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State Auditor

An Audit Report on

Proprietary and Emergency Procurements

At Selected State Agencies and Higher Education Institutions

June 2007

Report No. 07-037



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Overall Conclusion

In most respects, the University of Texas - Pan American, the Department of Public Safety, and the Building and Procurement Commission used appropriate methods to make proprietary and emergency procurements, as well as other procurements that were not subject to full competition.

The University of Texas - Pan American. The University of Texas - Pan American's (University) controls over proprietary and other noncompetitive procurements are sufficient to ensure that goods and services purchased are justified and that prices achieve best value for the University. Auditors did not identify any emergency procurements made at the University.

Department of Public Safety. Overall, the Department of Public Safety (Department) uses proprietary and emergency procurement methods for valid, justifiable reasons. The Department also controls procurements that are not competitively bid or to which a single bidder responds to ensure that the State does not pay excessive prices. However, the Department does not always document the basis for selecting vendors.

Building and Procurement Commission. The Building and Procurement Commission's (Commission) procurements of proprietary and emergency products and services were justified and subject to competition, but the Commission did not document how the vendor was selected on emergency procurements. The Commission also exercised reasonable controls over the hiring of consultants and professionals to ensure that they

Background Information

The Texas Government Code assigns responsibility for purchases of goods and services above certain thresholds to the Building and Procurement Commission (Commission) unless statute otherwise exempts the agency. The Commission, in turn, is allowed by statute to assign (that is, to delegate) purchasing responsibility to other agencies.

Proprietary Purchases: Goods or services that have distinctive characteristics not shared by competing products or services are considered proprietary. In some cases, proprietary products can be purchased only from a single vendor (that is, from a "sole source"). In other cases, competitive purchasing processes may be possible.

Emergency Purchases: Emergency purchases are made as the result of unforeseeable circumstances under which compliance with normal competitive purchasing practice would not be practicable or would not serve the public interest. An emergency purchase may be necessary to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the State.

Other Non-competitive Purchases: State rules are intended to promote competition in the procurement of goods and services. When competition is not practicable, as is frequently the case for consulting and professional services, rules require special handling of the transactions. Even when competitive processes are used, only a single vendor may respond, which results in a non-competitive situation.

This audit was conducted in accordance with Texas Government Code, Section 321.0131.

For more information regarding this report, please contact Nicole Guerrero, Audit Manager, or John Keel, State Auditor, at (512) 936-9500.

were competent and qualified and that prices paid were reasonable.

The effectiveness of the Commission's audits of state agency procurements could be improved by (1) providing more complete and straightforward guidance for processing vendor payments to state agencies and universities and (2) imposing stronger consequences for agencies that score poorly on these audits.

Summary of Management's Response

Management of the audited entities generally agreed with our recommendations.

Summary of Information Technology Review

All state agencies and higher education institutions use the Uniform Statewide Accounting System to process payments for products and services purchased with state funds, but they use a variety of systems to process and document procurement of goods and services.

During fiscal year 2006, the University used a Legacy system with limited procurement automation. In September 2006, the University converted to an Oracle accounting system with an automated procurement module. The Department uses an internally-developed Access database to track and control its purchasing activities. Because auditors relied upon University and Department procurement files, no reliance was placed upon these systems and, therefore, they were not reviewed during this audit.

The Commission uses the following Legacy systems in procuring goods and services for other state agencies:

- **Lotus Notes.** The Commission uses an IBM Lotus Notes database for tracking procurement of goods and services for its own use and for state agency facilities. The database allows electronic approvals of purchasing documents such as required justifications for proprietary and emergency procurements. Commission personnel also use this database for functions such as recording the number of solicitations that are distributed and tracking vendors that respond before awards are made.
- **IMPALA.** The Commission uses this purchasing system for tracking requisitions, published solicitations, and bids when procuring goods and services for other state agencies.

Because auditors primarily relied upon Commission purchasing files, review of the Lotus Notes system was limited to access controls over the approval of purchasing transactions. The controls tested were adequate to ensure the appropriate approval of procurement transactions. Because samples of Commission purchasing transactions on behalf of other agencies were drawn from the IMPALA system,

review of IMPALA was limited to determining that controls were adequate to ensure the completeness of the data.

