

An Audit Report on

Selected Entities' Compliance with Requirements Related to Historically Underutilized Businesses and Purchases from People with Disabilities

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Selected Entities' Compliance with Requirements Related to Historically Underutilized Businesses and Purchases from People with Disabilities

Overall Conclusion

All of the 11 entities audited have implemented some elements of the State's historically underutilized business (HUB) program, which is designed to encourage state entities to make contracting opportunities available to qualified HUBs. Of the 11, the Department of Family and Protective Services and Texas State University-San Marcos were fully compliant with HUB requirements. The University of Texas Health Science Center at Houston, the Department of State Health Services, the Texas A&M University System Health Science Center, the Alcoholic Beverage Commission, the State Board for Educator Certification, and the Texas Education Agency were substantially compliant. Three entities—Lamar University, the Soil and Water Conservation Board, and the Department of Agriculture—had minimal compliance. Since the end of the audit period (fiscal year 2003), these three entities all report that they have begun implementing our recommendations.

In fiscal year 2003, the Texas Building and Procurement Commission (TBPC) reported that the State paid approximately \$1.2 billion to HUBs out of \$9 billion spent in procurement categories that are eligible for HUB participation.

Furthermore, of the 11 entities audited, 10 fully complied with requirements related to purchasing from people with disabilities by making purchases from the Texas Industries for the Blind and Handicapped (TIBH) when available.

What Is the HUB Program?

The HUB program encourages state entities to make state contracting opportunities available to businesses owned by women and minorities. The program was created by the Texas Government Code (Chapter 2161), and the rules are documented in the Texas Administrative Code (Title 1, Part 5, Chapter 111, Section B).

SAO Audit Requirements

According to Texas Government Code, Section 2161.123, the State Auditor's Office is required to assess entities' compliance based on their implementation of HUB procedures and "shall not consider the success or failure to contract with historically underutilized businesses in any specific quantity."

What Constitutes a "Good-Faith Effort"?

The State Auditor's Office, in consultation with the Building and Procurement Commission, established a scale of levels of compliance with the elements of the HUB program. This scale (page iv) can be used to evaluate and compare entities' efforts toward implementing their HUB programs.

Key Points

Entities did not fully comply with HUB requirements:

- **Outreach Requirements.** Only 3 of the 11 entities audited fully complied with outreach requirements intended to increase HUBs' awareness of contracting opportunities. Outreach requirements include holding forums, implementing mentor-protégé programs,



and fulfilling the HUB coordinator responsibilities. (See Appendix 2 for TBPC rule updates.)

- **Subcontracting Requirements.** Seven entities fully complied with subcontracting requirements, which include taking actions such as awarding contracts to vendors that advertise HUB subcontracting requirements or notifying at least three HUBs of the potential for subcontracted work. Three entities did not comply with one or more of the requirements. Some of the entities did not solicit any contracts during the audit period that met the dollar threshold (\$100,000) for complying with subcontracting requirements. In those cases, we determined whether they had procedures in place to comply. We did not test subcontracting at one entity because (1) it did not have any contracts for more than \$100,000 and (2) TBPC would have facilitated any of the entity's contracts of \$100,000 or more per an agreement between it and the entity. (See Appendix 2 for TBPC rule updates.)
- **Reporting Requirements.** Nine of the 11 entities did not fully comply with HUB supplemental reporting requirements, mostly because they could not provide support for the numbers reported to TBPC. TBPC in turn provides this information to the Legislature in its statewide HUB report. As a result, there is a risk that the Legislature does not have completely reliable information to evaluate the HUB program and to monitor state HUB participation. (For HUB program statistics, see Appendix 3.)
- **Planning Requirements.** Eight of the 11 entities fully complied with planning requirements. Key requirements include developing a written plan for increasing HUB use, adopting HUB policies and procedures, and including a detailed report within the Legislative Appropriations Request identifying the entity's HUB activity.

All four entities at which we conducted follow-up audits have improved their levels of compliance.

All four entities at which we conducted follow-up audits improved their levels of compliance with HUB requirements in fiscal year 2003. Texas State University-San Marcos and the Department of Family and Protective Services implemented all of the previous year's recommendations and are now fully compliant. The State Board for Educator Certification and the Texas Education Agency were substantially compliant, meaning there are areas in which they can improve. In February 2003, the State Auditor's Office reported that these four entities did not make a good-faith effort to comply in fiscal year 2002 (see *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 03-018).

Ten of 11 entities fully complied with requirements related to purchasing from people with disabilities.

While the Texas A&M University System Health Science Center substantially complied with requirements for purchasing from people with disabilities, it did not make purchases from TIBH when available in approximately 5 percent of the items tested. Instead, it purchased its goods or services from other businesses. The remaining 10 entities fully complied; however, 8 of the 11 entities did not submit exception reports to TBPC each month. TBPC requires exception reports each month, even when there are no items to report. Most of the eight entities did not submit reports because there were no items to report. Chapter

122 of the Texas Human Resources Code establishes requirements for purchasing from people with disabilities and requires the State Auditor to audit entities' compliance.

Summary of Management's Response

The entities generally agree with our findings and recommendations. All of the entities' responses indicate that they are addressing the issues identified. (See Appendix 4 for comments provided by the Department of Agriculture.) The audit of entities' compliance with HUB requirements was conducted in accordance with requirements found in the Texas Government Code and Administrative Code. As required by statute, we worked closely with the Texas Building and Procurement Commission to develop the audit criteria and methodology that has been used to audit entities' compliance for the past three years.

Summary of Information Technology Review

We verified the accuracy and completeness of the process that the Office of the Comptroller of Public Accounts uses to identify HUB-eligible expenditures within Treasury funds. For non-Treasury expenditures, we traced information reported to TBPC to supporting vouchers maintained by the entities.

For the 11 entities audited, we focused our high-level review of information technology on the entities that were using complex automated systems or where errors in output indicated a need for further review. We limited our work to only those systems that support the HUB compliance process.

Summary of Objectives, Scope, and Methodology

Our audit objectives were to determine whether the selected entities (1) complied with HUB statutory requirements, (2) made efforts to comply with those requirements, and (3) reported complete and accurate information to TBPC. In addition to the above objectives, we determined whether the entities complied with requirements regarding purchasing from people with disabilities.

The scope of this audit included a review of HUB activities and purchases from people with disabilities for fiscal year 2003. We audited HUB activities in four compliance areas: planning, outreach, reporting, and subcontracting. We audited four agencies and three institutions of higher education, and we performed follow-up work at three agencies and one institution of higher education that did not make good-faith efforts to comply in fiscal year 2002.

Our methodology consisted of selecting entities to audit; auditing to determine compliance with Texas Administrative Code (Chapter 111), Texas Government Code (Chapter 2161), and Texas Human Resources Code (Chapter 122); and testing samples of supporting documentation.

Table 1

Scale of Entities' Levels of Compliance with HUB Requirements			
Level of Compliance		Percentage of Requirements Complied with Overall	Entities
Level of Good-Faith Effort	Noncompliant	0 to 30 percent	None
	Minimally Compliant	31 to 60 percent	<ul style="list-style-type: none"> ▪ Lamar University ▪ Soil and Water Conservation Board ▪ Department of Agriculture
	Substantially Compliant	61 to 90 percent	<ul style="list-style-type: none"> ▪ The University of Texas Health Science Center at Houston ▪ Department of State Health Services ▪ Texas A&M University System Health Science Center ▪ Alcoholic Beverage Commission ▪ State Board of Educator Certification ▪ Texas Education Agency
	Fully Compliant	91 to 100 percent	<ul style="list-style-type: none"> ▪ Department of Family and Protective Services ▪ Texas State University-San Marcos

Table 2

Entities' Compliance with HUB Requirements											
State HUB Program Requirements	Lamar University	Soil and Water Board	Dept. of Agriculture	UTHSC Houston ^a	DSHS ^b	TAMU HSC ^c	TABC ^d	SBEC ^e (Follow-Up)	TEA ^f (Follow-Up)	DFPS ^g (Follow-Up)	TxState ^h (Follow-Up)
Planning											
Compliance with Legislative Appropriation Request requirements (GC 2161.127 and TAC 111.15[c])	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Adoption of HUB Rules (GC 2161.003 and TAC 111.15 [b])	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y
Compliance with strategic plan requirements (GC 2161.123 and TAC 111.15[c])	N/A ⁱ	Y	Y	N/A ⁱ	Y	N/A ⁱ	Y	Y	Y	Y	Y ⁱ
Outreach											
Compliance with mentor-protégé program requirements (GC 2161.065 and TAC 111.28)	N	N	Y	Y	N	Y	Y	N	Y	Y	Y
HUB coordinator level equal to the procurement director (GC 2161.062 and TAC 111.26[b])	Y	Y	Y	Y	Y	N/A	Y	Y	Y	Y	Y
HUB coordinator communication with executive director (TAC 111.26[b])	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and evaluation of contracts (TAC 111.26[b])	N	N/A	Y	Y	Y	Y	Y	Y	N	Y	Y
HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach (TAC 111.26[b])	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y
HUB forum participation (GC 2161.066 and TAC 111.27[1]). If the entity hosted a forum, was it also advertised in the appropriate trade publication?	N	N	N	Y	Y	N	N	N	N	Y	Y
In-house marketing presentations by HUBs (GC 2161.066 and TAC 111.27[4])	N	N	N	Y	Y	Y	N	Y	Y	Y	Y
Reporting											
Reporting of accurate HUB expenditure information (GC 2161.122[a] and TAC 111.16[d])	N	Y	N	N	N	Y	Y	Y	Y	Y	Y
Compliance with monthly internal HUB usage reports requirements (TAC 111.16[c])	N	N	N	Y	N	Y	Y	Y	Y	Y	Y
Compliance with Progress Assessment Reports requirements (TAC 111.16(c))	Y	N/A	N	N	N	Y	Y	Y	Y	Y	Y
Compliance with HUB Supplemental Reports requirements (GC 2161.122[c])	N	N	N	N	N	N	N	N	N	Y	Y

