedures; and performing selected tests and other procedures.

Auditors used expenditure information in the Uniform Statewide Accounting System and the Department's LONESTARS financial system and performed analysis to determine the completeness of that data. Auditors did not perform any additional information technology work at the Department.

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# Detailed Results

## Chapter 1

### ***The Department Planned, Procured, and Formed the Two Private Facility Contracts Audited According to Applicable Statutes and Its Policies and Procedures***

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The Department of Criminal Justice (Department) planned, procured, and formed a \$31.3 million contract for the East Texas Treatment Facility (East Texas Facility) in January 2008 and a \$27.8 million contract for the Lockhart Work Program (Lockhart Program) in October 2008 generally in accordance with applicable statutes, rules, and the Department's policies and procedures.

In addition, the Department's contract managers and procurement staff complied with certification and training requirements. The Department's purchasers and contract specialists involved in contracting and procurement in fiscal years 2012 and 2013 had the required training and certifications for their positions. Certification and training requirements for the Department's purchasers and contract managers vary based on the time the purchasers and managers have held their positions. The Department's contract managers for both private facility contracts audited had the required certifications and training to manage the contracts based on their hire dates.

The *State of Texas Contract Management Guide*<sup>3</sup> required several planning and procurement steps to help state agencies be more successful in their contracting processes. The Department has implemented policies and procedures to align with those steps. While the Department followed most of those steps, it should ensure that its contract management and procurement staff follow all review processes as required.

The Department generally planned the two private facility contracts audited according to applicable statutes and its policies and procedures.

Although the Department did not document its needs assessment process, it had a process in place to identify its contracting needs for its request for proposals (RFP) by using similar, previously issued RFPs. The Department also worked with the Legislative Budget Board to identify projected offender populations on an ongoing basis. In addition, the Department was appropriated diversion funds during the 80th legislative session for treatment programs.

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<sup>3</sup> *State of Texas Contract Management Guide*, Version 1.10.

Number of Beds (Capacity) - Initial Contract Year	
<b>East Texas Facility:</b>	
▪ Substance Abuse Felony Punishment Facility	812
▪ Driving While Intoxicated (DWI) Recovery Program	500
▪ Intermediate Sanction Facility	812
<b>Lockhart Program:</b>	
▪ Male	500
▪ Female	500
Source: The Department's cost estimates.	

As a result of those activities, the Department incorporated the need for offender beds and various treatment programs into its RFPs for both contracts audited (see text box for the contracts' initial bed capacity). Specifically:

- The Department involved key personnel in drafting the RFPs and identified subcontracting opportunities for Historically Underutilized Businesses (HUBs).
- The Department identified and documented the statutory regulations and agency rules in the RFPs necessary for both contractors to operate the private facilities as recommended by the *State of Texas Contract Management Guide*.<sup>4</sup>

However, auditors identified some weaknesses in the Department's process for issuing the RFP for the East Texas Facility. Specifically:

- The Department did not approve the contract requisition and cost estimate for the East Texas Facility contract until after the Department issued the RFP. The Department's policies and procedures require that a contract requisition, which serves as the purchase request for private facilities, should be completed prior to issuing an RFP. The contract requisition and attached cost estimate for the East Texas Facility was dated January 2008; however, the Department issued the RFP in July 2007. That increases the risk that management will not review the purchase and associated costs for appropriateness prior to developing and issuing the RFP.
- The Department did not retain documentation of all its reviews of the East Texas Facility RFP. The Department's Rehabilitation Programs Division reviewed the RFP for one of the treatment programs, but it did not review the RFP for the other two treatment programs for which it contracted at the facility. In addition, the Department lacked documentation showing that reviews had been performed by other Department divisions for whom the contractor would provide services, including the Correctional Institutions Division, Parole Division, and Community Justice Assistance Division.

The Department followed the required processes to procure the two private facility contracts audited.

The Department complied with applicable state laws, rules, and its policies and procedures while procuring and awarding the two private facility contracts audited.

<sup>4</sup> *State of Texas Contract Management Guide*, Versions 1.4 and 1.5.

Specifically, for both contracts audited:

- The Department solicited bidders in accordance with state laws and rules.
- The Department conducted its bid opening process in accordance with applicable state laws and rules.
- The Department evaluated the bids in compliance with applicable state laws and rules.

The Department's policies and procedures require all employees who participate in an RFP process to sign a nepotism form as required by state laws and rules. All but one of the employees who participated in the RFPs for the two contracts audited signed the form. For the East Texas Facility contract, the Department's HUB representative, who participated in the review of the HUB subcontracting plan as part of the RFP review process, did not sign a nepotism form. The absence of a signed disclosure statement regarding nepotism increases the risk that purchasing employees will be unaware of the related requirements and that potential inappropriate favoritism may be shown to relatives or others with close relationships.

The Department formed the two private facility contracts audited in accordance with applicable state rules.

The Department included all essential contract terms listed in the *State of Texas Contract Management Guide* in the two private facility contracts audited. Those terms serve to protect the State's interests when entering into contracts.

## Recommendations

The Department should:

- Follow its review processes and maintain documentation of all reviews.
- Ensure that all employees who participate in an RFP process sign the required nepotism form.

## Management's Response

*Concur.*

*The Director of Contracts and Procurement Department will ensure the review process is followed and documentation of all reviews is maintained, to include signed nepotism forms from all employees who participated in the RFP process.*

*Completed: January 30, 2014.*

## ***While the Department Generally Monitored the Operations, Treatment Programs, and Payments Related to Both Private Facility Contracts Audited, It Should Improve Its Oversight of the Contractors' Compliance with Requirements***

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The Department generally monitored vendor performance for both private facility contracts audited and properly processed payments for those facilities. In addition, the Department developed tools, such as on-site review checklists and monthly desk reviews, to monitor compliance with the facility operational requirements and treatment program requirements. However, it should strengthen those processes to ensure that (1) its monitoring reviews adequately address all contract requirements, including those from contract modifications; (2) it performs scheduled reviews; and (3) it reports all identified noncompliance to ensure that contractors meet the operational and performance requirements of the contracts.