Summary of Objective, Scope, and Methodology

The objective of this audit was to determine whether proprietary and emergency procurement methods were used for valid, justifiable reasons and whether purchasing controls were operating to reasonably ensure that the State did not pay excessive prices for procurements that were not competitively bid or for which there was only one bidder.

The scope of this audit included noncompetitive procurements for which vendor payments were made during fiscal year 2006 and the first six months of fiscal year 2007. The scope also included policies and procedures of the Commission, the Department, and the University.

The audit methodology included conducting interviews with appropriate personnel, reviewing procurement files, and reviewing policies and procedures at the Commission, the Department, and the University.

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Detailed Results

Chapter 1

The University of Texas - Pan American

The University of Texas - Pan American's (University) controls over proprietary and other noncompetitive procurements are sufficient to ensure that goods and services purchases are justified and that prices represent best value to the University.

Texas Education Code, Section 51.9335, exempts state universities from the Building and Procurement Commission's procurement rules. The University follows its own documented policies and procedures and the procedures of the University of Texas System (System). The University and System policies and procedures reflect many of the National Association of State Procurement Officials' (NASPO) best practices and best practices contained in the Building and Procurement Commission's *State of Texas Procurement Manual*.

Auditors did not identify evidence that the University made any emergency procurements during fiscal year 2006.

Auditors did not identify any control deficiencies in the 22 proprietary procurements tested or in the 6 consulting or professional services procurements tested.

Department of Public Safety

Overall, the Department of Public Safety (Department) uses proprietary and emergency procurement methods for valid, justifiable reasons. The Department also controls procurements that are not competitively bid or to which a single bidder responds to ensure that the State does not pay excessive prices. However, the Department does not always document the basis for selecting vendors.

Proprietary Procurements. Auditors tested 12 proprietary procurements and identified no significant issues related to the Department's procurement of proprietary items. The Department prepared complete justifications for proprietary specifications, selected the appropriate procurement method, used appropriate solicitation methods, and obtained proper approvals.

Emergency Procurements. Auditors tested 21 emergency procurements and found that, with minor exceptions, the Department provided reasonable justifications for the nature of the emergency, limited the purchases to the scope and duration of the emergency, and obtained approval from appropriate Department personnel. Eighteen of the emergency procurements tested were made by field offices for repair of air conditioning systems during summer months. Field office staff did not document how they selected the vendor or whether they attempted to limit or control the amounts paid.

Single Bid Procurements and Procurements That Were Not Competitively Bid. Auditors tested five procurements that the Department subjected to competition but for which it received only one response. The Department made the awards on an appropriate basis after (1) soliciting bids from appropriately selected vendors, including historically underutilized businesses (HUB); (2) properly advertising solicitations; (3) properly accounting for the receipt of bids; and (4) obtaining approval from appropriate levels of management.

Auditors also tested seven consulting and professional services procurements. Auditors identified no problems with two of these seven procurements. However, the Department did not document how it determined the qualifications of the other five professionals or how it determined that fees were reasonable.

Table 1 summarizes the procurements that auditors tested at the Department.

Table 1

Department of Public Safety Procurements Tested		
Type of Procurement	Number of Procurements Tested	Value of Procurements Tested
Emergency	21	\$ 877,198
Proprietary	12	5,611,777
Consulting and Professional	7	396,710
Competitive with Single Response	5	1,976,221
Totals	45	\$8,861,906

Recommendation

The Department should ensure that all staff who make emergency or other noncompetitive procurements receive training and guidance regarding methods for controlling prices and documenting purchasing activities, especially for the selection of vendors, when competition is not possible or practicable.

Management's Response

- *Departmental staff will be instructed on the procedures for emergency and noncompetitive procurements at agency purchasing classes and as they contact the purchasing section for questions and guidance regarding these types of procurement. When the procurement paperwork is received in purchasing, it will be reviewed for compliance. If not compliant, the requestor will be notified and informed of the correct procurement procedure and to provide the appropriate information.*

Field staff will be required to provide documentation for the file as to how they selected the vendor and how they attempted to limit or control the cost of the contract. They will be informed of the required documentation each time they request an approval for an emergency procurement.