Entities' Compliance with HUB Requirements											
State HUB Program Requirements	Lamar University	Soil and Water Board	Dept. of Agriculture	UTHSC Houston ^a	DSHS ^b	TAMU HSC ^c	TABC ^d	SBEC ^e (Follow-Up)	TEA ^f (Follow-Up)	DFPS ^g (Follow-Up)	TxState ^h (Follow-Up)
Compliance with Group Purchasing Reports requirements (TAC 111.16(e))	N/A ^j	N/A	N/A	N/A ^j	N/A	N ^j	N/A	N/A	N/A	N/A	N/A ^j
Subcontracting											
Statement of Subcontracting Opportunities in solicitation document (TAC 111.14[2])	N	N/A ^k	Y	Y	Y	Y	Y	Y	Y	Y	Y
Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable (TAC 111.14[1])	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y
Statement of Texas certified HUB by potential contractor (TAC 111.14 [b])	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y
Evidence of good-faith effort in development of HUB Subcontracting Plans (TAC 111.14[b][1])	N	N/A	N	N	Y	Y	Y	Y	Y	Y	Y
Review and evaluation of HUB Subcontracting Plan prior to contract award (TAC 111.14[5])	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y
Percentage of Requirements Complied with Overall	33%	33%	53%	67%	74%	83%	84%	84%	84%	100%	100%
<p>^a The University of Texas Health Science Center at Houston ^e State Board for Educator Certification</p> <p>^b Department of State Health Services (formerly Department of Health) ^f Texas Education Agency</p> <p>^c Texas A&M University System Health Science Center ^g Department of Family and Protective Services (formerly Department of Protective and Regulatory Services)</p> <p>^d Alcoholic Beverage Commission ^h Texas State University-San Marcos</p> <p>ⁱ Institutions of higher education are exempt from strategic planning requirements as referenced in Government Code, Chapter 2056. However, institutions are subject to other HUB planning requirements (Government Code, Section 2161.123). (LAR and rule adoption as referenced in TAC, Section 111.15)</p> <p>^j Group Purchasing Reports usually apply to institutions of higher education because their purchases are made at the system level. However, for fiscal year 2003, the Texas A&M University Health Science Center was the only institution to make a group purchase.</p> <p>^k The Soil and Water Conservation Board defers its contracting responsibilities to the TBPC and was therefore not included in our testing of subcontracting requirements.</p>											

Table 3

Recent SAO Work		
Number	Product Name	Release Date
03-018	An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements	February 2003

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Detailed Results

Chapter 1

Lamar University

In fiscal year 2003, Lamar University (University) minimally complied with historically underutilized business (HUB) requirements. The University complied with 33 percent of the 18 HUB requirements that were applicable to it (see Table 2 on page v in the Executive Summary). While the University needs to make improvements in all four areas of its HUB program—planning, outreach, reporting, and subcontracting—it did comply with some HUB requirements (see text box).

The University complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- HUB coordinator level equal to the procurement director
- Progress Assessment Reports requirements
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Review and evaluation of HUB Subcontracting Plan prior to contract award

The University's deficiencies in the area of outreach affected its ability to comply with requirements in the other areas. Specifically, the University could not demonstrate that its HUB coordinator is "facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration and marketing and outreach efforts for HUB participation" (Texas Administrative Code [TAC] 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the University spent \$25.7 million within procurement categories that were eligible for HUB participation; it spent \$1.7 million (6.66 percent) of that amount procuring from HUBs.

Chapter 1-A

Subsequent Events

Since the end of the audit period (fiscal year 2003), the University has done the following to improve its level of compliance with the HUB program requirements:

- Adopted TBPC's revised HUB rules in February 2003
- Appropriately defined the HUB coordinator's responsibilities in December 2004 to comply with TAC requirements
- Improved communications between the HUB coordinator and the University president

Chapter 1-B

Planning

In fiscal year 2003, the University did not fully comply with planning requirements in Texas Government Code, Section 2161.003. Although the Texas Building and

Procurement Commission (TBPC) revised the HUB rules in 1999 and made them effective in 2000, the University had not adopted the rules as its own until halfway through fiscal year 2003 (the period covered by our audit). The University adopted the rules in February 2003 and is now in compliance with this requirement.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the University's noncompliance in the other three areas of HUB requirements.

Chapter 1-C

Outreach

The University did not fully comply with outreach requirements in TAC and the Texas Government Code. Specifically:

- The University was unable to provide evidence of communication between its HUB coordinator and its president. TAC 111.26 states that the HUB coordinator should be identified in a responsive role that reports to, communicates with, and provides information to the entity's executive director (president). This communication is important because it enables the HUB coordinator to advise the president about and assist with meeting HUB requirements.
- The University's HUB coordinator is not involved in the development of procurement specifications and HUB subcontracting plans or in the evaluation of contracts for compliance as required by TAC 111.26. Without the HUB coordinator's involvement, there may be an increased risk that the University will not provide adequate contracting opportunities to HUBs.
- The job duties of the University's HUB coordinator were not clearly defined in alignment with the responsibilities listed in TAC 111.26. As a result, we could not ensure that the HUB coordinator had the appropriate authority to carry out the responsibilities listed in TAC 111.26. The TAC states that the duties and responsibilities of HUB coordinators include facilitating compliance with the following: good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation.
- The University did not sponsor any HUB forums or invite HUBs to make in-house marketing presentations during fiscal year 2003. The purpose of forums is to increase HUBs' understanding of contracting with state entities. Texas Government Code, Section 2161.066, states that each state entity that has a HUB coordinator shall "aggressively identify and notify individual HUBs regarding opportunities to make presentations regarding the types of goods and services" they provide. In addition to requiring entities to identify and invite HUBs to make marketing presentations, TAC 111.27 requires each entity to design its own forum program and model the program, to the extent appropriate, following the format established by TBPC; sponsor presentations by HUBs at the entity; and advertise the forums in appropriate trade publications to target HUBs.
- The University did not have a mentor-protégé program in fiscal year 2003. According to TAC 111.28, each state entity with a biennial appropriation that exceeds \$10 million shall implement a mentor-protégé program to provide

professional guidance and support to facilitate protégés' development and growth as HUBs.

Recommendations

To comply with TAC 111.26, TAC 111.28, and Texas Government Code, Section 2161.066, the University should:

- Document its HUB coordinator's communications with the president.
- Involve its HUB coordinator in the development of procurement specifications and HUB subcontracting plans and in the evaluation of contracts for compliance.
- Ensure that its HUB coordinator has the appropriate responsibilities.
- Design and implement a forum program and invite HUBs to make in-house marketing presentations.
- Develop a mentor-protégé program.

Management's Response

Management concurs that the HUB Coordinator should enhance communications directly with the President by documenting meetings and other communications. The HUB coordinator will be more involved with HUB subcontracting plans and the evaluation of contracts for compliance. Although the HUB Coordinator has the authority and has been carrying out these duties, the job description has been better defined to include those job descriptions and filed with Human Resources. Lamar University is providing an outreach effort. However, we will continue to enhance the University's visibility when providing, participating and/or sponsoring HUB forums and the mentor protégé program.

Implementation Dates:

Communication: Fully implemented in December 2004

HUB subcontracting and the evaluation of contracts: Will be fully implemented by January 2005

Job Duties: Fully implemented in December 2004

HUB Forums and Mentor Protégé Program: Will be fully implemented by August 2005

Responsible Persons: Director of Purchasing/HUB Coordinator, Facilities Contract Management Unit, Small Business Development Center

Reporting

The University did not fully comply with reporting requirements in TAC 111.16 and Texas Government Code, Section 2161.122. Specifically:

- While the University did compile monthly HUB usage reports, it did not report by division, nor did its reports include subcontracting information in accordance with HUB requirements. TAC 111.16 and Texas Government Code, Section 2161.122, state that each entity shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they can implement and monitor the HUB program.
- The University did not report complete and accurate information to TBPC for fiscal year 2003 as detailed in TAC 111.16 and Texas Government Code, Section 2161.122. For example, the University overreported the numbers in its semiannual and annual HUB supplemental reports. Additionally, the University made approximately \$342,820 in subcontracting expenditures that it did not report to TBPC, which is required by TAC 111.16. (The University's subcontractors reported these expenditures to us.) As a result, decision makers do not have reliable information for evaluating the University's HUB program.

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the University should:

- Ensure that monthly HUB usage reports are compiled by division and include subcontracting information.
- Ensure the completeness and accuracy of its semiannual and annual HUB supplemental reports.
- Ensure that it collects and reports accurate and complete HUB subcontracting expenditure information to TBPC.

Management's Response

Management concurs that the monthly HUB usage report based on "Type" and "Dollars", will also include HUB categories for subcontracting information, and will be distributed to the appropriate operating division.

Reporting:

Compile monthly HUB usage reports by division: Will be fully implemented by January 2005

Accurate Reporting: Fully implemented in December 2004

Responsible Persons: Director of Purchasing/HUB Coordinator and Associate Vice President for Finance.

Chapter 1-E

Subcontracting

The University did not fully comply with subcontracting requirements in TAC 111.14. There was no evidence that the University monitored prime contractors' compliance with their HUB subcontracting plans. TAC 111.14(d) requires state entities to audit prime contractors' expenditures to HUB subcontractors. However, as discussed in Chapter 1-D (the Reporting section above), the University had unreported subcontracting expenditures for fiscal year 2003, so it could not fulfill the audit requirement of TAC 111.14(d).