### Chapter 2-A

#### **The Department Had Processes to Monitor Payments and Operations of Both Private Facility Contracts Audited; However, It Should Strengthen Those Processes to Hold Contractors Accountable for Noncompliance**

The Department's Private Facility Contract Monitoring/Oversight Division (Private Facility Division) reviews contract payments and monitors the operations of the State's private facility contracts. The operational reviews consist of on-site compliance reviews, desk reviews, and unannounced site visits.

**Payments.** The Department's payments for both private facility contracts audited were supported and generally made in a timely manner in fiscal years 2012 and 2013. Auditors tested 29 payments to the contractors and determined that 24 (83 percent) were made within the time frames required by the Prompt Payment Act. The remaining 5 payments were made between 1 and 25 days late; however, the Department reported that it was exempt from paying interest because the invoices were incomplete and/or contained billing disputes.

**On-site Compliance Reviews.** The Private Facility Division's on-site contract monitors conducted compliance reviews of the operations of the two private facilities; however, the checklists used for the on-site compliance reviews did not clearly identify which contract requirements have associated payment withholdings for noncompliance. (See Appendix 2 for more information about compliance standards for the East Texas Facility and Lockhart Program contracts.) As a result, the Department did not use the results of the on-site compliance reviews to assess contractor payment withholdings.

**Compliance Desk Reviews.** The Department's Private Facility Division has a monthly process for identifying areas of contractors' noncompliance with operational compliance standards; however, for certain compliance standards the Department relied entirely on the contractors' self-reported information, such as staffing reports, to determine compliance with those standards for the two contracts audited. For example, the Private Facility Division received and reviewed monthly vacancy reports from the contractors to determine the contractors' compliance with requirements to staff all positions with fully qualified employees. The Private Facility Division also received and reviewed monthly education reports from the contractors to determine the contractors' compliance with requirements to provide educational services by a qualified substitute in the absence of a teacher. Neither the Department's on-site contract monitors nor other Department staff validated the self-reported information against other independent sources, such as the contractors' human resources systems. Without validating the information, the Department lacks assurance that it receives accurate information from the contractor. As a result, it may not correctly determine contractors' compliance or impose the appropriate monetary sanctions for noncompliance.

**Unannounced Site Visits.** The Department conducted monthly unannounced visits in fiscal years 2012 and 2013 as required; however, it did not track the due dates for the contractors' responses to any findings from those visits. Both private facility contracts audited require the contractor to submit a written response to the Department detailing the corrective action taken to address findings within 20 days or be subject to a related payment withholding for noncompliance. As a result, the Department did not ensure that the contractors submitted responses within 20 days as required.

## Recommendations

The Department should:

- Align its operational monitoring checklists with contract requirements.
- Follow existing monitoring procedures, carry forward all issues of noncompliance, and enforce payment sanctions when applicable.
- Develop and implement a process to periodically review self-reported information from contractors in coordination with on-site compliance reviews.
- Develop and implement a process to track due dates for contractor responses to findings noted in its unannounced visit reports and hold contractors accountable for responding within required time frames.

## Management's Response

*Concur. The TDCJ – Private Facilities Contract Monitoring / Oversight Division (PFCM/OD) Director will ensure the recommendations are completed.*

- *The PFCM/OD Director will cross reference the contract requirements to the operational monitoring checklists to ensure all requirements of the contract are covered in the reviews for compliance. Target Date: May 1, 2014.*
- *The PFCM/OD Director will continue to follow monitoring procedures and will create a peer review process to ensure that the documentation tracks to the report issued. Policies and procedures were revised, effective November 26, 2013, to ensure payment sanctions resulting from compliance issues are processed when appropriate. Target Date: April 1, 2014.*
- *The PFCM/OD Director will incorporate a verification process into the on-site compliance reviews to periodically confirm reports submitted by the contractor. Also, certain self-reported monthly documentation that is required by the contracts for secure facilities will be verified by the on-site contract monitor. Target Date: April 1, 2014.*
- *The PFCM/OD Director will incorporate the tracking of due dates for contractor responses regarding unannounced visits as is currently being performed for all other compliance reviews. Appropriate actions will be taken to ensure the contractor is responsive. Target Date: March 1, 2014.*

## The Department Monitored the Treatment Programs at the East Texas Facility; However, It Should Strengthen Its Processes to Ensure That It Reviews All Treatment Program Requirements, Carries Forward All Noncompliance Issues, and Verifies Self-reported Information

### Treatment Programs at the East Texas Facility

- Substance Abuse Felony Punishment Facility (SAFPF) - An intensive, six-month therapeutic community program in which an offender is sentenced by a judge as a condition of community supervision or as a modification of parole/community supervision.
- Driving While Intoxicated (DWI) Recovery Program - A program for offenders charged with DWI-related offenses that meet the criteria established by the Department.
- Intermediate Sanction Facility (ISF) - A secure community residential facility with associated programs within the state of Texas for the detention, training, education, rehabilitation, and reformation of persons released on parole or mandatory supervision.

Source: The Department's contract for the East Texas Treatment Facility.

The Private Facility Division and Rehabilitation Programs Division (Rehabilitation Division) coordinated efforts to monitor the East Texas Facility's treatment programs in accordance with contract requirements. Monitoring included conducting periodic on-site performance reviews and quarterly desk reviews.

