



An Audit Report on

Financial Processes at the Office of Court Administration

August 2017

Report No. 17-048



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Overall Conclusion

The Office of Court Administration's (Office) processes and controls over its revenue collection and contractor payments for the statewide electronic filing system contract were not adequate to ensure compliance with applicable statutes, rules, and Office policies and procedures (see text box for information about the statewide electronic filing system contract). Because of those inadequate processes, the Office has not determined whether the revenue collected by the contractor responsible for managing the system was transferred as required by the contract, has not paid the contractor in a timely manner, and owes interest to the contractor for late payments.

The Texas Indigent Defense Commission (Commission), which is administratively attached to the Office and manages indigent defense grants, had adequate processes and related controls over its indigent defense grant program to ensure that it administered associated financial transactions in accordance with applicable statutes, rules, and Office policies and procedures. However, the Office should improve its controls and processes over asset accounting.

Statewide Electronic Filing System Revenue Collection and Contractor Payments. The Office did not have adequate monitoring processes over (1) the collection of filing fees through the statewide electronic filing system (eFile Texas) and (2) the transfer of those fees to the courts. Since fiscal year 2014, the Statewide Electronic Filing Fund has experienced shortfalls when compared to the Office's projected revenue levels for the contract.

In addition, the Office did not process payments to the contractor within the required time lines. Office management asserted that it made payments late because funds were not always available in the Statewide Electronic Filing Fund to

Background Information

The Office of Court Administration (Office) operates under the direction and supervision of the Supreme Court of Texas and the Chief Justice.

The Office is responsible for providing technical assistance, training, staffing, and support to judicial branch boards, commissions, and courts. It is also responsible for collecting and publishing statistics, reports, and studies about the courts and the judiciary.

The Office was appropriated \$159,850,567 for the 2016-2017 biennium.

Sources: The Office's *Strategic Plan for 2015-2019* and the General Appropriations Act (84th Legislature).

Statewide Electronic Filing System

The Office entered into a contract for the operation of the statewide electronic filing system, which provides electronic filing of court documents for the judicial branch in the state of Texas. The contract cost will total \$144.1 million from November 8, 2012, through August 31, 2021.

The Office pays the contractor using fees collected for electronically filed court documents and court costs associated with those filings as established under Texas Government Code, Section 51.851, which generated an average of \$15.6 million per year for fiscal years 2014 through 2016.

Contract expenditures were \$17.6 million (21.7 percent) of the Office's \$81.2 million in total expenditures during fiscal year 2016.

Sources: The Office and the Office's statewide electronic filing system contract and amendments.

This audit was conducted in accordance with Texas Government Code, Sections 321.0131 and 321.0132.

For more information regarding this report, please contact Michael Clayton, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

make the payments within the time lines required by Texas Government Code, Chapter 2251 (the Prompt Payment Act). As of March 31, 2017, the Office had accrued \$531,492 in interest owed to the contractor on invoiced amounts that had not been paid within the required time lines.

Indigent Defense Grant Fund Awards and Expenditures. The Commission had adequate controls over **the Commission’s** management of indigent defense grants to ensure that it awarded grant funds to eligible recipients, recipients appropriately spent grant funds, and payments to grant recipients were supported and approved.

Asset Accounting. The Office should strengthen its processes to ensure that assets are accurately and completely recorded in its asset management system. The Office performed an informal reconciliation between the Uniform Statewide Accounting System and the Statewide Property Accounting System for fiscal year 2016. However, that reconciliation was not sufficient to ensure that the Office accurately recorded in the Statewide Property Accounting System all controlled assets purchased during fiscal year 2016.

Table 1 presents a summary of the findings in this report and the related issue rating. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

| Summary of Chapters and Related Issue Ratings | | |
|---|---|---------------------------|
| Chapter | Title | Issue Rating ^a |
| 1 | The Office Did Not Have Adequate Processes and Controls Over Statewide Electronic Filing System Revenue Collection and Contractor Payments | High |
| 2 | The Office Had Adequate Controls Over Its Awarding, Monitoring, and Payment of Indigent Defense Grant Funds to Ensure That Funds Were Spent in Accordance With Applicable Rules, Requirements, and Grant Provisions | Low |
| 3 | The Office Should Strengthen Its Controls Over Asset Accounting to Ensure That It Accurately Reports Controlled and Capital Assets to the Statewide Property Accounting System | Medium |
| <p>^a A chapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter is rated Low if the audit identified strengths that support the audited entity’s ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.</p> | | |

Auditors communicated other, less significant issues separately in writing to Office management.

Summary of Management's Response

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. The Office agreed with the findings and recommendations in Chapters 2 and 3 of this report. However, the Office did not agree with some of the findings and recommendations in Chapter 1.

After review and consideration of management's responses, the State Auditor's Office stands by its conclusions based on evidence presented and compiled during this audit. As discussed in Chapter 1, the Office's management is responsible for ensuring that adequate monitoring processes are in place and working effectively over contract functions, including when those functions are performed by third parties.

Audit Objective and Scope

The objective of this audit was to determine whether selected agencies in the General Appropriations Act have processes and related controls to help ensure that they administer financial transactions in accordance with applicable statutes, rules, and agency policies and procedures.