Recommendation

To comply with TAC 111.14(d), the University should monitor prime contractors' compliance with their HUB subcontracting plans.

Management's Response

Management agrees to improve the monitoring of HUB subcontracting plans submitted by general contractors.

Implementation Date: Fully implemented in December 2004

Responsible Persons: Director of Purchasing/HUB Coordinator and Associate Vice President for Facilities Management and Operations.

Chapter 1-F

Purchasing from People with Disabilities

In fiscal year 2003, the University fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from the Texas Industries for the Blind and Handicapped (TIBH). In addition, the University complied with the requirement to submit monthly exception reports to TBPC, even when there were no items to report.

Soil and Water Conservation Board

In fiscal year 2003, the Soil and Water Conservation Board (Board) minimally complied with HUB requirements. The Board complied with 33 percent of the 12 HUB requirements that were applicable to it (see Table 2 on page v in the Executive Summary). None of the subcontracting requirements were applicable to the Board because (1) it did not enter into any contracts greater than or equal to \$100,000 in fiscal year 2003 and (2) TBPC would have facilitated any of the Board's contracts of \$100,000 or more per an agreement between the two entities. While the Board needs to make improvements in the three remaining areas of its HUB program—planning, outreach, and reporting—it did comply with some HUB requirements (see text box).

The Board complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Strategic plan requirements
- HUB coordinator level equal to the procurement director
- Reporting of accurate HUB expenditure information

The Board's deficiencies in the area of outreach affected its ability to comply with requirements in the other areas. Specifically, the Board could not demonstrate that its HUB coordinator is "facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Board spent \$1.3 million within procurement categories that were eligible for HUB participation; it spent \$16,244 (1.24 percent) of that amount procuring from HUBs.

Chapter 2-A

Subsequent Events

Since the end of the audit period (fiscal year 2003), the Board has done the following to improve its level of compliance with the HUB program requirements:

- Adopted TBPC's revised HUB rules on November 18, 2004
- Invited a local HUB vendor to present a marketing presentation in November 2004
- Compiled monthly internal HUB usage reports for fiscal year 2004

Chapter 2-B

Planning

In fiscal year 2003, the Board did not fully comply with planning requirements in Texas Government Code, Section 2161.003. Specifically, the Board has not adopted TBPC's revised HUB rules as its own. TBPC revised the HUB rules in fiscal year 1999, and these rules became effective in fiscal year 2000.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the Board's noncompliance in the other two areas of the HUB requirements.

Recommendation

To comply with Texas Government Code, Section 2161.003, the Board should adopt TBPC's revised HUB rules, which are in TAC 111.

Management's Response

Our Board adopted the TBPC revised HUB rules at our Board Meeting on November 18, 2004.

Chapter 2-C

Outreach

The Board did not fully comply with outreach requirements in the TAC. Specifically:

- The job duties of the Board's HUB coordinator were not clearly defined in alignment with the responsibilities listed in TAC 111.26. The TAC states that the duties and responsibilities of HUB coordinators include facilitating compliance with the following: good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation.
- The Board was unable to provide sufficient evidence that its HUB coordinator advised executive management about the HUB program. Additionally, it could not provide sufficient evidence that its HUB coordinator assisted executive management with meeting HUB requirements. TAC 111.26 states that the HUB coordinator should be in a position that reports to, communicates with, and provides information to the entity's executive management.
- The Board did not sponsor a HUB forum in fiscal year 2003. The purpose of these forums is to increase HUBs' understanding of contracting with state entities. Furthermore, the Board did not have evidence to demonstrate that HUBs were invited to make in-house marketing presentations in fiscal year 2003. Although a HUB made an in-house marketing presentation to the Board, we were unable to determine whether the HUB or the Board initiated the presentation. Texas Government Code, Section 2161.066, states that each state entity that has a HUB coordinator shall "aggressively identify and notify individual HUBs regarding opportunities to make presentations regarding the types of goods and services" they provide. In addition to identifying and inviting HUBs to make marketing presentations, each entity should take the following actions:
 - ♦ Design its own forum program and model the program, to the extent appropriate, after the format established by TBPC.
 - ♦ Sponsor presentations by HUBs.

- ♦ Advertise the forums in accordance with HUB rules.
- The Board did not comply with requirements in TAC 111.28 that require each state entity to implement a mentor-protégé program to provide professional guidance and support to facilitate protégés' development and growth as HUBs.

Recommendations

To comply with TAC 111.26 and 111.27 and the Texas Government Code, Section 2161.066, the Board should:

- Ensure that its HUB coordinator has the appropriate responsibilities defined.
- Provide its HUB coordinator with opportunities to communicate with the executive director.
- Design and implement a forum program and invite HUBs to make in-house marketing presentations.

To comply with TAC 111.28, the Board should develop the required elements of a mentor-protégé program.

Management's Response

Our agency is in the process of developing a job description for the HUB coordinator to define the responsibilities. The HUB coordinator meets with our Executive Director on a monthly basis to discuss the monthly Internal HUB report, and try to look toward the future to any opportunity to purchase from HUB vendors. On November 3, 2004, our agency held a HUB forum at our agency. Our HUB coordinator contacted a local HUB vendor and invited their firm to deliver a marketing presentation to our agency.

Our agency is actively in the process of developing a mentor protégé program, and plans to have this in place by January 1, 2005.

Chapter 2-D

Reporting

The Board did not compile monthly internal HUB usage reports. TAC 111.16 and Texas Government Code, Section 2161.122, state that each entity shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they can implement and monitor the HUB program.

Additionally, TBPC does not have reliable information to include in the annual statewide HUB report to evaluate the reporting results of the Board's HUB program for the following reasons:

- The Board did not report accurate HUB information as detailed in TAC 111.16 and Texas Government Code, Section 2161.122, to TBPC for fiscal year 2003.

Specifically, the Board underreported by 16 the number of contracts awarded to HUBs in its supplemental annual report. The Board reported only 3 contracts; however, it provided evidence that it could have reported 19 contracts.

- For its reported total number of bids/proposals received, the Board was able to produce supporting documentation for only 26 of the 33 bids/proposals it reported to TBPC.

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Board should:

- Compile monthly internal HUB usage reports.
- Ensure that the reported number of contracts awarded is accurate.
- Ensure that the reported number of bids/proposals received is accurate.

Management's Response

- *In FY03, our agency did not prepare the internal monthly HUB usage reports, but did prepare internal HUB reports in FY04 and plan to continue to prepare this report on a monthly basis.*
- *The agency has developed a tracking system that will ensure the correct number of contracts awarded.*
- *The agency has developed a tracking system that will ensure the correct number of bids/proposals received.*

Chapter 2-E

Purchasing from People with Disabilities

In fiscal year 2003, the Board fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not identify any items that the Board could have purchased from TIBH. In addition, the Board asserted that it sent exception reports to TBPC each month as TBPC requires. However, the Board did not consistently maintain copies of each report to verify this information, nor could we locate these reports at TBPC.

Recommendation

The Board should maintain copies of all monthly exception reports it submits to TBPC.

Management's Response

Our agency has implemented a file that will house copies of the monthly exception report. In FY04, TBPC implemented their web portal that would be utilized to report this information. After the information has been entered using the web portal, a copy will be printed and filed accordingly.

Department of Agriculture

In fiscal year 2003, the Department of Agriculture (Department) minimally complied with HUB requirements. The Department complied with 53 percent of the 19 HUB requirements that were applicable to it (see Table 2 on page v of the Executive Summary). While the Department needs to make improvements in all four areas of its HUB program—planning, outreach, reporting, and subcontracting—it did comply with some HUB requirements (see text box).

The Department complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Strategic plan requirements
- Mentor-protégé program requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator’s involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Review and evaluation of HUB Subcontracting Plan prior to contract award

The Department’s deficiencies in the area of outreach affected its ability to comply with requirements in the other areas. Specifically, the Department could not demonstrate that its HUB coordinator is “facilitating compliance with the agency’s good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation” (TAC 111.26 [b]). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

We assessed compliance based on the implementation of program procedures and did “not consider the success or failure to contract with historically underutilized businesses in any specific quantity” as required by Section 2161.123 of the Texas Government Code. In fiscal year 2003, the Department spent \$10.2 million within procurement categories that are eligible for HUB participation; it spent \$1.4 million (13.32 percent) of that amount procuring from HUBs.

Chapter 3-A

Subsequent Events

Since the end of the audit period (fiscal year 2003), the Department has done the following to improve its level of compliance with the HUB program requirements:

- Adopted TBPC’s revised HUB rules on May 2004 as published in the Texas Register
- Co-hosted a HUB forum in December 2004
- Appropriately defined the HUB coordinator’s responsibilities in August 2004 to comply with TAC requirements

Chapter 3-B

Planning

In fiscal year 2003, the Department did not fully comply with planning requirements in Texas Government Code, Section 2161.003. Although TBPC revised the HUB rules in 1999 and made them effective in 2000, the Department had not adopted the rules as its own as of 2003 (the period covered by our audit). However, the Department adopted the rules in 2004.

The planning aspects of the HUB program should be the guiding factor in establishing and implementing a successful HUB program. Noncompliance with planning requirements could have contributed to the Department's noncompliance in the other three areas of HUB requirements.

Management's Response

TDA adopted the HUB rules in its strategic plan as required by Govt. Code 2161.003 and TBPC TAC 111.15(b). However, because we only specifically mentioned TAC 111.11 – 111.24, the team determined that we did not fully comply because we did not mention by its legal citation TAC 111.26 (HUB Coordinator responsibilities), .27 (HUB Forum Programs), and .28 (Mentor Protégé.)

In fact, in fiscal year 2003 TDA had appointed a HUB Coordinator, established a HUB Forum Program and a Mentor Protégé Program, which we referenced in our strategic plan. We believe that TDA complied in substance with the requirements of the administrative code.