### On-site Performance Reviews

The Department designed a schedule to alternate reviews of the treatment programs performed by its Private Facility Division and Rehabilitation Division so that each program would be reviewed annually. The treatment programs at the East Texas Facility include Substance Abuse Felony Punishment Facility (SAFPF), Driving While Intoxicated (DWI) Recovery Program, and Intermediate Sanction Facility (ISF). (See text box for a description of the treatment programs at the East Texas Facility.) Although the Department developed a review schedule, it did not consistently complete or perform those reviews for the contract period that auditors reviewed (fiscal year 2009 through fiscal year 2013). In addition, the review tools that the Rehabilitation Division used did not clearly identify which contract requirements have associated payment withholdings for noncompliance. Specifically:

- The Department did not close out a fiscal year 2010 performance review report related to training and staffing that the Private Facility Division's program monitors completed. As a result, the Department did not ensure that the contractor resolved multiple issues identified in that report and did not enforce payment withholdings resulting from identified noncompliance. For example, the review identified multiple contract employees who did not receive required training.<sup>5</sup> Auditors were unable to quantify the amount of payments that should have been withheld because the Department was unable to locate the detailed supporting documentation needed to calculate the adjustments.
- The Department did not conduct on-site performance reviews for the SAFPf and DWI Recovery programs in fiscal year 2011. In addition, it

<sup>5</sup> The payment sanction for noncompliance with required training is calculated based on an employee's average daily salary multiplied by the amount of time between the employee's 91st day of employment and the date on which the training was provided.

reviewed only three of the six performance measures<sup>6</sup> for the ISF program in that same fiscal year. (See Appendix 3 for a list of the contract performance measures.)

- While the Department conducted on-site performance reviews in fiscal years 2009 through 2013, it did not always include identified instances of noncompliance in its reports to the contractor. For example, 8 (22 percent) of 36 monitoring checklists that auditors reviewed identified noncompliance with contract requirements; however, the results were not included in the report to the contractor and the Department did not have any documentation showing that the identified noncompliance had been resolved. As a result, the contractor may not be correcting all issues that are not in compliance with contract requirements.
- The Department did not apply payment withholdings for the noncompliance identified during on-site performance reviews as specified by the contract. For example, the performance reviews from both fiscal year 2012 and fiscal year 2013 identified employees who did not receive required training. However, the Department did not impose payment withholdings as specified by the contract. After auditors communicated that issue to the Department, the Department determined that those payment withholdings should have been at least \$10,192 for fiscal year 2012 and \$53,649 for fiscal year 2013. As noted above, issues of noncompliance were not always included in the reports to the contractors; because of that, there may have been additional payment withholdings for other instances of noncompliance in fiscal years 2012 and 2013. The Department also did not incorporate in its on-site performance reviews two new performance measure requirements that resulted from contract modifications for the East Texas Facility's SAFPF and DWI Recovery programs. The two performance measures were designed to help ensure contractor compliance with (1) a SAFPF special needs caseload requirement that there be 16 or fewer special needs offenders per counselor and (2) a DWI Recovery Program requirement that a copy of the comprehensive assessment plan be provided to the parole officer after completion of the program. Both performance measures have associated payment withholdings for noncompliance.
- The Rehabilitation Division's monitoring checklists were broadly designed to assess the quality of treatment programs. However, the checklists did not clearly identify which contract requirements have associated payment withholdings for contractor noncompliance. As a result, the Department did not use the results of the Rehabilitation Division's reviews to assess contractor payment withholdings for fiscal years 2011 through 2013.

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<sup>6</sup> This report refers to performance measures that are listed in the contracts audited. These are not the same as the Department's key performance measures that it reports to the Automated Budget and Evaluation System of Texas (ABEST).

- The Private Facility Division and Rehabilitation Division did not track the due dates for contractors' responses to any findings from the performance reviews. As a result, the Department did not ensure that the contractors submitted their written responses detailing the corrective action taken within 20 days as required in both contracts audited.

By not consistently performing required reviews or carrying forward issues of noncompliance in its reports to the contractor, the Department places itself at risk of being unable to hold the contractor accountable for not meeting contract requirements.

#### Desk Reviews of Self-reported Information

The Department generally conducted quarterly desk reviews of self-reported performance measures for the SAFPF and DWI Recovery programs at the East Texas Facility; however, auditors identified the following issues:

- The Department did not conduct desk reviews of the two new performance measures that resulted from contract modifications discussed above. In addition, it did not conduct reviews of any performance measures for the SAFPF and DWI Recovery programs for the first three quarters of fiscal year 2013. According to Department staff, the Rehabilitation Division was responsible for reviewing the quarterly reports beginning in fiscal year 2013; however, the Rehabilitation Division reported that it did not start receiving the reports until the fourth quarter of fiscal year 2013. The Private Facility Division had performed the reviews prior to fiscal year 2013.
- The Department did not verify self-reported information from the contractor or reconcile that self-reported information to the results of the Department's on-site performance reviews.
- The Department did not maintain support for the reviews it conducted in fiscal years 2008 through 2010; therefore, auditors were unable to validate the payment withholdings that should have been imposed during that time period. The Department assessed \$1,465 in payment withholdings for noncompliance identified in the quarterly desk reviews during fiscal years 2011 through 2012. Contract-related documents and correspondence are required to be maintained while a contract is active plus four years, in accordance with the State of Texas Records Retention Schedule.

## Recommendations

The Department should:

- Consistently review all treatment programs at the East Texas Facility in each fiscal year.
- Close out all reports, carry forward all issues of noncompliance, and enforce payment withholdings when applicable.
- Develop and implement a process to track due dates for contractor responses to findings noted in its performance reviews and hold contractors accountable for responding within required time frames.
- Coordinate with the responsible divisions to ensure adequate coverage over monitoring.
- Ensure that checklists include all significant contract requirements, including those resulting from contract modifications, and applicable payment withholdings.
- Develop and implement a process to periodically review self-reported performance data and reconcile self-reported information to the results of the Department's on-site performance reviews.
- Maintain supporting documentation for all contractual documents within required records retention periods.