The scope of this audit covered the **Office's** activities related to indigent defense grant funds and asset accounting for fiscal year 2016 (September 1, 2015, through August 31, 2016) and the first five months of fiscal year 2017 (September 1, 2016, through January 31, 2017) and activities over its payment and revenue collection monitoring of the **Office's contract for the operation of the** statewide electronic filing system (known as eFile Texas) from the start of the contracting process through March 31, 2017.

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Detailed Results

Chapter 1

The Office Did Not Have Adequate Processes and Controls Over Statewide Electronic Filing System Revenue Collection and Contractor Payments

Chapter 1
Rating:
High¹

The Office of Court Administration (Office) did not have adequate monitoring processes over (1) the collection of filing fees through the statewide electronic filing system (eFile Texas) and (2) the transfer of those fees to the courts. Per the statewide electronic filing system contract, the contractor for eFile Texas makes available to courts a payment portal that allows filers to pay filing fees associated with court filings through eFile Texas, including electronic filing fees. The contractor has an agreement with a third-party payment portal processor, to collect all fees processed through the portal and transfer those fees to the various courts in accordance with the statewide electronic filing system contract's requirements.

However, the Office lacks processes to verify whether those filing fees collected through the payment portal² are transferred to the courts as required by the contract. For example, the Office did not (1) require the contractor that operates eFile Texas or the payment portal processor to provide sufficient data, such as a summary report, to allow the Office to verify that filing fees collected are transferred as required or (2) ensure that the contractor had adequate monitoring processes in place over the payment portal processor.

While the contractor has effectively subcontracted out the collection and transfer of the filing fees collected to a third-party payment processor, the Office's management retains responsibility to ensure that there are adequate processes in place to ensure that filing fees are appropriately collected and transferred to the various courts and to ensure that the process is operating effectively. *The State of Texas Contract Management Guide*, which the Office

¹ The risks related to the issues discussed in Chapter 1 are rated as High because they present risks or results that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

² As identified in Section 2.1 of the first contract amendment.

has elected to follow, requires agencies to monitor contractors, including ensuring that subcontracted activities are sufficiently monitored.

Electronic Filing Funds Process

According to the Office's statewide electronic filing system contract and statute, filing fees processed through the statewide electronic filing system (eFile Texas) should be transferred as follows:

- Filing fees processed through eFile Texas are collected through a payment portal, which connects to a third-party payment portal processor.
- The payment portal processor is required to transfer the funds collected through the payment portal of the statewide electronic filing system to the correct court in accordance with the court's agreement with the payment portal processor.
- The clerks of the courts must remit all electronic filing fees and court costs collected to the Office of the Comptroller of Public Accounts (Comptroller's Office) on a quarterly basis as required by Texas Government Code, Section 51.851.
- The Comptroller's Office is then required to allocate those funds to the Statewide Electronic Filing Fund.

Sources: Statewide electronic filing system contract and Texas Government Code, Section 51.851.

Auditors analyzed the electronic filing fees and court costs that the Office of the Comptroller of Public Accounts (Comptroller's Office) identified as being paid for the Statewide Electronic Filing Fund and confirmed that all of those funds were transferred from the Comptroller's Office to the Office during fiscal year 2016 (see text box for more information on the specific fees and court costs deposited in the Statewide Electronic Filing Fund). However, auditors could not determine whether the contractor collected and transferred all funds to the correct courts as required by the contract.

Since fiscal year 2014, the Statewide Electronic Filing Fund has experienced shortfalls when compared to the Office's projected revenue levels. Specifically, the total revenues deposited in the Statewide Electronic Filing Fund from September 1, 2013, through March 31, 2017, was \$57.0 million, which was \$4.0 million less than the \$61.0 million revenue estimated by the Office for that time period. Without processes to monitor revenue transactions associated with electronic filing fees, the Office's ability to identify and evaluate possible causes of revenue shortfalls in the Statewide Electronic Filing Fund is limited.

Additionally, the Office was unable to provide auditors with documentation regarding how it developed the revenue estimates it used when it planned, formed, and amended the statewide electronic filing system contract. The Office asserted that when it amended the contract (specifically, the second contract amendment, effective August 13, 2013), it performed an analysis to determine the estimated revenue to be generated and used to process payments. It used those revenue estimates in the development of the schedule of payments to the contractor, which was part of the contract amendment. However, while the Office was able to provide documentation supporting its determination of the schedule of payments, it was unable to provide detailed documentation of how it developed the revenue estimates.

Revenue deposited in the Statewide Electronic Filing Fund consists of electronic filing fees on civil cases and criminal court costs charged under Texas Government Code, Section 51.851. The payment portal processor initially collects all applicable filing fees, including electronic filing fees, associated with filings made through eFile Texas (see text box for more information about how electronic filing funds are transferred to the

Statewide Electronic Filing Fund). According to the Office's *Fiscal Year 2016 Annual Financial Report*, \$20.3 million in revenue was deposited in the Statewide Electronic Filing Fund during fiscal year 2016; that amount represented 26.1 percent of the Office's total revenues of \$77.9 million for that fiscal year.