As noted in Chapter 3-A TDA formally adopted the revised HUB rules in May 2004.

Auditor's Follow-Up Comment

See page 16 for follow-up comment.

Chapter 3-C

Outreach

The Department did not fully comply with outreach requirements in the TAC. Specifically:

- The job duties of the Department's HUB coordinator were not clearly defined in alignment with the responsibilities listed in TAC 111.26. The TAC states that the duties and responsibilities of HUB coordinators include facilitating compliance with the following: good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation.
- The Department did not sponsor a HUB forum or invite HUBs to make in-house marketing presentations in fiscal year 2003. The purpose of forums is to increase HUBs' understanding of contracting with state entities. Texas Government Code, Section 2161.066, states that each state entity that has a HUB coordinator shall "aggressively identify and notify individual HUBs regarding opportunities to make presentations regarding the types of goods and services" they provide. In addition to identifying and inviting HUBs to make marketing presentations, each entity should take the following actions:
 - ♦ Design its own forum program and model the program, to the extent appropriate, after the format established by TBPC.
 - ♦ Sponsor presentations by HUBs.
 - ♦ Advertise the forums in accordance with HUB rules.

Recommendations

To comply with TAC 111.26, and the Texas Government Code, Section 2161.066, the Department should:

- Ensure that its HUB coordinator has the appropriate responsibilities defined.
- Design and implement a forum program and invite HUBs to make in-house marketing presentations.

Management's Response

TDA appointed its Coordinator for Purchasing as the HUB Coordinator as required by the statute and the rules and included this description in the coordinator's job description. However, the team concluded that because the job description for the Coordinator for Purchasing did not describe some of the specific duties of the HUB Coordinator, they could not ensure that the coordinator's duties had been clearly defined in alignment with the responsibilities listed in TAC 111.26.

TAC 111.26 (a) clearly states that an agency with expenditures in excess of \$10 million shall appoint a HUB Coordinator, which we did. TAC 111.26 (b) describes the duties and responsibilities of the HUB Coordinator. It does not require that the duties and responsibilities be detailed in the coordinator's job description or performance evaluation form.

We concur that detailing some of the HUB Coordinator's duties and responsibilities in the job description and performance evaluation is a "best practice." However, if detailing the HUB Coordinator's duties in the job description is significant enough to be considered a compliance requirement, the team should recommend that TBPC amend TAC 111.26 (b).

As noted in Chapter 3-A, TDA revised the job description of the Coordinator for Purchasing and defined the HUB Coordinator's duties.

The team determined that we were not in compliance with HUB forum participation because we did not participate in a HUB forum in 2003.

TDA has participated in and hosted HUB forums in the past (fiscal year 2002) and co-hosted one in December 2004.

TAC 127.27 states that agencies shall develop a HUB forum program. The rules do not state that agencies shall host or participate in an annual forum. The team used "legislative intent" to interpret the rule and determined that agencies are required to participate in annual forums. We concur that it is a best practice to host and participate in annual forums. We have done so in the past and will continue to do so in the future. TDA co-hosted a HUB forum held on December 7, 2004, at the William B. Travis Building.

If the team feels strongly that annual forums should be a compliance requirement, it should recommend that TBPC amend TAC.

Auditor's Follow-Up Comment

See page 16 for follow-up comment.

Chapter 3-D

Reporting

While the Department accurately reported its fiscal year 2003 HUB-eligible expenditure transactions to TBPC, it did not fully comply with other reporting requirements. We tested a sample of HUB-eligible expenditures reported to TBPC in fiscal year 2003 to verify that they were appropriately authorized by Department personnel, categorized as HUB expenditures, supported with Department purchase orders or requisitions, and relevant to the Department's mission.

The Department did not fully comply with other HUB reporting requirements in TAC and the Texas Government Code. Specifically:

- The Department's supporting documentation for the number of contracts awarded to and the number of bids submitted by HUBs did not match the numbers it reported to TBPC. As a result, we cannot ensure that decision makers have reliable information for evaluating the Department's HUB program. TAC 111.16 and Texas Government Code, Section 2161.122, require entities to report complete and accurate information to TBPC.
- As mentioned in the Subcontracting section below (Chapter 3-E), the Department did not require prime contractors to submit expenditure reports for each month that payments were made to subcontractors. TAC 111.16 states that on a monthly basis state entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that state entities are able to monitor the use of HUBs as subcontractors.
- The Department had approximately \$1.22 million in subcontracting expenditures as reported by the subcontractors; however, it did not report any of these to TBPC, as required by TAC 111.16. We obtained this information from the subcontractors, but it could not be verified with the Department.
- The Department did not compile monthly internal HUB usage reports. TAC 111.16, and Texas Government Code, Section 2161.122, state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers. It is essential that decision makers receive these reports so that they can implement and monitor the HUB program.

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Department should:

- Ensure the completeness and accuracy of the number of contracts awarded and the number of bids received by maintaining supporting documentation.

- Require prime contractors to submit expenditure reports for each month they pay subcontractors.
- Ensure that accurate and complete HUB subcontracting expenditure information is collected and reported to TBPC.
- Compile monthly HUB usage reports to include information regarding subcontractors and suppliers.

Management's Response

We agree with the recommendations.

TDA has upgraded its purchasing tracking system to quickly and accurately identify HUB expenditures. We have also developed an interim contract monitoring system on an Excel spreadsheet to monitor all contracts. These new improvements will assist the HUB Coordinator in preparing accurate reports for management and TBPC.

TDA does not currently have any prime contractors. However, if in the future TDA does contract with a prime contractor, TDA will ensure that it complies with the provisions of TAC 111.16.

Chapter 3-E

Subcontracting

The Department did not fully comply with subcontracting requirements in TAC 111.14. We tested two contracts, which totaled \$1.7 million according to the Department, and found the following errors:

- The Department awarded contracts to vendors who did not perform the following tasks, which are required by TAC 111.14:
 - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract.
 - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting.
 - ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media.
 - ♦ Encourage non-certified HUBs to become HUB-certified.
- The Department did not monitor prime contractors' compliance with their HUB subcontracting plans. TAC 111.14(d) requires state entities to audit prime contractors' expenditures to HUB subcontractors. However, as discussed in the Reporting section (Chapter 3-D) above, the Department did not require its prime contractors to submit expenditure reports, so it could not fulfill the audit requirement of TAC 111.14(d).

Recommendations

To comply with TAC 111.14, the Department should:

- Ensure that contracts are awarded to contractors who comply with TAC requirements.
- Monitor prime contractors' compliance with HUB subcontracting plans.

Management's Response

The team determined that because the primary contractors on "The Project" did not provide TDA with evidence of phone calls or contact documentation of the primary contractor's attempts to subcontract with HUBs, TDA had not complied with the requirements of TAC 111.14.

The two primary contractors on "The Project" submitted their bids with firm commitments to subcontract some of the work to HUBs. The primary vendors completed the required TBPC forms and identified the HUB subcontractors by name and percentage of work they would perform when they bid on the contract. TDA interviewed the contractors and their HUB subcontractors before the contracts were signed. The primary contractors did in fact hire the HUB subcontractors.

The team contends that the primary contractor was required to call at least three HUB vendors that perform similar services. We did not feel it was necessary to require that the primary contractor show TDA their phone logs or evidence of how they contacted their HUBs. If the primary contractors had stated that they had plans to subcontract the work but had not identified any HUBs, TDA would have assisted them in developing their HUB subcontracting program and monitored their compliance. In addition, if the primary vendor later determined that it had not found suitable subcontractors, we would have asked for evidence of their attempts to contact HUBs. TDA feels that it complied in substance with the requirements of TAC 111.14.

TDA agrees that it did not fully comply with the requirements in TBPC TAC 111.14(d). However, the two HUB contractors performed their duties either at TDA headquarters or at the primary contractor's location and were visible to TDA staff throughout the project.

TDA does not have any major contracts exceeding \$100,000 at this time that would require compliance with TAC 111.14.

Auditor's Overall Follow-Up Comment to the Department's HUB Responses

The audit of entities' compliance with HUB requirements was conducted in accordance with requirements found in the Texas Government Code and Texas Administrative Code. As required by statute, we worked closely with the Texas Building and Procurement Commission to develop the audit criteria and methodology that has been used to audit entities' compliance for the past three years.

Purchasing from People with Disabilities

In fiscal year 2003, the Department fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report. The Department did not meet this requirement.

Recommendation

To comply with TBPC requirements, the Department should submit exception reports for each month even if there are no items to report.

Management's Response

TDA agrees with and is complying with the recommendation. The HUB Coordinator is now submitting exception reports to TBPC even if there is nothing to report.

The University of Texas Health Science Center at Houston

In fiscal year 2003, the University of Texas Health Science Center at Houston (Health Science Center) substantially complied with HUB requirements. The Health Science Center complied with 67 percent of the 18 HUB requirements that were

The Health Science Center complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Mentor-protégé program requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- HUB forum participation
- In-house marketing presentations by HUBs
- Monthly internal HUB usage reports requirements
- Statement of Subcontracting Opportunities in solicitation document
- Review and evaluation of HUB Subcontracting Plan prior to contract award

applicable to it (see Table 2 on page v of the Executive Summary). While the Health Science Center needs to make improvements in two areas of its HUB program—reporting and subcontracting—it did comply with many HUB requirements (see text box).

The Health Science Center's compliance can be attributed to the fact that its HUB Coordinator is "facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Health Science Center spent \$77 million within procurement categories that were eligible for HUB participation; it spent \$7 million (9.09 percent) of that amount procuring from HUBs.