## Management's Response

*Concur. The TDCJ – PFCM/OD Director will coordinate with TDCJ – Rehabilitation Programs Division to ensure the recommendations are completed.*

- *The PFCM/OD Director will continue coordinating the completion of a comprehensive review schedule every fiscal year to rotate the programmatic reviews for all substance abuse in-prison programs. To ensure proper coverage and consistency, the divisions will meet semi-annually to share status reports on the programs monitored. Target Date: March 1, 2014.*
- *The PFCM/OD Director will continue to follow monitoring procedures and will create a peer review process to ensure that the documentation tracks to the report issued. Policies and procedures were revised, effective November 26, 2013, to ensure payment sanctions resulting from compliance issues are processed when appropriate. Target Date: May 1, 2014.*

- *The PFCM/OD Director will establish a process to track due dates for contractor responses to performance reviews. Appropriate actions will be taken to ensure the contractor is responsive. Target Date: April 1, 2014.*
- *To ensure proper coverage and consistency in monitoring the contracts, the PFCM/OD Director will coordinate a semi-annual meeting to share status reports on the programs monitored. Target Date: March 1, 2014.*
- *The PFCM/OD Director will cross reference the contract requirements to the monitoring checklists to ensure all requirements of the contract are covered in the reviews for compliance and the items that relate to payment withholdings are appropriately addressed. Target Date: May 1, 2014.*
- *The PFCM/OD Director will incorporate a verification process into the on-site compliance reviews to periodically confirm quarterly reports submitted by the contractor. Target Date: May 1, 2014.*
- *The PFCM/OD Director will determine the appropriate retention periods for contracts, contract compliance related documents, and contract payment documentation. The division responsible for maintaining these records will be outlined in policy. Target Date: April 1, 2014.*

## ***The Department Generally Provided Oversight of the Fuel Contract Audited***

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The Department sufficiently coordinated efforts with the Office of the Comptroller of Public Accounts' Texas Procurement and Support Services (TPASS) division to issue blanket purchase orders<sup>7</sup> for the statewide fuel contract audited. The Department followed its processes and applicable state requirements for the oversight of the purchase orders for the fuel contract that totaled \$13.4 million in fiscal year 2012 and \$13.0 million in fiscal year 2013.

The Department conducted reviews of payments to the fuel contractor and generally ensured that its fuel payments were paid within the required time frames. The Department also monitored its fuel depots for compliance with contract requirements. Specifically:

- All 30 fuel purchase payments tested for fiscal years 2012 and 2013 were supported, properly monitored, and generally made in a timely manner. Twenty-six (87 percent) of the 30 payments were made within the time frames required by the Prompt Payment Act. The remaining four payments were made within one to four days after the required time frame; however, the Department reported that it paid interest on only three of the late payments and that it was exempt from paying interest on the fourth payment because the invoice for that payment did not have the required purchase order number. All 30 payments were for fuel that the Department determined was of acceptable quality.
- The Department conducted on-site monitoring visits at its fuel depots as part of the operational reviews that occur every three years. The Department conducted on-site monitoring visits for 28 (97 percent) of the 29 fuel depots from fiscal year 2011 through fiscal year 2013. The Department did not include one fuel depot in its on-site monitoring schedule for that time period. Auditors tested 5 of the 28 fuel depots scheduled for on-site monitoring visits and determined that the Department adequately monitored the fuel inventory and usage, fuel calculations, and fuel delivery at all 5 of those depots.

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<sup>7</sup> The Office of the Comptroller of Public Accounts' Texas Procurement and Support Services (TPASS) division planned, formed, and procured the statewide fuel contract. The Department was responsible for the oversight of the blanket purchase orders. Auditors did not audit TPASS's planning, forming, and procuring of the statewide fuel contract.

## Recommendations

The Department should:

- Process payments within the time frames required by the Prompt Payment Act.
- Perform a full monitoring visit at all fuel depots as part of its three-year monitoring schedule.

## Management's Response

*Concur.*

- *The Director of the Manufacturing and Logistics Division and the Director for Accounting and Business Services will coordinate to ensure payments are processed within the required timeframes.*
- *The Director of the Administrative Review and Risk Management Division will ensure all fuel depots are scheduled to receive a full monitoring visit every three-years.*

*Completed: January 31, 2014*

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were:

- To determine whether the Department of Criminal Justice (Department) procured selected contracts for goods and services in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts requirements, and state entity policies and procedures to help ensure that the State's interests were protected.
- To determine whether the Department managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts requirements, and state entity policies and procedures.

### **Scope**

The scope of this audit covered the Department's active contracts and blanket purchase orders of more than \$1.0 million in fiscal year 2012 and fiscal year 2013. Auditors selected three contracts: two private prison contracts and a bulk fuel contract made under a statewide contract. The audit concentrated on all phases (planning, procurement, contract formation, and contract oversight) of the contracting process for the two private prison contracts and oversight of the bulk fuel contract.<sup>8</sup>

### **Methodology**

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Department staff; reviewing statutes, rules, Office of the Comptroller of Public Accounts requirements, and Department policies and procedures; and performing selected tests and other procedures. The selection methodology for the contracts was based on contract dollar amount, type of contract, recent audit coverage, and vendor performance information. For private facilities, auditors also considered the length of the contract.

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<sup>8</sup> The Office of the Comptroller of Public Accounts' Texas Procurement and Support Services division planned, formed, and procured the statewide fuel contract. The Department was responsible for the oversight of the blanket purchase orders. Auditors did not audit TPASS's planning, forming, and procuring of the statewide fuel contract.

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) and the Department's LONESTARS financial system and performed analysis to determine the completeness of that data. Auditors did not perform any additional information technology work at the Department.

Sampling methodology:

Auditors selected nonstatistical samples primarily through random selection designed to be representative of the population. In those cases, results may be extrapolated to the population but the accuracy of the extrapolation cannot be measured. In some cases, auditors used professional judgment to select additional items for testing. Those sample items generally are not representative of the population and, therefore, it would not be appropriate to extrapolate those results to the population.