As a result of the revenue shortfalls discussed above, the Office did not comply with requirements in Texas Government Code, Chapter 2251 (the

Prompt Payment Act), on payments it made to the contractor for the statewide electronic filing system contract. Office management asserted to auditors that it made payments late because funds were not always available in the Statewide Electronic Filing Fund to make the payments within the time lines required by the Prompt Payment Act. As of March 31, 2017, the contractor had invoiced the Office a total of \$60.7 million, in accordance with the contract's schedule of payments. That amount was \$3.7 million more than the total revenues deposited in the Statewide Electronic Filing Fund since that fund was established on September 1,

Electronic Filing Fees and Court Costs

Texas Government Code, Section 51.851, requires that:

- In addition to other fees authorized or required by law, an electronic filing fee be collected on certain civil actions or proceedings of (1) \$30 in the supreme court, a court of appeals, a district court, a county court, a statutory county court, or a statutory probate court and (2) \$10 in a justice court.
- In addition to other court costs, a person shall pay \$5 as a court cost on conviction of any criminal offense in a district court, county court, or statutory county court.

2013.

Table 2 shows (1) the annual revenues deposited in the Statewide Electronic Filing Fund, (2) the annual total schedule of contractor payments, and (3) the difference between the revenue deposits and scheduled payments for fiscal years 2014 through 2017 (as of March 31, 2017).

Table 2

| Annual Revenues and Scheduled Payments for the Statewide Electronic Filing System Contract | | | |
|--|--|-------------------------------|---------------|
| Fiscal Year | Revenues Deposited in the Statewide Electronic Filing Fund | Scheduled Contractor Payments | Difference |
| 2014 | \$11,102,567 | \$12,942,500 | \$(1,839,933) |
| 2015 | 15,309,992 | 18,968,212 | (3,658,220) |
| 2016 ^a | 20,299,000 | 19,111,455 | 1,187,545 |
| 2017 (as of March 31, 2017) | 10,326,467 | 9,698,643 | 627,824 |
| Totals | \$57,038,026 | \$60,720,810 | \$(3,682,784) |

^a Senate Bill 1139 (84th Legislature, Regular Session) increased the electronic filing fee from \$20 to \$30 for certain civil cases, effective September 1, 2015.

Sources: The statewide electronic filing system contract and amendments and Office financial records.

In addition, the Office did not pay interest accrued on past due payments at the time the principal was paid as required. The Office asserted that it had an agreement with the contractor to not pay any interest owed on overdue payments; however, it did not provide documentation supporting that agreement to auditors.

As of March 31, 2017, the Office had accrued \$531,492 in interest owed to the contractor on invoiced amounts that had not been paid within the required time lines. That interest was accrued on:

- Twenty-eight (93 percent) of 30 payments between September 1, 2013, and March 31, 2017, that the Office processed after the time lines required by the Prompt Payment Act. Those 28 payments totaled \$55.3 million in principal.
- A total of \$3.7 million in invoiced amounts that were overdue and had not been paid as of March 31, 2017. The Office may have accrued additional interest on those invoiced amounts after March 31, 2017.

Additional Strengths and Weaknesses in the Office's Contract Processes

While reviewing the Office's controls for its statewide electronic filing system contract, auditors identified the following strengths in the Office's contract processes:

- The Office is not required to follow the *State of Texas Contract Management Guide* or the *State of Texas Purchasing Manual*. However, it elected to follow the requirements in both of those publications during the procurement and management of its contract for the operation of eFile Texas.
- Based on the documentation reviewed by auditors, the Office followed purchasing processes that were adequate to ensure that it advertised the solicitation for the statewide electronic filing system contract to ensure fair, open competition, and it followed an evaluation process that was sufficient to ensure a fair, unbiased selection of a vendor. Specifically:
 - ♦ The Office advertised the solicitation in the *Electronic State Business Daily* and sent notification of the opportunity to relevant vendors from the Centralized Master Bidders List.
 - ♦ The Office evaluated all eight offers it received using the same criteria and evaluation team. That team included eight individuals from throughout the judicial branch.
- The Office formed the contract to include specific performance goals for overall system availability and for the contractor's response times to

incidents affecting the statewide electronic filing system's functionality. The Office obtained monitoring reports that allowed it to verify that the contractor was meeting the eFile Texas availability goals for each month of fiscal year 2016 and the first five months of fiscal year 2017.

However, auditors identified the following weaknesses in the Office's contract processes:

- The Office did not maintain adequate documentation supporting its determination that the total contract cost was reasonable and represented the best value to the State. Specifically:
 - ♦ The Office did not perform a cost estimate during planning to determine a reasonable contract cost. That prevented it from objectively evaluating respondents' proposed prices during its evaluation processes, as is recommended by the *State of Texas Contract Management Guide*.
 - ♦ The Office was unable to provide adequate documentation for determining costs for contract amendments. Specifically:
 - The Office was unable to provide documentation to auditors showing that it performed an analysis to determine that the total contract costs were reasonable when it amended the contract (specifically, the second contract amendment, effective August 2013); the second amendment established a schedule of payments to the contractor totaling \$72.0 million for fiscal years 2014 through 2017.
 - The Office was unable to provide documentation to auditors supporting its evaluation of the financial impact of the third contract amendment (effective July 2016) that extended the contract for four additional years (fiscal years 2018 through 2021) at an additional \$72.0 million.
- The Office did not develop or perform any monitoring processes to verify whether the vendor had adequate information security controls in place to ensure compliance with Title 1, Texas Administrative Code, Chapter 202.
- The monitoring reports that the Office obtained from the contractor did not include sufficient information to verify whether contractor incident ticket response times met contract requirements for each month of fiscal year 2016 and the first five months of fiscal year 2017.