Chapter 4-A

Reporting

Our testing showed that the Health Science Center accurately reported its fiscal year 2003 HUB-eligible expenditure transactions to TBPC. We tested a sample of HUB-eligible expenditures that the Health Science Center reported to TBPC in fiscal year 2003 to verify that they were appropriately authorized by personnel, categorized as HUB expenditures, supported with purchase orders or requisitions, and relevant to the mission.

However, the Health Science Center did not fully comply with other HUB reporting requirements in TAC and the Texas Government Code. Specifically:

- For both its semiannual and annual HUB supplemental reports, the Health Science Center was unable to provide supporting documentation for the total number of bids/proposals received and the total number of contracts awarded because these numbers were estimated.
- The Health Science Center misreported subcontracting expenditures to TBPC for fiscal year 2003. The Health Science Center reported \$700,000 in expenditures; however, it had support for \$815,000 in expenditures (16 percent more than it reported). Furthermore, the Health Science Center's subcontractors informed us

of \$64,000 in subcontracting expenditures that the Health Science Center did not report and for which it did not have support.

- The Health Science Center did not consistently collect prime contractors' expenditure reports for each month that payments were made to subcontractors. TAC 111.16 states that, on a monthly basis, state entities shall require contractors/vendors to identify their HUB subcontractors and the amounts paid for purchases. These reports are designed to ensure that state entities are able to monitor the use of HUBs as subcontractors.

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Health Science Center should:

- Ensure the accuracy of its HUB reports.
- Ensure that it collects and reports accurate and complete HUB subcontracting expenditure information to TBPC.
- Require prime contractors to consistently submit expenditure reports for each month they pay subcontractors.

Management's Response

Management generally agrees with the recommendations. Regarding the finding that the Health Science Center under reported HUB subcontracting expenditures to TBPC for fiscal year 2003, we have the following comment: As the deadline for submission of the annual HUB report to TBPC occurs prior to the last date contractors can submit their Progress Assessment Reports (PARs), there is a possibility of under-reporting subcontracting expenses to TBPC. During fiscal year 2004, procedures were developed to track monthly submissions of PARs by contractors. Effective fiscal year 2005, contract language has been modified to require contractors to submit PARs as a condition of payment.

Chapter 4-B

Subcontracting

The Health Science Center did not fully comply with subcontracting requirements in TAC 111.14. We found the following errors:

- The Health Science Center awarded one \$441,000 contract to a vendor that did not perform the following tasks that TAC 111.14 requires:
 - ♦ Divide the contract work into reasonable lots or portions.
 - ♦ Provide evidence that the contractor notified three or more HUBs that the contractor intended to subcontract.
 - ♦ Show that it gave the HUBs at least five days to respond to a bid for subcontracting.

- ♦ Advertise subcontracting opportunities in general media, trade associations, or minority-focused media.
- ♦ Encourage non-certified HUBs to become HUB-certified.
- The Health Science Center did not monitor prime contractors' compliance with their HUB subcontracting plans. For example, a Health Science Center's prime contractor did not report approximately \$64,000 in subcontractor payments; therefore, the Health Science Center did not report this amount to TBPC as required. TAC 111.14(d) requires the contractor/vendor to document its compliance with its HUB subcontracting plan and submit a compliance report to the contracting agency periodically.

Recommendations

To comply with TAC 111.14, the Health Science Center should:

- Ensure that it awards contracts to contractors that comply with TAC requirements.
- Monitor prime contractors' compliance with HUB subcontracting plans.

Management's Response

Management agrees with the recommendations and findings of deficiencies in the one contract reviewed. Training was provided to current HUB Program personnel on the Health Science Center's HUB Subcontracting Procedures to ensure that all elements required are present in HUB Subcontracting plans submitted for review. The HUB Coordinator has developed a report which is being utilized to monitor contractor's compliance with submitted subcontracting plans.

Chapter 4-C

Purchasing from People with Disabilities

In fiscal year 2003, the Health Science Center fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report, and the Health Science Center did not comply with this requirement.

Recommendation

To comply with TBPC requirements, the Health Science Center should submit exception reports for each month, even when there are no items to report.

Management's Response

Management agrees with the recommendations stated. Effective January 1, 2005 the Director of Purchasing will be responsible for submitting these reports monthly.

Department of State Health Services

In fiscal year 2003, the Department of State Health Services (Department, formerly the Department of Health) substantially complied with HUB requirements. The Department complied with 74 percent of the 19 HUB requirements that were applicable to it (see Table 2 on page v of the Executive Summary). While the

Department needs to make improvements in two HUB areas—outreach and reporting—it did comply with many HUB requirements (see text box).

The Department complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Strategic plan requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- HUB forum participation
- In-house marketing presentations by HUBs
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Evidence of good-faith effort in development of HUB Subcontracting Plans
- Review and evaluation of HUB Subcontracting Plan prior to contract award

The Department's compliance can be attributed to the fact that its HUB Coordinator is "facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Department spent \$181 million within procurement categories that were eligible for HUB participation; it spent \$20.5 million (11.29 percent) of that amount procuring from HUBs.

Chapter 5-A

Outreach

The Department did not fully comply with outreach requirements in the TAC. Specifically, the Department has developed a mentor-protégé program, but there was insufficient documentation to verify that the Department periodically monitored the program. TAC 111.28 requires that agencies monitor the progress of the mentor-protégé relationship.

Recommendations

To comply with TAC 111.27 and 111.28, the Department should maintain documentation of monitoring efforts for its mentor-protégé program.

Management's Response

As noted by the State Auditor's Office, TDH has good procedures for the mentor/protégé program. However during the past year, the Department was without a HUB coordinator for an extended period and went through a transformation as a result of HB 2292. This resulted in a lot of staff movement and

much of the HUB documentation on the mentor/protégé program and reporting from fiscal year 2003 was misplaced. The Department agrees with the recommendation and will maintain documentation of the monitoring efforts for its mentor/protégé program.

Responsible Party: DSHS HUB Coordinator and Accounting Director

Date of Completion: January 1, 2005

Chapter 5-B

Reporting

The Department did not materially comply with reporting requirements in TAC 111.16 and Texas Government Code, Section 2161.122. Specifically:

- The Department did not report complete and accurate information to TBPC. As a result, decision makers do not have reliable information for evaluating the Department's HUB program. Specifically, for the following numbers it reported to TBPC, the Department either was unable to provide supporting documentation or did not have complete documentation: (1) the number of contracts awarded and the number of bids/proposals submitted by HUBs, (2) vendor amounts, and (3) vendor payments.
- The Department's summary reports of procurement card expenditures matched what it reported to TBPC; however, its detailed expenditure reports did not match the summary reports.
- The Department did not compile monthly internal HUB usage reports for the entire fiscal year. While the Department provided a report for September 2002, it was unable to produce these reports for the remaining months of fiscal year 2003. TAC 111.16 and Texas Government Code, Section 2161.122, state that entities shall maintain, and compile monthly, information relating to the entity's and its operating divisions' use of HUBs, including information regarding subcontractors and suppliers.

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Department should:

- Ensure that it reports complete and accurate information to TBPC.
- Maintain sufficient documentation for information it reports to TBPC.
- Ensure that it compiles monthly internal HUB usage reports.

Management's Response

The Department agrees that complete and accurate information must be reported to the Texas Building and Procurement Commission (TBPC). The Department's

Accounting Director and HUB Coordinator will work together to establish quality assurance reviews to ensure the accurate and complete reporting of HUB usage.

As noted by the auditors the Department's procurement card summary information agreed within one percent of total amount reported to TBPC; however, due to the timing of certain transactions it was not possible to match the procurement card detail to the reporting period. The Department agrees it is important to be able to reconcile procurement card detail and will establish reporting criteria to ensure the accuracy of the information reported.

The Department also agrees that it was unable to produce all internal monthly HUB usage reports compiled for fiscal year 2003. However, the Department generated quarterly reports for the Texas Board of Health and the Commissioner. The Department's HUB Coordinator and technical staff will produce monthly usage reports for internal review and planning.

Responsible Party: DSHS HUB Coordinator and Accounting Director

Date of Completion: January 1, 2005

Chapter 5-C

Purchasing from People with Disabilities

In fiscal year 2003, the Department fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not identify any material items that could have been purchased from TIBH. In addition, the Commission complied with TBPC's requirement to submit exception reports each month, even when there were no items to report.

In fiscal year 2003, the Texas A&M University System Health Science Center (Health Science Center) substantially complied with HUB requirements. The Health Science Center complied with 83 percent of the 18 HUB requirements that were applicable to it (see Table 2 on page v of the Executive Summary). While the Health Science Center needs to make improvements in two areas of its HUB program—outreach and reporting—it did comply with many HUB requirements (see text box).

The Health Science Center complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Mentor-protégé program requirements
- HUB coordinator communication with executive director
- HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- In-house marketing presentations by HUBs
- Reporting of accurate HUB expenditure information
- Monthly internal HUB usage reports requirements
- Progress Assessment Reports requirements
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Evidence of good-faith effort in development of HUB Subcontracting Plans
- Review and evaluation of HUB Subcontracting Plan prior to contract award

The Health Science Center's compliance can be attributed to the fact that its HUB Coordinator is "facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Health Science Center spent \$20.02 million within procurement categories that were eligible for HUB participation; it spent \$1.2 million (6.08 percent) of that amount procuring from HUBs.

Chapter 6-A

Outreach

While the Health Science Center sponsored a HUB forum in fiscal year 2003, it did not advertise the forum in the appropriate trade publications that target HUBs as required by TAC 111.27.

Recommendation

To comply with TAC 111.27, the Commission should advertise the forums in accordance with HUB rules.