Information collected and reviewed included the following:

- Contracts with the East Texas Treatment Facility and the Lockhart Work Program and modifications.
- Statewide fuel contract with Truman Arnold Companies.
- Department policies and procedures.
- Department procurement files, including planning documentation, purchase orders, approvals, invoices, and other supporting documentation.
- Department operation, program, and desk review reports for the private facilities, including supporting documentation.
- Department fuel inventory reports and supporting records.
- Department personnel training and certification records, nepotism forms, and confidentiality agreement forms.
- Department contract expenditure data from the Department's internal financial system (LONESTARS) and USAS.
- Emails and other documentation that supported information provided by Department employees during interviews.

Procedures and tests conducted included the following:

- Interviewed employees at the Department and the Office of the Comptroller of Public Accounts' Texas Procurement and Support Services (TPASS) division.

- Tested whether Department purchasing staff met the training and certification requirements outlined in the *State of Texas Procurement Manual*.
- Tested whether the Department followed applicable guidelines in the *State of Texas Contract Management Guide* and the *State of Texas Procurement Manual* when planning for the private facility contracts audited.
- Reviewed contracts to determine whether they included essential contract terms listed in the *State of Texas Contract Management Guide*, as applicable.
- Reviewed contracts and modifications for appropriate authorizations.
- Reviewed contract payments for appropriate support and approvals.
- Reviewed the Department's monitoring activities, including its checklists and the results of the Department's on-site and desk reviews of the private facilities audited.
- Reviewed the Department's monitoring activities for a judgmental sample of five fuel depots and the supporting records.

Criteria used included the following:

- Texas Government Code, Chapters 2151, 2155-2158, 2161, 2251, 2254, 2261, 2262, and 2263.
- Title 34, Texas Administrative Code, Chapter 20.
- *State of Texas Contract Management Guide*, Versions 1.4, 1.5, 1.9, and 1.10.
- *State of Texas Procurement Manual*, version released in 2012 and version in effect prior to 2012.
- Department policies and procedures.
- State of Texas Records Retention Schedule.

## Project Information

Audit fieldwork was conducted from August 2013 through December 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Jennifer Wiederhold, CGAP (Project Manager)
- Stacey Williams, CGAP (Assistant Project Manager)
- Joey Fredrick, MAcy
- Lauren Godfrey, CIA, CGAP
- Scott Labbe
- Eric Ladejo, MPA
- Bianca F. Pineda
- Jeannette Quiñonez, CPA
- Sherry Sewell, CGAP
- Julia Youssefnia, CPA, MPA
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- James Timberlake, CIA (Audit Manager)

## Private Facility Compliance Standards

Table 1 lists the compliance standards applicable to the Department of Criminal Justice's (Department) private facility contracts with the East Texas Treatment Facility (East Texas Facility) and Lockhart Work Program (Lockhart Program). The East Texas Facility includes three treatment programs: Substance Abuse Felony Punishment Facility (SAFPF), Driving While Intoxicated (DWI) Recovery Program, and Intermediate Sanction Facility (ISF). Each of the compliance standards lists payment withholdings for noncompliance.

Table 1

Compliance Standards in the Private Facility Contracts Audited with the East Texas Facility and Lockhart Program					
Compliance Standard	Compliance Standard Applicability				Payment Withholding for Noncompliance
	Lockhart Program	East Texas ISF	East Texas SAFP	East Texas DWI	
Contractor shall accurately and completely report all Uses of Force, in accordance with the Department's Use of Force Plan.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$20 for every 5 errors or omissions above the acceptable 5 errors or omissions.</li> <li>Withhold payment by \$35 for each day the report is not accurate and complete.</li> </ul>
Contractor shall submit all Uses of Force within 15 days of incident occurrence in accordance with Department policy.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold by \$35 for every day past the required 15 days.</li> </ul>
Contractor shall make the initial notification to the Emergency Action Center (EAC) and appropriate Department staff (i.e., contract monitor) of all incidents within three hours of the incident in accordance with Department policy.	No	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$100 for every 30-minute interval beyond the acceptable 3 hours (with a maximum of 6 intervals). Any notification received after this time will result in a reduction of an additional \$150.</li> </ul>
Contractor shall send a preliminary written report to the EAC and appropriate Department staff (i.e., director of operations monitoring section, regional contract monitor supervisor, contract monitor) within three hours following the initial notification of the incident.	No	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$100 for every 30-minute interval beyond the acceptable 3 hours (with a maximum of 6 intervals). Any notification received after this time will result in a reduction of an additional \$150.</li> </ul>
Contractor shall accurately and completely report all Administrative Review of Incident Reports.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$20 for every 5 errors or omissions above the acceptable 5 errors or omissions.</li> <li>Withhold payment by \$35 for each day the report is not accurate and complete.</li> </ul>
Contractor shall submit all Administrative Review of Incident Reports to the designated Department staff within 10 working days (Monday - Friday, excluding Texas state holidays as defined by the Legislature) of incident occurrence in accordance with Department policy.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$35 for every day past the acceptable 10 working days.</li> </ul>
Contractor shall process offender disciplinary cases in accordance with the Department's disciplinary policy to ensure that cases do not lapse.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$60 for every percentage above 1 percent.</li> </ul>