Recommendations

The Office should:

- Develop and implement documented monitoring processes over:
 - ♦ The contractor's, including its payment portal processor, collection and transfer of filing fees to verify that fees paid are collected and transferred to the courts as required.
 - ♦ Key contract provisions, including information security and performance goals, to determine whether the contractor is providing contracted services sufficiently to support contract payments.
- Track the interest owed to the contractor on overdue payments and determine how the Office will comply with Texas Government Code, Chapter 2251.
- Analyze (1) the estimated cost of contracts to determine whether contract costs are reasonable and (2) the financial impact of contract amendments, and maintain documentation supporting those analyses.

Management's Response

Amendment No. 1 of the statewide electronic filing system contract between the Office of Court Administration (OCA) and the vendor requires the vendor to make available to the courts a payment portal for payment of filing fees. The amendment also requires the vendor to enter into separate agreements with the courts regarding the payment portal. Lastly, courts are required to enter into member bank agreements with the payment processor (Chase) regarding the transfer of funds from Chase to the courts. The audit report faults OCA for not having adequate monitoring processes to verify the filing fee amounts collected through the payment portal are transferred to the courts.

OCA has worked with the vendor to ensure that the vendor complies with its contractual obligation to provide a payment portal. The vendor does not hold at any time filing fees that are to be transferred to the courts. Rather, the vendor preauthorizes an amount pursuant to a clerk's filing fee schedule. Upon acceptance of the filing by the clerk and modification of filing fees, as necessary, the payment processor (Chase) captures the final amount, and then transfers the funds directly to the clerk.

Statutorily, OCA does not have authority or responsibility for ensuring that courts or clerks charge appropriate filing fees. Rather, it is the Comptroller of Public Accounts who has the statutory responsibility to do this in most fees,

but not all. Because of the lack of statutory responsibility, OCA has no insight into the fee schedules of each clerk's office, as the fee schedules are configured by the individual clerk's offices in collaboration with the vendor. Because of this limitation, only the courts or clerks can verify that the correct amounts have been transferred to the court. It is for this reason that OCA has worked with the vendor to provide reconciliation reports from both the vendor and the payment processor for each clerk's office. These reconciliation reports provide the clerk the ability to see the amount of filing fees authorized by the vendor for transfer to the clerk and the actual amount of filing fees transferred to the clerk. The reports separate the amounts by transaction, so that the clerk can reconcile each transaction. As part of the on-boarding process, the vendor has provided the clerk's office with training on how to use the reports to reconcile the amounts owed to the court.

The State Auditor has suggested that OCA should attempt to reconcile the amounts authorized with the amounts deposited for each of the offices accepting electronic filing. This would involve reconciliation for over 458 separate district and county clerks' offices and 803 separate justice courts who will or are allowed to accept electronic filing, along with the over 6.5 million transactions that are annually processed through the electronic filing system. Even if OCA had the statutory authority to perform this reconciliation function, a task this large would require significant staff resources. Because this function is more properly handled by the individual clerks' offices and the audit function handled by the Comptroller of Public Accounts, OCA believes that the reconciliation function should continue to be handled by those entities.

In the alternative, the State Auditor suggests that OCA should utilize a summary report to verify that filing fees that are collected are transferred as required. OCA believes that a transaction-level reconciliation is appropriate, rather than a summary level reconciliation. Because of the business processes, a summary level reconciliation would be impossible. OCA could request a summary report of transactions but would need to adopt some tolerance of deviation from the reconciliation. OCA does not believe that this is an appropriate response. Rather, OCA believes that the appropriate place for reconciliation is at the transaction level and with the offices responsible for accepting electronic filing through the daily reconciliation reports provided to those offices.

While informal information has been provided to the courts indicating that they should notify OCA of any issues regarding reconciliation of transactions and other issues with the e-Filing system, OCA will formally notify the courts that if a court experiences difficulty in reconciling transactions and believes that funds have not been transferred appropriately, the court must notify

OCA of that issue. In turn, OCA will work with the contractor and payment processor to remedy the situation.

Otherwise, OCA believes that it has sufficient monitoring processes in place to ensure that the vendor performs the functions required by the contract that are within the statutory purview of OCA.

The State Auditor also discusses the revenue shortfall experienced in the Statewide Electronic Filing Fund when compared to OCA's projected revenue levels. The Auditor suggests that had OCA had better processes to monitor revenue transactions associated with the electronic filing fees, OCA could better identify and evaluate possible causes of revenue shortfalls in the fund. As discussed above, OCA does not have the statutory authority or the capacity to monitor the transaction-level data. As with other filing fees, Government Code Sec. 51.851 requires that the electronic filing fee be collected by the clerk of the court and deposited into the local treasury account (for the trial courts). The statute requires that those fees then be deposited with the comptroller pursuant to Chapter 133 of the Local Government Code. Therefore, OCA only has visibility into the amounts deposited with the Comptroller quarterly and amounts transferred to the Electronic Filing Fund. The State Auditor also fails to consider that the statewide electronic filing fee is collected on a significant number of documents that are not electronically filed. Therefore, even if OCA had the statutory authority to review transaction-level data through the electronic filing vendor, OCA would not have full visibility into the amounts that should be transferred to the statewide filing fund.