- *Documentation from the user will be required stating how the qualifications of the selected professional or consultant were determined and basis for determination if fees are reasonable prior to an award of the contract.*

Chapter 3-A

Commission Procurements

The Building and Procurement Commission's (Commission) procurements of proprietary and emergency products and services were justified and subject to competition, but the Commission did not document how the vendor was selected for emergency procurements. The Commission also exercised reasonable controls over the hiring of consultants and professionals to ensure that they were competent and qualified and that prices paid were reasonable.

Proprietary and Emergency Procurements. Auditors tested 22 procurements of proprietary goods or services. Seventeen (with a total value of \$32,944,126) were for other state agencies and 5 (with a total value of \$743,996) were for internal use or for the maintenance of state agency facilities. Auditors also tested 11 emergency procurements with a total value of \$509,737.

The Commission properly justified the proprietary nature of all but one of the proprietary procurements and the need for all of the emergency procurements. It also obtained approval of purchasing documents from appropriate levels of management. The Commission solicited bids from vendors for all of the proprietary procurements.

However, the Commission did not document how the vendor was selected for any of the emergency procurements. It also did not post to the *Electronic State Business Daily* two proprietary solicitations that were above the \$25,000 threshold requiring posting according to the *State of Texas Procurement Manual*. The Commission indicated that it subsequently changed procedures and began posting all procurements as required. *The Electronic State Business Daily* is the primary mechanism for ensuring that private companies can identify and respond to opportunities to conduct business with the State. The Commission also did not include on two requests for proposals a clause identifying the product or service as proprietary as required by the *State of Texas Procurement Manual*. The required proprietary clause makes public the fact that the specifications for the goods and services are so distinctive that competition may be limited.

Single Bid Procurements and Procurements That Were Not Competitively Bid. Auditors tested 28 competitive procurements to which the Commission received a single response and 25 noncompetitive procurements primarily from other state agencies. Auditors also tested eight professional services procurements and three consulting services procurements.

The Commission made the awards to single bidders on an appropriate basis after (1) soliciting bids from appropriately selected vendors, including HUBs;

(2) properly advertising solicitations; (3) properly accounting for the receipt of bids; and (4) obtaining approval from appropriate levels of management. However, it did not document whether there was negotiation or how it determined that the bids received were reasonable.

In all cases, the Commission exercised reasonable procedures and controls to determine that the consultants or professionals hired were knowledgeable, competent, and qualified. It also gave appropriate preferences to firms that operate in Texas and evaluated fees and determined their reasonableness.

Table 2 summarizes the procurements that auditors tested at the Commission.

Table 2

Building and Procurement Commission Procurements Tested		
Type of Procurement	Number of Procurements Tested	Value of Procurements Tested
Emergency	11	\$ 509,737
Proprietary	22	33,688,122
Other Noncompetitive	25	24,701,920
Consulting and Professional	11	2,815,128
Competitive with Single Response	28	40,596,326
Totals	97	\$102,311,233

Recommendations

To demonstrate its efforts to obtain best value for the State, the Commission should document how the vendor is selected in emergency procurements. Documentation should include vendors contacted and any informal bids or price negotiations.

To ensure that state agencies receive best value when only a single bidder responds to a solicitation, the Commission should document how it determines that the award should be made, including any attempts to negotiate prices. When negotiation is not possible or practicable, the Commission should document why this is the case and the basis for making awards to a single bidder.

Management's Response

- *TBPC will take measures to improve its documentation of vendor selections for emergency procurements. According to TAC 113.2 (25), an Emergency Procurement is "a situation requiring the state agency to*

make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.”

For all eleven TBPC Emergency Procurements audited by the SAO, ‘best value’ was determined prior to the award through communication among the vendors, the responsible program managers, the Internal Procurement (IP) purchaser, and in most cases TBPC Executive Management, to insure the selected vendor provided “best value.” This process for communication, negotiation, and vetting was not always summarized in narrative format on the purchase-order document.

In several cases, the required Emergency Purchase Justification form outlined the reasoning or methodology used in determining best value and selecting the vendor. In all cases, the selected vendor for the emergency procurements provided sufficient information in the form of quotations, hourly rates, and materials costs.

In the future, TBPC IP will briefly summarize the actions taken to arrive at a best value determination when awarding emergency procurements.

