



An Audit Report on

Selected Capitol Complex Project Contracts at the Texas Facilities Commission

December 2018

Report No. 19-016



An Audit Report on

Selected Capitol Complex Project Contracts at the Texas Facilities Commission

SAO Report No. 19-016
December 2018

Overall Conclusion

The Texas Facilities Commission (Agency) generally complied with contract planning, procurement, formation, and oversight requirements for the Capitol Complex Project (Project) contracts and contract amendments audited. While auditors did not identify potential conflicts of interest for the procurements tested, the Agency should strengthen certain processes and controls to ensure compliance with conflict of interest requirements, as well as compliance with nondisclosure, reporting, and vendor insurance requirements. In addition, the Agency should strengthen its information technology controls.

For this report, auditors reviewed all or portions **of the Agency's contracting processes for six** procurements of services for the Project (see Figure 1 in Chapter 1). Those six procurements resulted in five contracts and five contract amendments.

Contract Procurement Requirements

The Agency had controls in place to help ensure compliance with state procurement requirements. For example, the Agency advertised the solicitations in accordance with Texas Government Code and implemented consistent evaluation procedures.

However, the Agency's practice of awarding services through contract amendments to an existing vendor and awarding multiple contracts under one solicitation resulted in the Agency not consistently reporting to the *Electronic State Business Daily* as required, reducing the transparency of the procurement process. In addition, while the Agency complied with most nondisclosure requirements, it should strengthen controls to help ensure compliance with all conflict of interest requirements.

Contract Insurance, Monitoring, and Reporting Requirements

While the Agency ensured that the vendor subject to bond requirements obtained sufficient bond coverage, it did not ensure that each vendor met all minimum

Background Information

Texas Government Code, Chapter 2166, requires the Texas Facilities Commission (Agency) to satisfy state agencies' office space needs. To address consistent increases in leasing costs and as mandated by the 83rd Legislature, the Agency produced, and later updated, the Texas Capitol Complex Master Plan (Plan).

The Plan lays out a strategic vision, identifies long-term goals, and outlines an implementation strategy for the construction of new State-owned office buildings and grounds within the Capitol Complex. The Capitol Complex Project (Project), which is part of the Plan, consists of three phases.

The 84th Legislature authorized \$581.2 million in funding for Phase I of the Project, which is scheduled to be completed by 2022.

Sources: 2016 and 2018 Texas Capitol Complex Master Plans and the General Appropriations Act (84th Legislature).

liability insurance coverage requirements in the contract. The Agency had processes to help ensure that it received the deliverables required by the contracts and complied with most reporting requirements to the Legislative Budget Board. However, it did not consistently ensure that certain payment reviews were documented, and it did not report vendor performance for certain procurements to the Comptroller of Public Accounts as required.

Contract Planning and Formation Requirements

The Agency had processes to help ensure that it performed most required activities related to contract planning and formation. However, the Agency should strengthen its processes to ensure that (1) its policies and procedures address all applicable areas, (2) it consistently develops and retains support for cost estimates, and (3) its contracts include all required vendor affirmations.

Information Technology Controls

The Agency should implement and strengthen certain controls over its information technology systems that support the contracting processes audited to help ensure its information is secure and reliable.

Auditors also communicated other, less significant issues separately in writing to the Agency.

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

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
1	Summary of the Capitol Complex Project and Procurements Audited	Not Rated
2-A	The Agency Complied With Most Procurement Requirements	Low
2-B	The Agency Did Not Consistently Report Contract Information to the <i>Electronic State Business Daily</i> as Required	Medium
2-C	The Agency Did Not Fully Comply With Conflict of Interest and Nondisclosure Requirements	Medium
3-A	The Agency Did Not Ensure That Each Vendor Met All Liability Insurance Coverage Requirements	High
3-B	The Agency Had Monitoring Processes to Help Ensure That It Received Deliverables and Processed Payments as Required; However, It Should Ensure That All Payment Reviews Are Documented	Low
3-C	The Agency Complied With Most Contract Reporting Requirements	Low
4	The Agency Complied With Most Requirements for Contract Planning and Formation; However, It Should Strengthen Some Aspects of Those Processes	Medium
5	The Agency Should Strengthen Certain Controls Over Its Information Systems	High

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
<p>^a A subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.</p>		

Summary of Management's Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Agency agreed with most of the findings and recommendations in this report. However, it did not agree with **auditors' finding** that it did not ensure that vendors obtained the minimum liability insurance coverage required by the contracts.

After review and consideration of the Agency's management responses, including the additional documentation the Agency provided, the State Auditor's Office stands by its conclusions based on the evidence presented and compiled during the audit.

Audit Objective and Scope

The objective of this audit was to determine whether the Agency procures and manages selected Capitol Complex Master Plan contracts in accordance with applicable requirements to help ensure that the Agency awards contracts properly, the Agency has support for expenditures, and contractors perform in accordance with contract terms.