Management's Response

HSC concurs. HSC did not advertise the June 2003 Economic Opportunity Forum in an appropriate trade publication. Instead, since the preponderance of HUBs that participated in the forum reside within the regional area, the planning staff targeted over 150 HUB certified services and commodities vendors registered on the Central Master Bidders List as potential business partners and mailed personal invitations to them. In addition, the details of the forum were advertised in the regional newspaper (Bryan-College Station Eagle) where delivery covers more than seven counties and has a total circulation of more

than 27,279. Approximately 78 HUB vendors attended the forum and presented information to more than 250 attendees.

While we concur with the SAO findings, exception is taken in that advertising in trade publications is not always cost effective with state appropriations nor do we agree that it would have been the best approach to widely advertise the June 2003 forum. During 2003, the HSC collaborated with other Texas A&M University System agencies to host the forum. Nevertheless, the HSC is reviewing options to maximize appropriate advertising benefit.

Chapter 6-B

Reporting

The Health Science Center did not fully comply with reporting requirements as detailed in TAC 111.16 and Texas Government Code, Section 2161.122, for fiscal year 2003. Specifically, the Health Science Center was unable to provide supporting documentation for the numbers it reported in its supplemental semiannual (six-month) report and its annual report. Additionally, the numbers it reported in its annual report were significantly less than those reported in its semiannual report. As a result, TBPC does not have reliable information to include in the annual statewide HUB report to evaluate the results of the Health Science Center's HUB program.

In addition, the Health Science Center did not track or report purchases it made through the group purchasing program as required in TAC 111.16(e) and Texas Government Code, Section 2161.122(d).

Recommendations

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Health Science Center should ensure that it reports complete and accurate information to TBPC in its HUB supplemental reports.

To comply with TAC 111.16(e) and Texas Government Code, Section 2161.122(d), the Health Science Center should ensure that it tracks and reports complete and accurate information regarding group purchases to TBPC.

Management's Response

HSC concurs. We recognize there was an inaccuracy in reporting correct and complete information regarding supplemental data for fiscal year 2003. However, in fiscal year 2004, the newly employed HUB Coordinator immediately began reviewing the reporting requirements to ensure appropriate steps were in place to comply with HUB reporting requirements. As a result, specific tools to collect, compile, track, and report supplemental data were developed and implemented to enable the HSC to successfully monitor and report accurate and complete information. Also, the HSC has employed a Certified Texas Purchasing Manager (CTPM) to serve as the assistant HUB Coordinator whose responsibilities include tracking and compliance regarding reporting group purchases to TBPC. Therefore, although the semi-annual report lacked substantiation, the annual provided accurate and substantiated numbers using the newly established metric tools.

Purchasing from People with Disabilities

In fiscal year 2003, the Health Science Center substantially complied with requirements for purchasing from people with disabilities, which are specified in Chapter 122 of the Texas Human Resources Code. However, our testing found three items from a sample of 66 (approximately 5 percent) that could have been purchased from TIBH but that the Health Science Center purchased from another vendor. Furthermore, the TBPC requires agencies to submit exception reports each month even if there are no items to report. However, the Health Science Center did not submit any exception reports to TBPC in fiscal year 2003 (therefore, it did not report the three items mentioned above).

Recommendations

To fully comply with Chapter 122 of the Texas Human Resources Code, the Health Science Center should ensure that it purchases items from TIBH when items are available from this source.

Additionally, to comply with TBPC requirements, the Health Science Center should submit the required exception reports each month, even if there are no items to report.

Management's Response

HSC concurs. The HSC recognizes the TIBH state purchase program and will take appropriate action in an effort to comply with program requirements. The HSC has designated a state-use coordinator who has begun training regarding program requirements. Additionally, as a result of the problematic reporting requirements associated with submitting required monthly exception reports and the challenges with collecting accurate and complete information, the HSC has requested of the A&M System Financial Accounting Management Information System (FAMIS) team, the creation of a process that will meet the reporting requirements of TBPC.

Alcoholic Beverage Commission

In fiscal year 2003, the Alcoholic Beverage Commission (Commission) substantially complied with HUB requirements. The Commission complied with 84 percent of the 19 HUB requirements that were applicable to it (see Table 2 on page v of the Executive Summary). While the Commission needs to make improvements in two areas of its HUB program—outreach and reporting—it did comply with many HUB requirements (see text box).

The Commission complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Strategic plan requirements
- Mentor-protégé program requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- Reporting of accurate HUB expenditure information
- Monthly internal HUB usage reports requirements
- Progress Assessment Reports requirements
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Evidence of good-faith effort in development of HUB Subcontracting Plans
- Review and evaluation of HUB Subcontracting Plan prior to contract award

The Commission's compliance can be attributed to the fact that its HUB Coordinator has the authority to "facilitate compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Commission spent \$2.2 million within procurement categories that were eligible for HUB participation; it spent approximately \$402,000 (18.27 percent) of that amount procuring from HUBs.

Chapter 7-A Outreach

The Commission did not fully comply with outreach requirements in Texas Government Code, Section 2161.066, and TAC 111.27. Specifically:

- The Commission did not have evidence to demonstrate that it invited HUBs to make in-house marketing presentations in fiscal year 2003. The purpose of marketing presentations is to allow HUBs the opportunity to deliver technical and business presentations that demonstrate their capability to do business with the agency. Texas Government Code, Section 2161.066, states that each state entity that has a HUB coordinator shall "aggressively identify and notify individual HUBs regarding opportunities to make a presentation regarding the types of goods and services" they provide.
- While the Commission sponsored a HUB forum in fiscal year 2003, it did not advertise the forum in the appropriate trade publications that target HUBs, as required by TAC 111.27.

Recommendations

To comply with Texas Government Code, Section 2161.066, and TAC 111.27, the Commission should:

- Maintain documentation demonstrating that it invites HUBs to make in-house marketing presentations.
- Advertise its HUB forums in accordance with HUB rules.

Management's Response

We agree with the recommendations. The agency has created an electronic file folder for all e-mails and letters sent to owners or representatives of historically underutilized businesses inviting them to make presentations or informing them on how to do business with the TABC. The agency will capture information for each in-house presentation that will include date and location of presentation, attendees, signature of HUB representative and a summary of the subject matter presented. The information will be stored in a hardcopy file by fiscal year.

Advertising of forums will be done on TABC's public Website and on TBPC's Website. The agency co-sponsored a forum on December 7, 2004, that was posted on the Texas Building and Procurement Commission's Website.

Chapter 7-B

Reporting

The Commission did not fully comply with reporting requirements in TAC 111.16 and Texas Government Code, Sections 2161.122 and 2161.125. Specifically:

- The Commission did not report complete and accurate information to TBPC for fiscal year 2003. As a result, decision makers do not have reliable information for evaluating the Commission's HUB program. We found the following errors:
 - ♦ The Commission reported in its supplemental semiannual (six-month) report that it had awarded 404 contracts. However, our testing found that the Commission actually awarded 330 contracts. Likewise, in its supplemental annual report, the Commission reported that it had awarded 485 contracts. However, our testing found that the Commission actually awarded 586 contracts.
 - ♦ The Commission was unable to provide supporting documentation for the number of HUB bids and proposals received that it reported to TBPC. As a result, we cannot validate the number reported. TAC 111.16 and Texas Government Code, Section 2161.122, require entities to report complete and accurate information to TBPC.
- In its semiannual and annual supplemental reports, the Commission did not categorize the numbers of contracts awarded and bids received by sex, race, and ethnicity as required by Texas Government Code, Section 2161.125.

Recommendations

To comply with TAC 111.26 and Texas Government Code, Sections 2161.122 and 2161.125, the Commission should:

- Ensure that its reported number of contracts awarded is accurate.
- Ensure the completeness and accuracy of the number of reported HUB bids and proposals received by maintaining supporting documentation.
- Ensure that the information it submits to TBPC includes all required elements.

Management's Response

We agree with the recommendations. The agency is currently tracking the numbers by comparing a download of TBPC's CMBL vendor file at the end of each month with TABC's internal database. The agency will manually track HUB data that is not captured in the download and reconcile the numbers reported to TBPC with current supporting documentation to ensure that numbers reported to TBPC are accurate.

The agency has developed a log that each purchaser will use to manually categorize the number of contracts awarded and bids received by sex, race and ethnicity as required by Texas Government Code, Section 2161.125.

Chapter 7-C

Purchasing from People with Disabilities

In fiscal year 2003, the Commission fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any material items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report, and the Commission did not comply with this requirement.

Recommendation

To comply with TBPC requirements, the Commission should submit the required exception reports each month, even if there are no items to report.

Management's Response

We agree with the recommendation and have standardized the letter that will be submitted each month regardless of whether there are items to report or not. The Director of Business Services will be responsible for implementing all corrective actions required in this report and will be the contact person for questions related to the recommendations made.

State Board for Educator Certification—Follow-Up Agency

In fiscal year 2003, the State Board for Educator Certification (Board) substantially complied with HUB requirements. The Board complied with 84 percent of the 19 HUB requirements that were applicable to it (see Table 2 on page v of the Executive Summary). This is an improvement from fiscal year 2002, when the Board did not make a good-faith effort to comply. (See *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 03-018, February 2003.)

The Board complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Strategic plan requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator's involvement in development of procurement specifications and HUB Subcontracting Plans and in evaluation of contracts
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- In-house marketing presentations by HUBs
- Reporting of accurate HUB expenditure information
- Monthly internal HUB usage reports requirements
- Progress Assessment Reports requirements
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Evidence of good-faith effort in development of HUB Subcontracting Plans
- Review and evaluation of HUB Subcontracting Plan prior to contract award

While our follow-up work found that the Board implemented most of the prior audit recommendations and complied with many of the requirements (see text box), it did not fully comply with certain requirements in outreach and reporting in fiscal year 2003.

The Board's improved compliance can be attributed to the fact that its HUB coordinator is given the authority to "facilitate compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that, when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Board spent \$14.6 million within procurement categories that were eligible for HUB participation; it spent \$1.4 million (9.93 percent) of that amount procuring from HUBs.