- *Statewide Purchasing*

TBPC agrees with the finding. While the finding is valid, it should be noted that some corrective actions were implemented prior to the SAO Audit. Those actions included documented procedures which require competitive vs. sole-source purchasing decisions to be made during the specification review process. Purchasing decisions are documented to provide evidence that negotiation has occurred or was attempted in those instances where a sole-source contract award was made.

- *Internal Procurement*

As noted by the SAO, TBPC made the awards to single bidders on an appropriate basis after soliciting bids from appropriately selected vendors (including HUBs), properly advertising solicitations, properly accounting for the receipt of bids, and obtaining approval from appropriate levels of management. TBPC Internal Procurement follows established procedures in determining best value; and will add a brief best value statement to single-bid procurements in the future to better document the best-value decision making process.

Regarding posting proprietary solicitations to the ESBD, as of January 2007, TBPC Internal Procurement began such posting in accordance with TGC2155.067 (f). The two proprietary purchases noted as exceptions were made prior to January 2007.

Commission Procurement Audits

The effectiveness of the Commission's audits of state agency procurements could be improved by (1) providing more complete and straightforward guidance for processing vendor payments to state agencies and universities and (2) imposing stronger consequences for agencies that score poorly on these audits.

Procurement Audit Requirements

Title 1, Texas Administrative Code, Section 113.18, requires the Commission to audit payment vouchers and associated purchasing documents of each state agency at least once every biennium.

The Commission is substantially behind schedule in completing procurement audits required by the Texas Administrative Code (see text box for additional details). Effective October 1, 2006, the Commission discontinued prepayment audits of emergency and services procurements exceeding \$25,000, opting instead for a risk-based approach using only postpayment audits. The Commission indicates that the audit process has been slowed because (1) it is developing new procedures for postpayment audits that incorporate emergency procurements and risk-based reporting and (2) it has experienced significant turnover. As of March 23, 2007, the Commission had completed only 41 percent (43 of 105) of the audits required during the biennium ending August 31, 2007.

The samples for the Commission's audits are drawn from the vendor payment files in the Uniform Statewide Accounting System (USAS). The Commission is responsible for providing guidance to state agencies and universities for entering information that identifies the type of procurement associated with each payment. Agency accounts payable departments rely upon this guidance to process payment vouchers.

The nature of a purchasing transaction in USAS is determined through a combination of a document type and a purchasing category code. However, the combinations provided in some cases do not identify the type of procurement transaction. For example, there is no combination that specifically identifies a proprietary procurement. Further, the guidance for determining the combinations is complex and confusing, which results in varying interpretations and the use of improper purchasing category code and document type entries. These errors and the inability to identify the nature of all procurement transactions may lead to the omission of some high-risk procurements from the Commission's audit samples, which reduces the effectiveness of audit oversight.

The effectiveness of the Commission's audits also is reduced because the consequences of poor audit scores are limited. Title 1, Texas Administrative Code, Chapter 113, provides that the Commission may assume responsibility for procurement activity of a state agency that consistently scores poorly on Commission procurement audits. However, it is unlikely that the Commission

would be able to assume these responsibilities when this happens because of its limited resources.

Recommendations

The Commission should:

- Develop a plan for completing audits of procurement at state agencies within required time frames.
- Consider making the purchasing category code the sole method of identifying the type of procurement transaction in USAS.
- Expand the available purchasing category codes to ensure that the nature of the procurement can be identified for all goods and services procured by state agencies.
- Clarify the associated guidance to state agencies in its *State of Texas Procurement Manual* and USAS documentation.
- Review the allocation of its resources and consider expanding the review of agencies that score poorly in procurement audits.

Management's Response

- *As the SAO notes, Procurement Review is required to complete 105 agency audits during a biennium. The current and projected plan allows staff 20 "active" months during the biennium. The active months do not include August which is designated for fiscal-year work completion; nor do they include September which is designated for transaction accumulation. Therefore, the audit plan for the next biennium will require completion of procurement audits at the rate of 5.25 agencies per month.*

This will be accomplished by strategically tracking and selecting documents for review from the largest agencies during the first three quarters of the biennium; and scheduling the remaining agencies for tracking/selection during the final 12 "active" months of the biennium.