The scope of the audit covered selected Capitol Complex Project, Phase I, contracts and corresponding contract amendments awarded as of February 28, 2018. In addition, auditors tested Agency payments to the vendors as of May 2018 **and vendors' compliance with liability insurance requirements as of July 2018**. The third-party vendor that manages IMPACT—the Agency's management project system—**did not permit access to auditors to test controls over the system's application and database.**

Contents

Detailed Results

Chapter 1	
Summary of the Capitol Complex Project and Procurements Audited	1
Chapter 2	
The Agency Complied With Most Procurement Requirements; However, It Should Strengthen Its Processes to Ensure That It Complies With All Reporting and Conflicts of Interest Requirements	4
Chapter 3	
While the Agency Did Not Ensure That Vendors Met All Insurance Requirements, It Complied With Most Monitoring and Reporting Requirements	12
Chapter 4	
The Agency Complied With Most Requirements for Contract Planning and Formation; However, It Should Strengthen Some Aspects of Those Processes	19
Chapter 5	
The Agency Should Strengthen Certain Controls Over Its Information Systems	23

Appendices

Appendix 1	
Objective, Scope, and Methodology	26
Appendix 2	
Issue Rating Classifications and Descriptions	31
Appendix 3	
List of all Capitol Complex Project - Phase I Contracts	32
Appendix 4	
Requirements Tested for Each Procurement Audited	35

Appendix 5

Related State Auditor’s Office Work 37

Detailed Results

Chapter 1

Summary of the Capitol Complex Project and Procurements Audited

Capitol Complex Project

The Capitol Complex comprises 122 acres of the Capitol grounds and surrounding property in Austin. The Capitol Complex Project (Project) is based on a master plan for the development and transformation of the site, including new government office buildings, parking garages, pedestrian-friendly green spaces, and an open space “Texas Mall” designed to accommodate special events.

The Project currently consists of three phases. The 84th Legislature authorized \$581.2 million in funding for Phase I, which includes:

- Two office buildings at 1601 and 1801 Congress Avenue, which also include some above- and below-ground parking.
- Three blocks of the Texas Mall, which will be a tree-lined walkway on Congress Avenue between 16th Street and Martin Luther King Jr. Boulevard and will include a public green space.
- A five-level underground parking garage under the new Texas Mall.

Phase I also includes renovations and expansion of the existing chilled water plant and new utility tunnels serving the new and some of the existing state buildings. At the completion of Phase I, the new buildings and parking garages will be capable of accommodating approximately 3,600 employees and approximately 3,800 parking spaces.

The Texas Facilities Commission (Agency) is responsible for implementing Phase I. The Agency contracted with vendors to provide construction manager-agent (CMA) and master architect/engineer (A/E) services (see text box for a description of roles and duties of the Project’s vendors). The Agency also contracted with a site services engineer to collect necessary pre-design information, such as surveys. The Agency divided Phase I of the

Description of Capitol Complex Project Vendor Roles and Duties

- Construction manager-agent (CMA): The CMA serves in a fiduciary capacity and is responsible for assisting the Texas Facilities Commission (Agency) with the management and coordination for the overall design and construction of the Capitol Complex Project (Project).
- Master architect/engineer (Master A/E): The Master A/E serves in a fiduciary capacity and is responsible for oversight, coordination, and management of the overall design of the Project.
- Site services engineer (SSE): The SSE is responsible for providing site environmental, archeological, and engineering services for the Project.
- Architect/Engineer (A/E): The A/E is responsible for providing professional architectural and/or engineering services for a specific package.
- Construction manager-at-risk (CMR): The CMR is responsible for providing construction and consultation services related to a specific package.