As was noted in the bill analysis for S.B. 1970 (84th Legislature, Regular Session) and in various budget presentations made by OCA during the 84th and 85th Legislative Sessions, one of the main reasons that the revenue projections were not met is that there was a dramatic drop in civil case filings and criminal case filings. This drop in case filings has impacted numerous filing fee and court cost revenue funds, not just the electronic filing fund.

OCA agrees that it would be helpful to have more visibility into the revenues that should be deposited into the electronic filing fund. If the funds were transferred directly into the state treasury, rather than into the local treasury, OCA would have a greater ability to see the revenue that is being transferred. OCA would also have more timely access to the funds to pay the vendor. However, changes of this nature would require statutory changes.

The State Auditor also makes a finding about OCA being unable to provide auditors with documentation regarding how it developed the revenue estimates when it planned, formed, and amended the statewide electronic filing system contract. OCA provided to the State Auditor the revenue

estimates developed by OCA at the time of the contract and amendments but was unable to provide backup documentation that was used at the time to develop the estimates by OCA's Finance Division. OCA will ensure that future documentation is maintained so that such determinations can be substantiated if requested.

The State Auditor notes that OCA failed to comply with the requirements of the Texas Prompt Payment Act on payments made to the contractor for the statewide electronic filing system. OCA is appropriated funding from the Statewide Electronic Filing Fund to make payments to the vendor for the electronic filing system contract. As expected, OCA can only pay balances up to the amounts actually deposited in the account. As discussed previously, the deposits to the Statewide Electronic Filing Fund are made quarterly by clerks across the state (appellate courts transfer the small portion they receive more regularly). Once the Comptroller receives the deposits, the Comptroller transfers amounts to the fund approximately two weeks after receipt. Because of this delay, and the previously discussed shortfall in revenue, OCA has been unable to pay the full invoices required by the contract. OCA has discussed this issue with the vendor previously. OCA will review the Prompt Payment Act and the payments to the vendor and develop an appropriate response.

The State Auditor notes that OCA did not maintain adequate documentation supporting several decisions related to the contract. OCA has a history of internal face-to-face meetings to discuss these types of issues and has not always documented specific discussions from these meetings. OCA will ensure that adequate documentation is maintained for these types of discussions in the future.

OCA will evaluate an appropriate strategy for verifying whether the vendor has adequate information security controls in place to ensure compliance with Title 1, Texas Administrative Code, Chapter 202.

OCA has worked with the vendor to include incident ticket response times in the monitoring reports.

The Commission Had Adequate Controls Over Its Awarding, Monitoring, and Payment of Indigent Defense Grant Funds to Ensure That Funds Were Spent in Accordance With Applicable Rules, Requirements, and Grant Provisions

Chapter 2
Rating:
Low ³

The Texas Indigent Defense Commission (Commission), which is administratively attached to the Office, manages indigent defense grants that are funded through the Office's appropriations. The Commission had adequate processes and controls over the awarding and monitoring of indigent defense grant funds to ensure that funds were spent in accordance with applicable rules, requirements, and grant provisions.

Indigent Defense Grant Types

Discretionary Grants. Those grants are awarded to encourage innovation and remedy noncompliance with applicable requirements. The Texas Indigent Defense Commission (Commission) awards them based on varied application processes as defined by the Commission, and they are awarded under the following strategies: (1) competitive discretionary grants, (2) extraordinary disbursement grants, (3) targeted specific grants, and (4) technical support grants.

Formula Grants. Those grants are awarded to Texas counties to assist them in meeting constitutional and statutory requirements related to indigent defense. The Commission awards them using a **formula based on a county's (1) percentage of state population and (2) percentage of the State's indigent defense expenditures from the preceding year (with selected exclusions) as reported on counties' Indigent Defense Expenditure Reports.**

Supplemental Capital Defense Formula Grants. Those grants are awarded to eligible counties to assist them in covering the cost of defense for indigents in capital cases. The Commission awards **them using a formula based on a county's (1) percentage of the total population for all eligible counties and (2) percentage of the indigent defense expenditures for capital cases as reported on the eligible counties' Indigent Defense Expenditure Reports.**

Source: The Commission.

For fiscal year 2016, \$31.5 million (39 percent) of the Office's \$81.2 million in expenditures⁴ were payments to indigent defense grant recipients. The Commission awards indigent defense grant funds in the form of formula grants, supplemental capital defense formula grants, and various discretionary grants (see text box for more information on the types of indigent defense grants).

Awarding of Grant Funds

The Commission's grant award processes were sufficient to ensure that it (1) approved discretionary award amounts prior to award, (2) based formula and supplemental award amounts on the Commission's calculations, (3) obtained all required documentation from applicants prior to award, and (4) considered any instances of recipient noncompliance.

The Commission calculated the formula award amounts for all 254 Texas counties and supplemental award amounts for the 13 counties eligible to receive the awards using formulas designed in accordance with its published methodologies for fiscal year 2016. It should be noted that the Commission relied on data the counties reported in their *Indigent Defense Expenditure Reports* in its calculations and auditors did not perform any work to verify the accuracy of the data in those reports.

³ The risk related to the issues discussed in Chapter 2 is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

⁴ The \$81.2 million in expenditures excludes depreciation and amortization.