**Compliance Standards in the Private Facility Contracts Audited with the East Texas Facility and Lockhart Program**

Compliance Standard	Compliance Standard Applicability				Payment Withholding for Noncompliance
	Lockhart Program	East Texas ISF	East Texas SAFPF	East Texas DWI	
Contractor shall process all disciplinary cases to ensure a satisfactory completion ratio (good/bad) not to exceed a 90/10 ratio.	No	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$60 for every percentage above 10 percent.</li> </ul>
Contractor shall staff all positions with fully qualified employees, including special certification and licenses where applicable, as directed in the contract.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by an average daily salary for each calendar day a position is vacant in excess of 60 or 90 days as applicable when a vacancy exceeds the calendar day acceptable allowance for filling a position.</li> </ul>
Contractor shall follow all requirements in the contract, including conducting a background check prior to initial employment, the re-hiring of staff, conducting annual background checks, and an employee needing approval to return to work after being arrested, indicted, or charged with a criminal offense.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$50 per day.</li> </ul>
Contractor shall obtain from the Department, and maintain a copy in employee files, prior written approval to hire all upper-level management staff as directed in the contract.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by an average daily salary for each day the position was filled with a non-approved individual.</li> </ul>
Contractor shall maintain valid current insurance policies as directed in the contract.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$1,000 per calendar day for which mandated insurance coverage was not in effect. Facility has 20 days to cure before this becomes an Event of Default per the contract.</li> </ul>
Contractor shall achieve and/or maintain American Correctional Association (ACA) accreditation, to include the ACA Performance-Based Correctional Health Care Program, throughout the term of the contract as directed in the contract.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$500 for each calendar day that certification fails to be achieved and/or maintained throughout the contract. Facility has 20 days to cure before this becomes an Event of Default per the contract.</li> </ul>
In the absence of the teacher, educational services must continue to be provided by a qualified substitute as directed in the contract.	Yes	No	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by the average daily salary for an education position for each day that a class did not have a qualified substitute provide instruction.</li> </ul>
Contractor shall deploy staff to all security supervisor and security officer posts as directed in the contract and the Department's Staffing Plan.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Withhold payment by \$40 for a post not manned.</li> <li>Withhold payment by \$50 for a post not manned by a qualified, fully trained staff.</li> </ul>
Contractor shall submit a written response to the Department detailing the corrective action taken to address any items of noncompliance within 20 days of receiving written notice of the item from the Department. If any items of noncompliance are not verified as corrected by the Department's contract monitor, the contractor shall be notified in writing of the remaining item(s) of noncompliance and the contractor shall submit an immediate subsequent written response to the Department.	Yes	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>Department shall withhold payment for each day the response is past the acceptable number of days. This withholding shall range from \$195 per day to withholding the monthly payment, based on the decision of the director of the Department's Private Facility Contract Monitoring/Oversight Division.</li> </ul>

Compliance Standards in the Private Facility Contracts Audited with the East Texas Facility and Lockhart Program

Compliance Standard	Compliance Standard Applicability				Payment Withholding for Noncompliance
	Lockhart Program	East Texas ISF	East Texas SAFPF	East Texas DWI	
Contractor shall ensure that any offenders released from custody are eligible and approved for release in accordance with all applicable Department policies and procedures.	No	Yes	Yes	Yes	<ul style="list-style-type: none"> <li>▪ Withhold payment by \$5,000 for each erroneous release.</li> <li>▪ Withhold payment by \$500 for each calendar day the offender remains out of custody, at the discretion of the director of the Department's Private Facility Contract Monitoring/Oversight Division.</li> </ul>

## Performance Measures for the East Texas Treatment Facility

In the contract audited with the East Texas Treatment Facility, the Department of Criminal Justice (Department) established performance measures and related payment withholdings for the treatment programs offered at the facility to hold the contractor accountable for unacceptable performance. Table 2 lists the performance measures for the Substance Abuse Felony Punishment Facility, Driving While Intoxicated (DWI) Recovery Program, and Intermediate Sanction Facility at the East Texas Treatment Facility.

Table 2

Performance Measures in Contract Audited for the East Texas Treatment Facility	
Performance Measure	Payment Withholding for Noncompliance
<b>Substance Abuse Felony Punishment Facility</b>	
Offenders shall be provided, within the timeframes specified by the <i>Substance Abuse Treatment Operations Manual</i> , with an Individualized Treatment Plan that addresses their specific needs.	Payment will be withheld by Per Diem rate for each day for each offender without an Individualized Treatment Plan after the timeframe specified by the <i>Substance Abuse Treatment Operations Manual</i> .
Offenders shall have clinical progress notes documented on a weekly basis.	No payment withheld. Failure to comply with performance measure will be documented as poor contract performance.
An assessment is administered to each offender within the timeframes specified by the <i>Substance Abuse Treatment Operations Manual</i> .	Payment will be withheld by Per Diem rate for each day for each offender without an assessment after the timeframe specified by the <i>Substance Abuse Treatment Operations Manual</i> .
Contractor shall comply with <i>Substance Abuse Treatment Operations Manual</i> 's caseload requirement: 25 or less offenders per counselor.	Payment will be withheld by \$100 per caseload exceeding requirement.
Treatment staff shall receive initial training(s) as outlined in the Department of State Health Services' <i>Standards of Care and Counselor Licensure Guide</i> .	For each treatment staff employee that fails to complete initial required training within the first 90 days of employment, payment will be withheld by an amount equal to the average daily salary for each calendar day in excess of 90 days beginning on the 91st day.
Contractor shall staff all Counselor III positions with fully qualified employees, including special certifications and licenses.	Payment will be withheld by a daily rate based on the average daily salary for each calendar day the Counselor III position remains vacant in excess of 30 calendar days.
Contractor shall comply with the <i>Substance Abuse Treatment Operations Manual</i> 's special needs caseload requirement: 16 or less special needs offenders per counselor.	Payment will be withheld by \$100 per caseload exceeding requirement.
Offenders shall be provided with a Continuum of Care Plan 30 days prior to completion of the prison phase of the program.	Payment will be withheld by Per Diem rate for each day the offender's Continuum of Care Plan is not completed within 30 days of the offender's discharge date.
<b>Driving While Intoxicated (DWI) Recovery Program</b>	
Each Offender shall be assessed within three working days of admission into the DWI Recovery Program.	Payment will be withheld by Per Diem rate for each day for each offender not assessed within the appropriate timeframe.
Offenders shall be provided with an Individualized Comprehensive Treatment Plan that addresses their specific needs within five working days.	Payment will be withheld by Per Diem rate for each day for each offender without a Comprehensive Treatment Plan within the required timeframe.
Offenders shall have clinical progress notes documented on a weekly basis.	No payment withheld. Failure to comply with performance measure will be documented as poor contract performance.