Chapter 8-A

Outreach

The Board did not fully comply with outreach requirements in the TAC. Specifically:

- While the Board has implemented a mentor-protégé program, it did not comply with a specific provision in TAC 111.28 that requires each state entity's mentor-protégé program to include mentor and protégé eligibility and selection criteria. Further, the Board does not have a process for monitoring the progress of the mentor-protégé relationship as required by the TAC. According to TAC 111.28, "each state entity with a biennial appropriation that

exceeds \$10 million shall implement a mentor-protégé program" to provide professional guidance and support to facilitate protégés' development and growth as HUBs.

- The Board did not sponsor a HUB forum in fiscal year 2003. The purpose of these forums is to increase HUBs' understanding of contracting with state entities.

Recommendations

To comply with TAC 111.28, the Board should:

- Develop the required elements of its mentor-protégé program, such as establishing eligibility and selection criteria and a process for monitoring the progress of the mentor-protégé relationship.
- Design and implement a HUB forum program.

Management's Response

The Board concurs with the fiscal year 2003 audit findings. The Board has since revised and established mentor and protégé selection criteria and has developed procedures for monitoring the mentor-protégé relationship progress to correct the findings for fiscal year 2004.

The Board did sponsor a HUB forum for fiscal year 2004 and has developed a relationship with other state agencies to sponsor a HUB Forum for fiscal year 2005.

Chapter 8-B

Reporting

The Board did not report complete and accurate information as detailed in TAC 111.16 and Texas Government Code, Section 2161.122. The Board did not provide accurate information in its semiannual and annual HUB supplemental reports to TBPC. Specifically, the Board overreported the number of bids/proposals received in its annual report. Similarly, the Board underreported the number of contracts awarded in its semiannual report.

Recommendation

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Board should ensure the completeness and accuracy of the numbers it reports in its semiannual and annual HUB supplemental reports.

Management's Response

The Board concurs with the findings. The Board has corrected the problem in fiscal year 2004. The Board will be consolidating administrative functions with the Texas Education Agency including the purchasing and HUB functions in an effort to streamline and provide oversight for all HUB functions and reporting requirements.

Purchasing from People with Disabilities

In fiscal year 2003, the Board fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any material items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report, and the Board did not comply with this requirement.

Recommendation

To comply with TBPC requirements, the Board should submit the required exception reports each month, even when there are no items to report.

Management's Response

The Board concurs with the audit finding. The Board will be consolidating administrative functions and services with TEA including oversight of the reporting function.

The State Board for Educator Certification is confident that corrective measures have been taken to correct the findings in the audit.

Texas Education Agency—Follow-Up Agency

In fiscal year 2003, the Texas Education Agency (Agency) substantially complied with HUB requirements. The Agency complied with 84 percent of the 19 HUB requirements that were applicable to it (see Table 2 on page v of the Executive

The Agency complied with the following HUB requirements:

- Legislative Appropriations Request requirements
- Adoption of HUB rules
- Strategic plan requirements
- Mentor-protégé program requirements
- HUB coordinator level equal to the procurement director
- HUB coordinator communication with executive director
- HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach
- In-house marketing presentations by HUBs
- Reporting of accurate HUB expenditure information
- Monthly internal HUB usage reports requirements
- Progress Assessment Reports requirements
- Statement of Subcontracting Opportunities in solicitation document
- Use of resources such as the Certified Master Bidders List and Internet to determine whether subcontracting opportunities are probable
- Statement of Texas certified HUB by potential contractor
- Evidence of good-faith effort in development of HUB Subcontracting Plans
- Review and evaluation of HUB Subcontracting Plan prior to contract award

Summary). This is an improvement from fiscal year 2002, when the Agency did not make a good-faith effort to comply. (See *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 03-018, February 2003.)

While our follow-up work found that the Agency implemented most of the prior audit recommendations, the Agency did not fully comply with certain requirements in outreach and reporting in fiscal year 2003. However, the Agency did comply with many HUB requirements (see text box).

The Agency's improved compliance can be attributed to the fact that its HUB coordinator is given the authority to "facilitate compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Agency spent \$122.7 million within procurement categories that were eligible for HUB participation; it spent \$18.4 million (14.96 percent) of that amount procuring from HUBs.

Chapter 9-A

Outreach

The Agency did not fully comply with the HUB outreach requirements in the TAC. In fiscal year 2003, the Agency did not advertise its forum in the appropriate trade publications to target HUBs as required by TAC. According to TAC 111.27, agencies with a biennial appropriation exceeding \$10 million should advertise forums in appropriate trade publications to target HUBs.

Recommendation

To comply with TAC 111.27, the Agency should advertise forums in accordance with HUB rules.

Management's Response

The agency concurs with the fiscal year 2003 audit finding. The agency did advertise the agency sponsored HUB forum for fiscal year 2004 in appropriate trade publications. The TAC Rule 111.27 requiring advertising HUB forum has since been revoked for fiscal year 2005 and will no longer be a HUB requirement. The agency Purchasing Director/HUB Coordinator is responsible for the corrective actions and has already implemented the change for fiscal year 2004.

Chapter 9-B

Reporting

As in the previous audit, the Agency did not report complete and accurate information as detailed in TAC 111.16 and Texas Government Code, Section 2161.122. The Agency overreported the number of contracts it awarded in its semiannual report and its annual report, and it did not report complete information for the number of bids/proposals received. As a result, decision makers continue to not have reliable information for evaluating the Agency's HUB program.

Recommendation

To comply with TAC 111.16 and Texas Government Code, Section 2161.122, the Agency should ensure the completeness and accuracy of the number of reported bids/proposals received and contracts awarded.

Management's Response

The agency concurs with the findings. The agency has corrected the problem in fiscal year 2004. The agency Purchasing Director/HUB Coordinator has provided training to purchasing staff and implemented a monthly reporting system to filter duplication of information. This change was implemented for fiscal year 2004 data.

Chapter 9-C

Purchasing from People with Disabilities

In fiscal year 2003, the Agency fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report, and the Agency did not comply with this requirement.

Recommendation

To comply with TBPC requirements, the Agency should submit the required exception reports each month, even when there are no items to report.

Management's Response

The agency concurs with the audit finding. The reporting responsibility has been transferred to the Purchasing Director and exception reports have been submitted for fiscal year 2004 and 2005 to date.

Department of Family and Protective Services—Follow-Up Agency

The Department complied with all HUB requirements.

In fiscal year 2003, the Department of Family and Protective Services (Department, formerly the Department of Protective and Regulatory Services) fully complied with HUB requirements. Our follow-up work found that the Department implemented our prior audit recommendations and fully complied with all requirements in all HUB categories in fiscal year 2003.

This is an improvement from fiscal year 2002, when the Department did not make a good-faith effort to comply. (See *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 03-018, February 2003.)

The Department's improved compliance can be attributed to the fact that its HUB coordinator is given the authority to "facilitate compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the Department spent \$33.2 million within procurement categories that were eligible for HUB participation; it spent \$5.68 million (17.09 percent) of that amount procuring from HUBs.

Purchasing from People with Disabilities

In fiscal year 2003, the Department fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from TIBH. In addition, the Department complied with TBPC's requirement that agencies submit exception reports each month, even when there are no items to report.

Texas State University-San Marcos—Follow-Up University

The University complied with all HUB requirements.

In fiscal year 2003, Texas State University–San Marcos (University, formerly Southwest Texas State University) fully complied with HUB requirements. Our follow-up work found that the University implemented our prior audit recommendations and fully complied with requirements in all HUB categories in fiscal year 2003.

This is an improvement from fiscal year 2002, when the University did not make a good-faith effort to comply. (See *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, SAO Report No. 03-018, February 2003.)

The University's improved compliance can be attributed to the fact that its HUB coordinator is given the authority to "facilitate compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, and marketing and outreach efforts for HUB participation" (TAC 111.26). Our previous HUB audits have shown that when an entity complies with all of the HUB coordinator requirements, it typically has a better overall level of compliance.

As required by Section 2161.123 of the Texas Government Code, the State Auditor's Office assessed compliance based on the implementation of program procedures and did "not consider the success or failure to contract with historically underutilized businesses in any specific quantity." In fiscal year 2003, the University spent \$32.5 million within procurement categories that were eligible for HUB participation; it spent \$4.2 million (12.99 percent) of that amount procuring from HUBs.

Purchasing from People with Disabilities

In fiscal year 2003, the University fully complied with requirements for purchasing from people with disabilities, as specified in Chapter 122 of the Texas Human Resources Code. Our testing did not find any items that could have been purchased from TIBH. However, TBPC requires agencies to submit exception reports each month even when there are no items to report. While the University has procedures in place to identify purchases available from TIBH, it did not consistently submit exception reports in fiscal year 2003.

Recommendation

To comply with TBPC requirements, the University should submit the required exception reports each month, even when there are no items to report.

Management's Response

Management agrees, and the required exception reports will be submitted each month even when there are no items to report.

Appendices

Appendix 1

Objectives, Scope, and Methodology

The objectives of this audit were to determine whether the selected entities:

- Complied with historically underutilized business (HUB) statutory requirements.
- Made efforts to comply with HUB statutory requirements.
- Reported complete and accurate data to the Texas Building and Procurement Commission (TBPC).
- Complied with requirements related to purchasing from people with disabilities.

Scope

The State Auditor's Office audited 11 entities' fiscal year 2003 HUB activities in four compliance areas: planning, outreach, reporting, and subcontracting. The 11 included 4 entities that did not make good-faith efforts to comply with HUB statutory requirements in fiscal year 2002. Entities were audited based on the Texas Administrative Code (TAC), Chapter 111; the Texas Government Code, Chapter 2161; the Texas Human Resources Code, Chapter 122. We also audited the 11 entities' fiscal year 2003 purchases made from people with disabilities.