The Commission followed processes, which ensured that formula, supplemental, and discretionary grant funds were awarded in accordance with applicable statutes, rules, and Commission policies. Specifically:

- For all 25 formula and 2 supplemental awards tested, the Commission ensured that (1) the applicants submitted all documentation required in its *Fiscal Year 2016 Formula Grant Request for Applications* and *Fiscal Year 2016 Supplemental Capital Defense Formula Grant Policy* (that included certifying its receipt and acceptance of each county's *Indigent Defense Expenditure Report*) and (2) the amounts awarded were supported by the Commission's calculations.
- For all seven discretionary awards tested, the Commission ensured that (1) it approved the amounts awarded prior to issuing the awards and (2) the award budgets were within applicable requirements.
- For 10 of the 25 formula awards and 2 of the 7 discretionary awards tested for which the recipient had instances of previous noncompliance identified by the Commission, the Commission ensured that special terms and conditions addressing the noncompliance were included in the award notice, as is recommended in Title 1, Texas Administrative Code, Section 173.105.
- For 6 (86 percent) of 7 discretionary grant awards tested, the Commission ensured that the applicants submitted all required documentation prior to issuing the awards. The remaining award was a renewal of a multi-year grant for which the recipient had not submitted a renewal application, as required by the Commission's published grant requirements, at the time the award was made. However, the Commission ensured that the appropriate county judge signed the Commission's notice of the grant's extension, which indicated that the recipient accepted the extension of the award and acknowledged that it would continue to comply with applicable requirements.

Fiscal Monitoring of Grant Recipients

The Commission had fiscal monitoring processes in place that were sufficient to allow it to determine whether recipients spent grant funds appropriately and in accordance with indigent defense grant requirements. Specifically:

- The Commission performed a risk assessment for fiscal year 2016 that was sufficient to develop a schedule of planned monitoring reviews of selected grant recipients based on qualitative and quantitative risk factors.

- For all five monitoring reviews tested, the Commission performed steps to (1) determine selected grant recipients' compliance with key financial requirements for indigent defense grants, including verifying that each recipient's *Indigent Defense Expenditure Report* was supported by its general ledger; (2) document issues identified; and (3) when applicable, verify and document that the recipients planned corrective actions.

Grant Payments

The Commission and the Office had processes in place that were sufficient to ensure that payments to grant recipients were adequately supported, reviewed, and processed to the correct recipient during fiscal year 2016 and the first five months of fiscal year 2017. Specifically, for all 26 grant payments tested:

- The amounts paid were supported by the applicable grant award amounts and, when applicable, expenditure reports that the grant recipients submitted.
- The payments and associated supporting documentation were reviewed and approved in accordance with Commission and Office processes.
- The recipients of the payments matched the applicable award recipients.

Recommendation

The Office should work with the Commission to strengthen their processes to ensure that grant applicants submit all required application documents prior to issuing a grant award.

Management's Response

Management agrees with this recommendation. OCA staff have conducted a review of grant procedures and created a new checklist for tracking receipt of all required documents for each grant application. OCA staff are working on a comprehensive update of grant procedures to be completed by August 31, 2017.

The Office Should Strengthen Its Controls Over Asset Accounting to Ensure That It Accurately Reports Controlled and Capital Assets to the Statewide Property Accounting System

Chapter 3
Rating:
Medium⁵

Capitalized and Controlled Assets

Capitalized Asset - A capitalized asset is an asset that has a value equal to or greater than the capitalization threshold established for that asset type. The threshold for the asset type determines materiality. Capitalized assets are reported in an agency's annual financial report.

Controlled Asset - A controlled asset is an asset that has a value that is less than the capitalization threshold established for that asset type. However, due to its high-risk nature, it is required to be reported in the Statewide Property Accounting system (SPA). Controlled assets are not reported in an agency's annual financial report, but they are included in its annual physical inventory.

Source: The Comptroller's Office SPA core training.

The Office should strengthen its accounting processes and controls over capitalized and controlled assets to ensure that all assets purchased are accurately recorded in the Statewide Property Accounting (SPA) system in accordance with the Comptroller's Office's *SPA Process User's Guide* (see text box for information about capitalized and controlled assets).

The Office performed an informal reconciliation process between the SPA system and the Uniform Statewide Accounting System (USAS) for fiscal year 2016. The Office reviewed a total of \$551,895 in purchases in its reconciliation.

Auditors reviewed the Office's reconciliation and associated documentation for fiscal year 2016 and determined that the Office accurately recorded in the SPA system \$130,892 in capitalized assets it identified during its reconciliation. The Office identified and accurately recorded an additional \$158,763 in capitalized asset purchases that were not included in its initial reconciliation documentation. Auditors analyzed USAS expenditure information and did not identify any potential purchases of capitalized assets that the Office had not identified.

However, the Office's reconciliation process was not sufficiently designed to ensure that all controlled assets the Office purchased were accurately recorded in the SPA system. Specifically:

- The reconciliation documentation did not include any evidence supporting that (1) differences identified had been appropriately addressed and (2) the Office performed a secondary review and approval of the reconciliation.
- The Office did not record in the SPA system 35 controlled assets with a total value of \$48,241 that it purchased during fiscal year 2016. Subsequent to auditors identifying those assets, the Office recorded them in the SPA system.
- The Office reported an inaccurate acquisition cost for 106 controlled assets that it purchased during fiscal year 2016—101 of those asset

⁵ The risks related to the issues discussed in Chapter 3 are rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

values were underreported by a total of \$1,160 and the remaining 5 asset values were overreported by a total of \$13,084.