**Performance Measures in Contract Audited for the East Texas Treatment Facility**

Performance Measure	Payment Withholding for Noncompliance
DWI Recovery Program group sessions and classes shall not exceed the limits stated in the Department's <i>DWI Recovery Program Operations Manual</i> .	Payment will be withheld by Per Diem rate for each offender in excess of the mandated group/class size limit.
DWI Intervention Program group sessions and classes shall not exceed the limits set by Department of State Health Services' requirements.	Payment will be withheld by Per Diem rate for each offender in excess of the mandated group/class size limit.
Contractor shall maintain a counselor-to-offender caseload ratio of 25 or less offenders to 1 counselor.	Payment will be reduced by \$100 per caseload exceeding requirement.
Treatment staff shall receive training in accordance with requirements outlined in the Department's <i>DWI Recovery Program Operations Manual</i> .	For each treatment staff employee that fails to complete training requirements set forth by the <i>DWI Recovery Program Operations Manual</i> , payment will be withheld by an amount equal to the employee's base salary (including fringe benefits) for each calendar day that training was not delivered.
Contractor shall ensure that a copy of the Comprehensive Assessment Plan is provided to the parole officer after completion of the DWI Recovery Program.	Payment will be withheld by Per Diem rate for each day for each offender who completed the DWI Recovery Program without a Comprehensive Assessment Plan provided to the parole officer.
Intermediate Sanction Facility	
Staff providing substance abuse treatment shall receive initial training as outlined in the Department of State Health Services' standards within the first 90 days of employment.	For each treatment staff employee that fails to complete initial required training within the first 90 days of employment, payment will be withheld by an average daily salary for each calendar day in excess of 90 days beginning on the 91st day.
Staff providing cognitive intervention programming shall obtain a certificate of training in a cognitive intervention program.	For each employee providing cognitive intervention programming that fails to complete required training within the first 90 days of employment, payment will be withheld by an average daily salary for each calendar day in excess of 90 days beginning on the 91st day.
Contractor shall comply with all licensure standards set forth by the Department of State Health Services and Department of Criminal Justice policies (including screening/intake forms and assessment/diagnostic needs).	Payment will be withheld by Per Diem rate for each day for each offender without an assessment after the specified timeframe.
Contractor shall comply with all licensure standards set forth by the Department of State Health Services and Department of Criminal Justice Policy (including individualized treatment plans).	Payment will be withheld by Per Diem rate for each day for each offender without an individualized treatment plan after the specified timeframe.
Contractor shall complete an offender evaluation prior to and upon conclusion of programming requirements.	Payment will be withheld by Per Diem rate for each day for each offender for whom an evaluation is not conducted as required.
Contractor shall document the offender's daily adjustment and/or progress notes weekly at a minimum.	No payment withheld. Failure to comply with performance measure will be documented as poor contract performance.

## Contractor Information

The Department of Criminal Justice (Department) contracted with Management & Training Corporation (MTC) to manage the East Texas Treatment Facility. MTC is headquartered in Centerville, Utah, and it operates a total of 24 correctional facilities in Arizona, California, Florida, Idaho, New Mexico, Ohio, Mississippi, and Texas. According to MTC, it employs more than 9,000 people. Figure 1 shows a screenshot of the MTC Web site's home page.