We audited the following agencies:

- Lamar University
- Soil and Water Conservation Board
- Department of Agriculture
- The University of Texas Health Science Center at Houston
- Department of State Health Services
- Texas A&M University System Health Science Center
- Alcoholic Beverage Commission

We performed follow-up procedures at the following agencies:

- State Board for Educator Certification
- Texas Education Agency
- Department of Family and Protective Services
- Texas State University--San Marcos

Methodology

Based on a risk assessment, the State Auditor's Office asked 11 entities to complete a survey that included specific information technology questions as well as HUB compliance questions.

For the 11 entities, we performed the following tests to determine compliance with Texas Administrative Code, Chapter 111, and Texas Government Code, Chapter 2161. The following information is based on the audit programs and audit work performed:

- We reviewed strategic plans and Legislative Appropriations Requests to ensure that the required information was included.
- We worked with TBPC to develop the procedures used in the audit.
- We reviewed documentation and conducted interviews to determine:
 - ♦ Whether the agencies had adopted appropriate policies and procedures.
 - ♦ Whether the agencies were performing the necessary HUB outreach activities and whether they had developed mentor-protégé programs.
 - ♦ Whether the HUB coordinator position was operating as statute requires and whether the HUB coordinator had appropriate resources and access to conduct the HUB program successfully.
- We reviewed and tested reports submitted to TBPC to determine the accuracy of the reports.
- We reviewed all applicable contracts and subcontracts to determine compliance with HUB statutes.
- We created process maps for various entities to depict and isolate critical control points in both manual and automated reporting processes.
- We wrote findings on the entities that did not comply with HUB requirements within 5 percent of a tolerable error rate.
- The entities' levels of compliance with HUB requirements were based on the following scale:
 - ♦ Compliance rate of 91 to 100 percent = Fully Compliant
 - ♦ Compliance rate of 61 to 90 percent = Substantially Compliant
 - ♦ Compliance rate of 31 to 60 percent = Minimally Compliant
 - ♦ Compliance rate of 0 to 30 percent = Noncompliant

Additional procedures for purchases made from people with disabilities included a review of documentation and interviews with appropriate staff. We also reviewed and tested a sample of expenditures and reports submitted to TBPC.

The entities' levels of compliance for purchases made from people with disabilities were based on the following scale:

- Error rate of 0 percent = Fully Compliant
- Error rate of 1 to 30 percent = Substantially Compliant
- Error rate of 31 to 60 percent = Minimally Compliant
- Error rate of 61 to 100 percent = Noncompliant

Project Information

We conducted our audit in accordance with generally accepted government auditing standards. Fieldwork was conducted from May 2004 through September 2004.

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

- Courtney Ambres-Wade (Project Manager)
- Barbette Mays (Assistant Project Manager)
- Kathy L. Aven, CIA
- Nick Ballard
- Veda Mendoza, CIA
- Luis Solis
- Jennifer Weiderhold
- J. Scott Killingsworth, CIA (Quality Control Reviewer)
- Sandra Vice, CIA, CGAP (Audit Manager)

Recent Changes to the Texas Building and Procurement Commission's HUB Rules

TBPC is responsible for administering the HUB program for the State of Texas in accordance with Texas Government Code, Section 2161.002. In administering the program, TBPC has implemented rules for entities to refer to in its administrative code.

TBPC has recently made some changes to its administrative code, which will affect the criteria we use to audit compliance with HUB requirements. These changes are outlined below:

- Graduation procedures have been repealed as of June 2004. This repeal deletes the requirement in TAC 111.23 that entities determine whether a HUB has exceeded the U.S. Small Business Administration's standards for gross receipts or total employment levels for four consecutive years. In addition, HUBs that have previously exceeded the size standard may reapply and, if all other HUB requirements are met, become HUB certified again.
- Subcontracting rules have been revised as of September 2004. TAC 111.14 outlines (1) the steps to be followed in determining whether subcontracting opportunities are probable under a contract, (2) the good-faith effort required in developing a HUB subcontracting plan, (3) submission and review during contract performance, and (4) contract compliance. The new subcontracting rules include specific procedures for construction contracts, professional services contracts, and commodities and other services contracts. For example, evidence of a good-faith effort in developing a HUB subcontracting plan for professional services contracts is established if the professional services contractor meets or exceeds HUB participation goals.
- Requirements for HUB forum programs have been amended as of November 2004. The amendments delete the requirement to advertise required HUB forums in trade publications and permits advertising through existing means, including the Centralized Master Bidders List, the HUB Directory, and TBPC's Web site without incurring costs and without compromising the intent and purpose of administering the HUB forums. Additionally, the amended rule provides for administering HUB forums at a location other than the offices of the state agency when state agency offices will not accommodate HUB forum participants. Finally, the amended rule allows entities to administer HUB forums cooperatively.

HUB Program Statistics for Fiscal Year 2003

	Construction			Professional Services	Other Services	Commodity Purchases	Funds Eligible to Be Spent with HUB Vendors	Funds Spent with HUB Vendors	Percentage Spent with HUB Vendors
	Heavy	Building	Special Trade						
State Goal	11.90%	26.10%	57.20%	20.00%	33.00%	12.60%	N/A	N/A	N/A
Statewide Actual	9.86%	16.40%	21.55%	16.92%	14.19%	13.49%	\$9,013,971,755	\$1,174,918,905	13.00%
Texas State University-San Marcos	18.60%	31.30%	23.80%	2.24%	3.05%	8.24%	\$32,514,784	\$4,222,207	12.99%
State Board for Educator Certification	0.00%	0.00%	0.00%	0.00%	9.79%	20.70%	\$14,579,368	\$1,448,177	9.93%
Texas Education Agency	0.00%	0.00%	22.20%	0.00%	15.40%	12.50%	\$122,701,263	\$18,350,813	14.96%
Department of Family and Protective Services	0.00%	0.00%	4.17%	0.00%	10.10%	33.90%	\$33,229,226	\$5,681,156	17.09%
Lamar University	0.00%	0.00%	6.45%	4.98%	5.28%	7.74%	\$25,747,190	\$1,715,379	6.66%
University of Texas Health Science Center at Houston	0.00%	0.00%	37.50%	30.20%	13.90%	5.27%	\$77,108,262	\$7,014,436	9.09%
Soil and Water Conservation Board	0.00%	0.00%	0.00%	0.00%	0.03%	13.00%	\$1,305,117	\$16,244	1.24%
Alcoholic Beverage Commission	0.00%	0.00%	91.00%	0.00%	11.10%	14.80%	\$2,207,546	\$402,307	18.27%
Department of State Health Services	0.00%	0.00%	8.27%	0.69%	21.10%	7.16%	\$181,142,368	\$20,451,668	11.29%
Department of Agriculture	0.00%	0.00%	0.00%	1.47%	17.50%	17.00%	\$10,157,951	\$1,353,177	13.32%
Texas A&M University Health Science Center	0.00%	53.30%	4.10%	0.98%	0.40%	5.97%	\$20,022,694	\$1,217,943	6.08%

Source: Texas Building and Procurement Commission FY 2003 Statewide HUB Report

Comments from the Department of Agriculture



SUSAN COMBS, COMMISSIONER

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December 16, 2004

John Keel, CPA
State Auditor's Office
1501 N. Congress Avenue
Austin, Texas 78701

Dear Mr. Keel:

We accept the State Auditor's (SAO) findings regarding the audit of the Texas Department of Agriculture's (TDA) HUB program for fiscal year 2003. However, we would like to point out that although we were not found to be in full compliance with the HUB requirements, it had no bearing on our ability to successfully implement and contract with HUB vendors. The facts show that for fiscal year 2003, TDA exceeded statewide HUB participation in two of the three categories applicable to TDA and TDA's overall HUB participation was higher than the State's HUB participation by 3 percent. In addition, all of the recommendations made by the SAO have already been implemented.

It is our opinion that any failure on our part to fully comply with HUB program requirements is partially due to the audit team's (team) interpretation of Texas Building and Procurement Commission (TBPC) rules. The team used "legislative intent" to establish best practices as compliance requirements.

Black's Law Dictionary states that legislative intent is looked to when courts attempt to construe or interpret a statute which is ambiguous or inconsistent. The courts have clearly held that the legislative intent of a statute is determined by first looking to the plain language of the statute, and then to the legislative history and circumstances contemporaneous with the enactment of the statute. Black's defines legislative history as background and events, including committee reports, hearings, and floor debates leading to the enactment of a law.

In this case the team contacted House and Senate legislative staffers to describe the HUB audit objectives and methodology. We recognize the importance of obtaining input from all interested parties, especially those who work at the legislature. However, it is our opinion that having discussions with staff members does not constitute "legislative intent" that creates a compliance requirement for state agencies to follow. It is important to differentiate between a compliance requirement and a best practice. If the team determined that a best practice should be complied with by all agencies, the team should recommend to TBPC to change the rules and add the requirement to the TAC through the administrative process so that agencies will have notice and opportunity to comply.

We further recommend that the SAO review its methodology for conducting the HUB compliance audit, particularly in how it determines if an agency did or did not make a good faith effort to implement the HUB Program.

John Keel, CPA
December 16, 2004
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We acknowledge the team's constructive best practice recommendations to improve TDA's HUB program and we have implemented those recommendations.

Attached are our responses to the audit recommendations. If you have any questions regarding our responses, please contact Gilberto F. Mendoza, Director for Internal Audits, at (512) 463-8251 or Gilberto.mendoza@agr.state.tx.us.

Sincerely,



Susan Combs
Commissioner

Attachment

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Tom Craddick, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Brian McCall, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

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