The Office purchases assets on behalf of other judicial branch courts and agencies. However, it did not have formal, documented policies and procedures over its asset management processes during fiscal year 2016, including not defining a specific process for handling asset purchases made on behalf of other judicial branch courts and agencies. The lack of policies and procedures increases the risk that assets will not be accurately recorded in the Office's asset records.

It should be noted that the Office stopped using the SPA system as its asset management system and began using the Centralized Accounting and Payroll/Personnel System (CAPPS) as its asset management system at the beginning of fiscal year 2017.

Recommendations

The Office should:

- Strengthen and formally document its reconciliation process to ensure that all assets purchased are recorded in the SPA system.
- Develop documented policies and procedures governing its asset management processes.

Management's Response

Management agrees with these recommendations. Effectively immediately, OCA's Alternate Property Manager will review the Property Manager's monthly reconciliations of CAPPS, SPA, and USAS. Staff also created a spreadsheet to track reconciliations; this form will be signed by both property staff and then submitted to the Deputy Chief Financial Officer for review. Additionally, OCA staff are updating the agency's property manual and documenting the reconciliation process; target completion date is December 31, 2017.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether selected agencies in the General Appropriations Act have processes and related controls to help ensure that they administer financial transactions in accordance with applicable statutes, rules, and agency policies and procedures.

Scope

The scope of this audit covered the Office of Court Administration's (Office) activities related to indigent defense grant funds and asset accounting for fiscal year 2016 (September 1, 2015, through August 31, 2016) and the first five months of fiscal year 2017 (September 1, 2016, through January 31, 2017) and activities over its payment and revenue collection monitoring of the Office's contract for the operation of the statewide electronic filing system (known as eFile Texas) from the start of the contracting process through March 31, 2017.

Methodology

The audit methodology included collecting information and documentation; interviewing Office staff regarding financial and operational processes; testing documentation related to expenditure and revenue monitoring activities for the statewide electronic filing system contract, indigent defense grant funds, and the Office's asset accounting reconciliation; reviewing access to key financial systems; and analyzing and evaluating the results of audit tests.

Data Reliability and Completeness

Auditors used expenditure and revenue information in the Uniform Statewide Accounting System (USAS). Auditors (1) relied on previous State Auditor's Office audit work on USAS, (2) reviewed the Office's user access to USAS, and (3) compared the information against the Office's *Annual Financial Report* for applicable fiscal years and the Texas Indigent Defense Commission's (Commission) *Fiscal Year 2016 Expenditure Report* and determined that the data was sufficiently reliable for the purposes of this audit.

Auditors used spreadsheets in which the Commission calculated formula and supplemental indigent defense grant award amounts. To determine the

reliability of that information, auditors (1) obtained the spreadsheets in their entirety, (2) performed a high-level review of data fields and contents for appropriateness, (3) compared the data against a third-party list of Texas counties to verify that all appropriate counties were included, and (4) reviewed the Office's user access to the network drive on which the spreadsheets were stored. Auditors determined that the data in the spreadsheets was sufficiently reliable for the purposes of this audit.

For population data the Commission used in its calculation of formula and supplemental awards, auditors relied upon third-party population estimates from the Texas Demographics Center and the U.S. Census Bureau. Because auditors obtained those data sets from third-party sources, auditors did not perform any data reliability procedures.

Auditors relied upon indigent defense discretionary award information from the Commission's indigent defense grant management system. To determine the reliability of that information, auditors (1) reviewed user access to the grant management system and (2) compared the data against a third-party list of Texas counties to verify that all appropriate counties were included. Auditors determined that the data in the grants management system was sufficiently reliable for the purposes of this audit.

Auditors relied upon a manually prepared list of fiscal monitoring reviews that the Commission performed. To determine the reliability of that information, auditors compared the list against the Commission's risk assessment used to select grant recipients for fiscal monitoring reviews and determined that the information was sufficiently reliable for the purposes of this audit.

For the risk assessment the Commission used to select grant recipients for fiscal monitoring reviews, auditors reviewed the risk assessment to determine whether it included (1) all risk factors required by the Commission's policies and (2) all recipients of indigent defense grants. Auditors determined that the information was sufficiently reliable for the purposes of this audit.

To determine the reliability of the data from the Statewide Property Accounting (SPA) system, auditors (1) extracted the data from the SPA system and (2) reviewed the Office's reconciliation between SPA and capital and controlled asset information from USAS. Auditors determined that the data in the SPA system was sufficiently reliable for the purposes of this audit.

Sampling Methodology

Auditors selected a nonstatistical sample of 25 formula and 2 supplemental indigent defense grant awards and 6 discretionary indigent defense grant

awards through random selection designed to be representative of the population. Auditors used professional judgment to select one additional item for discretionary grant award testing. The test results as reported do not identify which items were randomly selected or selected using professional judgment. Therefore, it would not be appropriate to project those test results to the population.