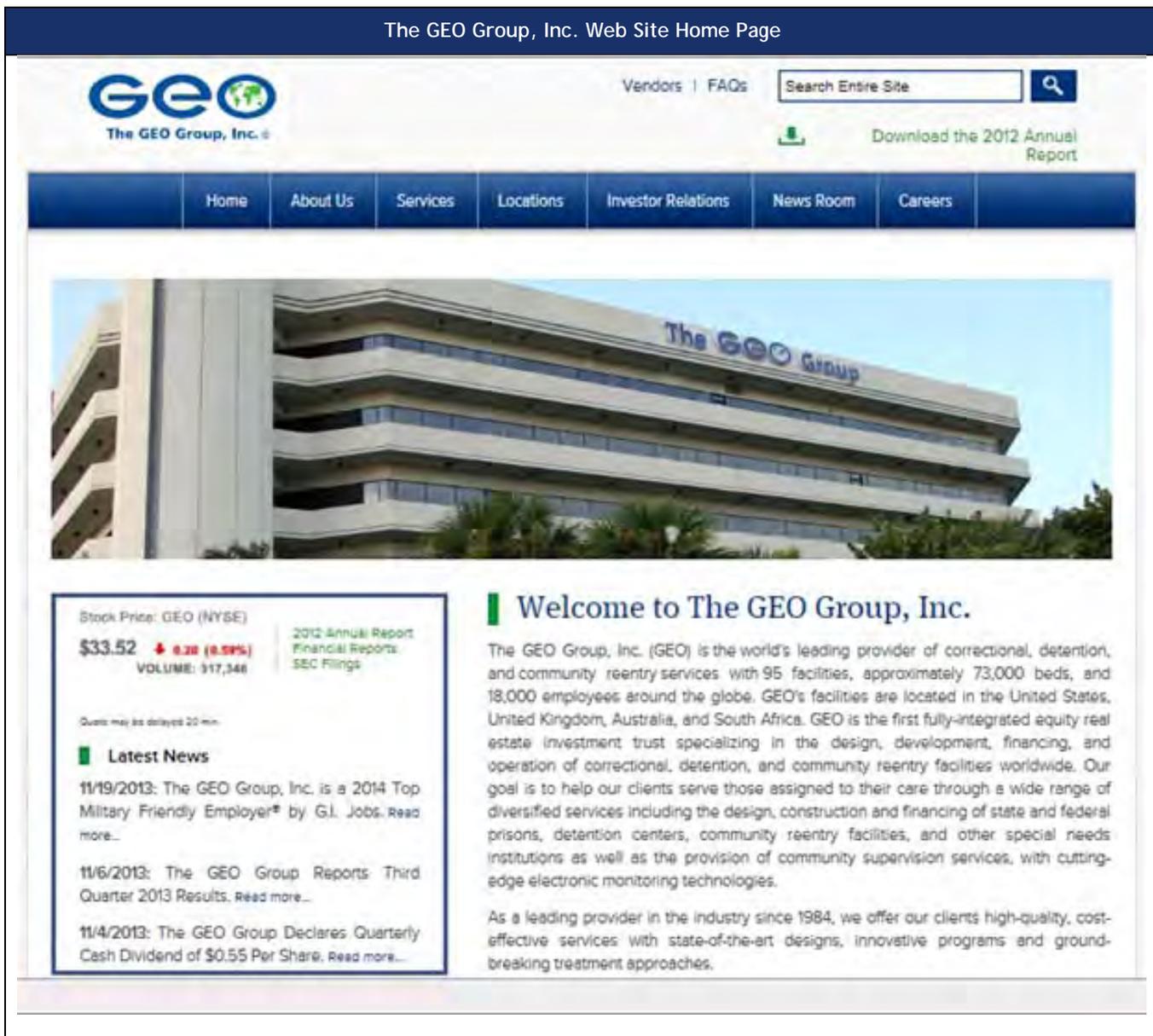
Figure 1



Source: MTC Web site at <http://www.mtctrains.com/>.

The Department contracted with The GEO Group, Inc. (GEO) to manage the Lockhart Work Program. According to GEO, it manages 95 facilities worldwide and employs more than 18,000 people. Figure 2 shows a screenshot from the GEO Web site's home page.

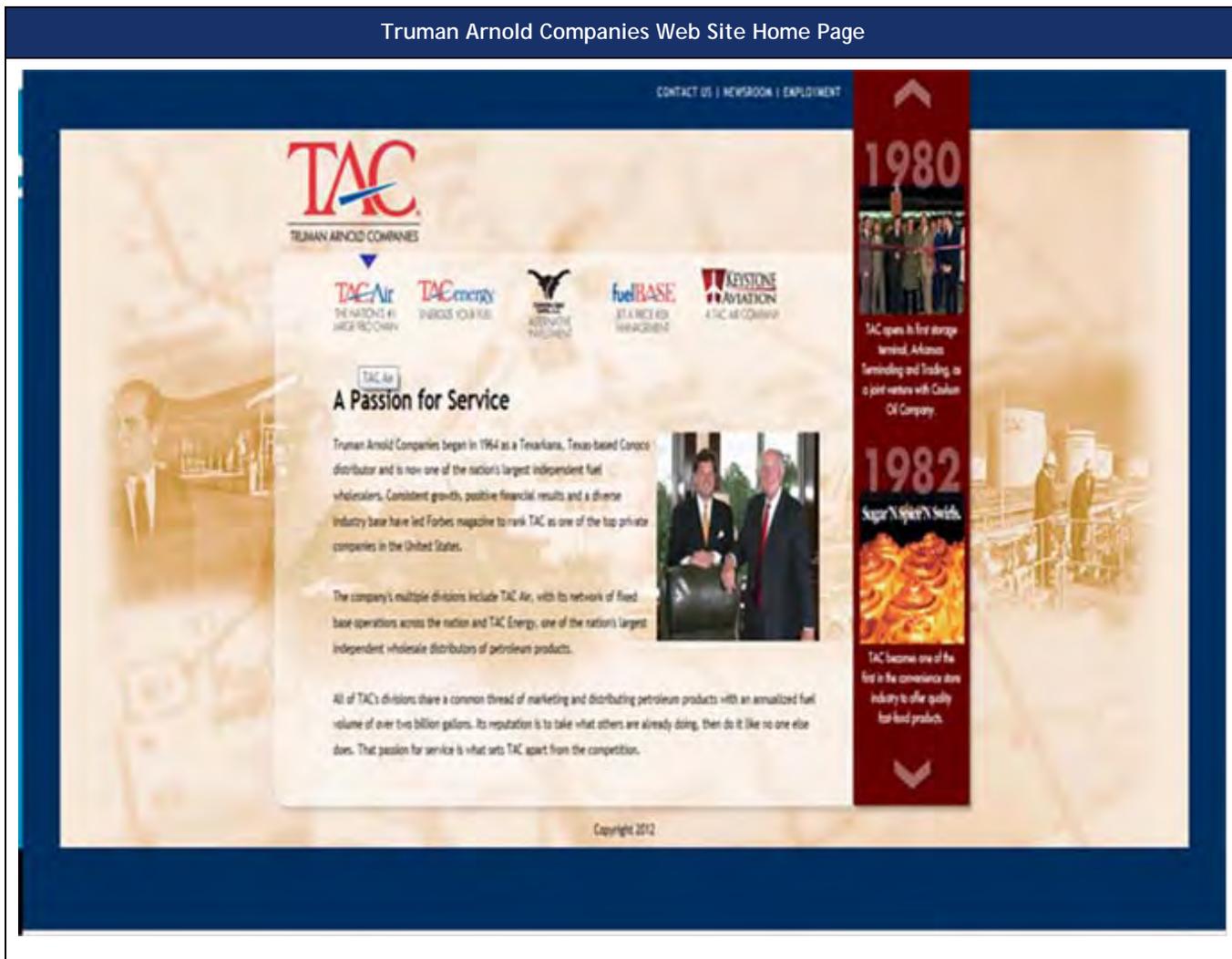
Figure 2



Source: The GEO Group, Inc. Web site at www.geogroup.com.

Truman Arnold Companies is the bulk fuel distributor for the Department. Truman Arnold Companies is headquartered in Texarkana, Texas. Figure 3 shows a screenshot from the company's Web site's home page.

Figure 3



Source: Truman Arnold Companies Web site at <http://www.trumanarnoldcompanies.com/>.

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