- *In conjunction with the Comptroller's Office, TBPC will consider fine-tuning purchasing category codes to facilitate audit processes, subject to cost-benefit of re-programming and system modifications, training, etc.*
- *Management will consider refining transaction definitions and consider expanding the number of PCC Codes as appropriate.*

- *At this time, the Procurement Manual (the "Manual") is undergoing significant modifications, some of which affect procurement audits and will provide the guidance the SAO recommends. While TBPC acknowledges that procurement audit issues are best addressed in the Manual, until it is published, TBPC will continue to disseminate this important information to state agencies as Web site updates, in e-Mail blasts, as articles in Buy Ways and at Brown Bag Lunches. Finally, while we can and will update the Manual, we lack authority over the management, requirements and policies associated with USAS.*
- *Currently, in addition to requiring a poorly-performing agency to establish a corrective action plan to eliminate errors identified in a review, and implement administrative controls, TBPC may also recommend remedial training for agency purchasers and implementation of administrative controls.*

As a last resort, TBPC has the authority to revoke delegated purchasing authority in whole or in part. As the SAO notes, TBPC staffing limitations make it unlikely that it would revoke and take over the purchasing authority it has delegated to another agency, although the option remains available to the commission. If resources remain at current levels, management will expand its reviews based upon the stratified document selection process now in place.

Appendix

Appendix

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether proprietary and emergency procurement methods were used for valid, justifiable reasons and whether purchasing controls were operating to reasonably ensure that the State did not pay excessive prices for procurements that were not competitively bid or for which there was only one bidder.

Scope

The scope of this audit included noncompetitive procurements against which vendor payments were made during fiscal year 2006 and the first six months of fiscal year 2007. The scope also included policies and procedures of the Building and Procurement Commission (Commission), the Department of Public Safety (Department), and the University of Texas - Pan American (University).

Methodology

The audit methodology included conducting interviews with appropriate personnel, reviewing procurement files, and reviewing policies and procedures at the Commission, the Department, and the University.

Information collected and reviewed included the following:

- Auditee policies and procedures.
- Procurement files, including requisitions, purchase orders, and correspondence.
- Vendor payment data from the Uniform Statewide Accounting System (USAS).
- Procurement data from the Commission's Impala system.
- Organization charts.

Procedures and tests conducted included the following:

- Comparison of agency and university policies and procedures to internal policy and procedures, as well as (1) the Texas Government Code, (2) the Texas Administrative Code, (3) the Texas Education Code, (4) the

Commission's *State of Texas Procurement Manual*, and (5) the National Association of State Procurement Officials' *Principles and Practices*.

- Judgmental sampling of proprietary, emergency, and other noncompetitive procurements processed by each agency and university. Auditors performed the following tests:
 - ♦ Reviewed associated procurement files and determined whether the purchasing process was adequately documented.
 - ♦ Evaluated whether emergency procurements and proprietary specifications were properly justified and approved.
 - ♦ Determined whether procurement activities were properly advertised or reported.

Criteria used included the following:

- The Texas Government Code.
- The Texas Education Code.
- The Texas Administrative Code.
- The National Association of State Procurement Officials' *Principles and Practices*.
- The Commission's *State of Texas Procurement Manual*.
- The University's *Handbook of Operating Procedures*.
- The Department's *General Manual*.

Project Information

Audit fieldwork was conducted from March 2007 through May 2007. This audit was conducted in accordance with generally accepted government auditing standards.

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

- Agnes Rasmussen, CPA, CISA (Project Manager)
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- Gary Leach, MBA, CISA, CQA
- Barrett Sundberg
- Lisa Thompson
- Charles P. Dunlap, Jr., CPA (Quality Control Reviewer)
- Nicole Guerrero, MBA, CGAP (Audit Manager)

Copies of this report have been distributed to the following:

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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 Warren Chisum, House Appropriations Committee
The Honorable Jim Keffer, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Building and Procurement Commission

Members of the Building and Procurement Commission
Mr. Edward Johnson, Executive Director

Department of Public Safety

Members of the Public Safety Commission
Colonel Thomas A. Davis, Jr., Director

The University of Texas System

Members of the University of Texas System Board of Regents
Mr. Mark G. Yudof, Chancellor

The University of Texas – Pan American

Dr. Blandina A. Cardenas, President



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