Auditors selected a nonstatistical sample of five fiscal monitoring reviews of indigent defense grant recipients that the Commission performed through random selection. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Auditors selected a nonstatistical sample of 25 indigent defense grant expenditures through random selection designed to be representative of the population. Auditors used professional judgment to select one additional item for testing. The test results as reported do not identify which items were randomly selected or selected using professional judgment. Therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- The Office's and the Commission's policies and procedures.
- Documentation related to the Office's financial management of the statewide electronic filing system contract, such as contractor invoices, purchase vouchers, the contract and amendments, and information related to the Office's monitoring of revenue collection.
- Expenditure and revenue data from USAS.
- Indigent defense grant information from the Commission's grant management system.
- Commission documentation, such as fiscal monitoring review documentation and reports, grant award notices, Commission meeting minutes, and application documents from grant applicants.
- The Office's reconciliation of its assets recorded in the SPA system and USAS for fiscal year 2016 and associated documentation.

Procedures and tests conducted included the following:

- Interviewed Office staff to identify the Office's financial and operational processes, including financial and administrative internal controls.

- Tested documentation related to the statewide electronic filing system contract, including contractor payment documentation, and reviewed information related to the Office’s monitoring of the contractor’s collection of revenue to determine compliance with the Office’s policies and procedures and state laws and regulations.
- Tested documentation related to the Commission’s indigent defense grant expenditures, awarding of indigent defense grant funds, and indigent defense grant fiscal monitoring to determine compliance with the Commission’s and the Office’s policies and procedures and state laws and regulations.
- Reviewed the Office’s fiscal year 2016 reconciliation of assets recorded in the SPA system to USAS and associated documentation to determine whether assets the Office purchased were recorded in SPA in accordance with state laws and regulations.

Criteria used included the following:

- Office and Commission policies, procedures, and guidelines.
- Office of the Comptroller of Public Accounts’ *State of Texas Procurement Manual*, *State of Texas Contract Management Guide*, and *SPA Process User’s Guide*.
- Texas Government Code, Chapter 2251.
- Title 1, Texas Administrative Code, Chapter 173.

Project Information

Audit fieldwork was conducted from December 2016 through July 2017. 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:

- Scott Armstrong, CGAP (Project Manager)
- Joseph Kozak, CPA, CISA (Assistant Project Manager)
- Richard E. Kukucka, CFE

- Sarah Rajiah
- Brenda Zamarripa, CGAP
- Brianna C. Pierce, CPA (Quality Control Reviewer)
- Michael Owen Clayton, CPA, CISA, CFE, CIDA (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 3 provides a description of the issue ratings presented in this report.

Table 3

| Summary of Issue Ratings | |
|--------------------------|---|
| Issue Rating | Description of Rating |
| Low | The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited. |
| Medium | Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level. |
| High | Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity. |
| Priority | Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity. |

Time Line of Key Events for the Statewide Electronic Filing System Contract

Table 4 presents a time line of key events related to the Office of Court Administration's (Office) contract for the operation of the statewide electronic filing system (known as eFile Texas), which provides electronic filing of court documents for the judicial branch in the state of Texas.

Table 4

| Time Line of Key Events for Statewide Electronic Filing System Contract | |
|---|--------------------|
| Description of Event | Date |
| The statewide electronic filing system contract is signed by both the Office's and the contractor's representatives and work begins on the development and implementation of the statewide electronic filing system. | November 8, 2012 |
| The Supreme Court of Texas mandates electronic filing for all civil cases in Texas. | December 11, 2012 |
| The Office obtains a waiver from the Department of Information Resources, exempting it from using Texas.gov as the payment portal for the statewide electronic filing system. | June 7, 2013 |
| Electronic filing for civil cases becomes active in the first county in Texas. (Electronic filing for civil cases is implemented on a county-by-county basis.) | June 26, 2013 |
| Amendment 1 to the contract, altering the specific method through which filing fees are collected through the statewide electronic filing system from Texas.gov's payment portal to the contractor's payment portal, goes into effect. | July 23, 2013 |
| Amendment 2 to the contract, establishing a schedule of payments to the contractor with a total contract cost of approximately \$72.0 million from September 1, 2013, through August 31, 2017, goes into effect. | August 12, 2013 |
| Texas Government Code, Sections 51.851 and 51.852, created by House Bill 2302 (83rd Legislature, Regular Session) and signed by the Governor on June 14, 2013, establishing (1) electronic filing fees and criminal court costs and (2) the Statewide Electronic Filing Fund into which those fees and court costs are deposited, goes into effect. | September 1, 2013 |
| Changes to Texas Government Code, Section 51.851, increasing the electronic filing fee rate for certain civil cases from \$20 to \$30, go into effect. | September 1, 2015 |
| Electronic filing becomes active for civil cases in all Texas counties. | September 15, 2015 |
| The Court of Criminal Appeals mandates electronic filing for all criminal cases in Texas. | June 30, 2016 |
| Amendment 3 to the contract, extending the contract for an additional four years (through August 31, 2021) at an additional cost of approximately \$72.0 million, goes into effect. | July 22, 2016 |

Sources: Statewide electronic filing system contract and amendments; Texas Government Code, Chapter 51; Supreme Court of Texas's *Miscellaneous Docket Number 12-9208*; and the Court of Criminal Appeals of Texas's *Miscellaneous Docket Number 16-003*.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Joe Straus III, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable John Zerwas, House Appropriations Committee

The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Office of Court Administration

The Honorable Nathan Hecht, Chief Justice, Supreme Court of Texas

Mr. David Slayton, Administrative Director



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