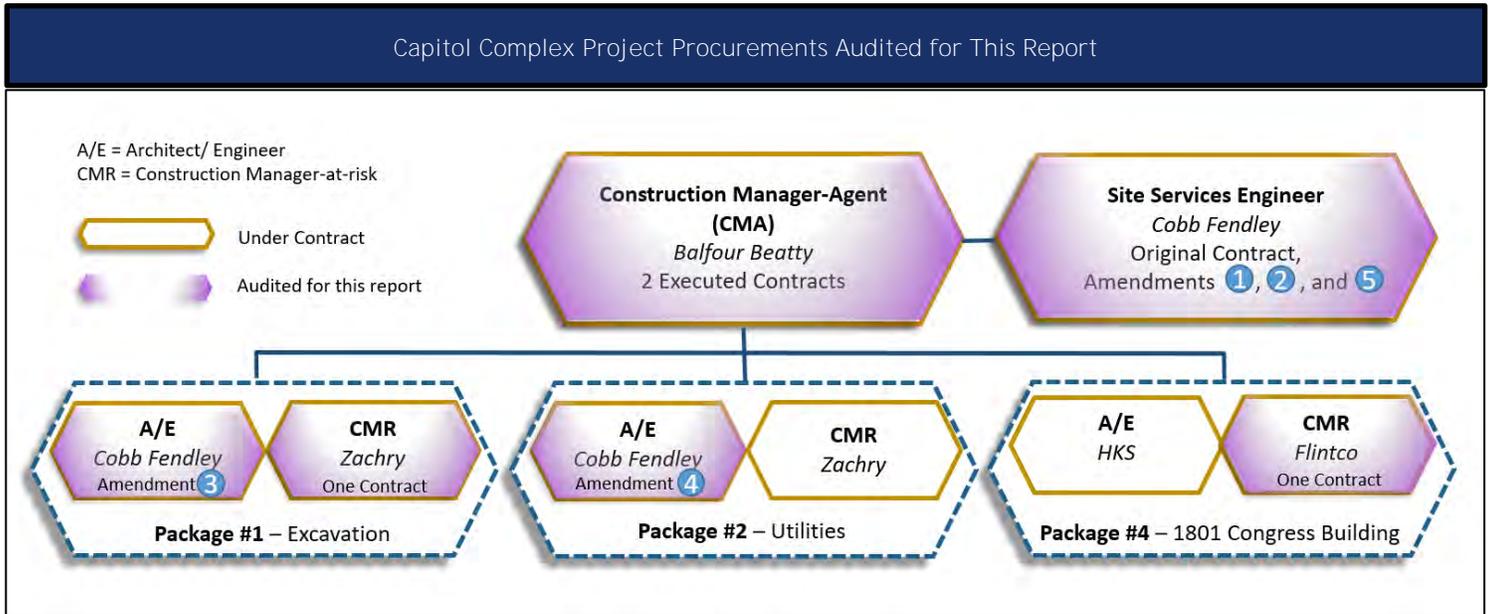
Source: The Agency.

Project into six construction “packages,” each of which includes an A/E and a construction manager-at-risk (CMR) vendor (see Appendix 3 for additional information about those six packages and a list of Project contracts as of September 30, 2018).

Procurements Audited for This Report

For this report, auditors reviewed all or portions of the Agency’s contracting processes for six procurements of services for the Project (see Appendix 4 for specific requirements tested for each procurement). Those six procurements resulted in five contracts and five contract amendments (see Figure 1).

Figure 1



Source: The State Auditor’s Office created this figure based on information provided by the Agency.

The six procurements audited were:

- Balfour-CMA. The procurement of CMA services was awarded to Balfour Beatty Construction, LLC. For this procurement, the Agency issued one request for qualifications solicitation, which resulted in two executed contracts.
- Cobb-Site Services. The procurement of site services engineering services was awarded to Cobb Fendley & Associates, Inc. For this procurement, the Agency issued one request for qualifications solicitation. This procurement includes site services engineering services for the Capitol Complex and the North Austin Complex projects. This procurement includes an executed contract and contract amendments No. 1, No. 2,

and No. 5¹ (see below for information about contract amendments No. 3 and No. 4). Auditors tested only information related to the Capitol Complex Project.

- Cobb-Excavation A/E. The procurement of excavation A/E services was awarded to Cobb. For this procurement, the Agency issued a request for qualifications solicitation. However, it awarded those services as amendment No. 3 to the Cobb-Site Services contract even though Cobb had not responded to the solicitation. The Agency canceled the original solicitation after awarding those services.
- Cobb-Utilities A/E. The procurement of utilities A/E services was awarded to Cobb. For this procurement, the Agency issued a request for qualifications solicitation. Cobb responded to that solicitation and was awarded those services. However, instead of executing a contract, the Agency awarded those services as amendment No. 4 to the Cobb-Site Services contract.
- Zachry-Excavation CMR. The procurement of excavation CMR services was awarded to Zachry Construction Corporation. For this procurement, the Agency issued a request for qualifications solicitation and awarded those services to Zachry. The Agency later canceled that contract and subsequently awarded a contract for those services to J.E. Dunn Construction Company.²
- Flintco-1801 Congress CMR. The procurement of CMR services for the construction of an office building at 1801 Congress Avenue was awarded to Flintco, LLC.³ For this procurement, the Agency issued a request for qualifications solicitation that resulted in one executed contract.

¹ Auditors tested only the Agency's contract amendment processes for Cobb-Site Services amendments No. 1, No. 2, No. 4, and No. 5.

² Auditors did not review the subsequent award of services to J.E. Dunn Construction Company.

³ Auditors tested only selected procurement and insurance requirements for this procurement.

The Agency Complied With Most Procurement Requirements; However, It Should Strengthen Its Processes to Ensure That It Complies With All Reporting and Conflicts of Interest Requirements

The Agency complied with most contract procurement requirements for the Project procurements audited (see Appendix 4 for specific requirements tested for each procurement). However, the Agency did not consistently report contract information to the *Electronic State Business Daily* as required. The Agency should also strengthen controls to help ensure compliance with conflict of interest, nondisclosure, and Certificate of Interested Parties reporting requirements.

Chapter 2-A

The Agency Complied With Most Contract Procurement Requirements

Chapter 2-A
Rating:
Low ⁴

For the five procurements tested for procurement requirements, the Agency had sufficient controls in place to help ensure compliance. Specifically:

Solicitations. The Agency advertised the five solicitations tested in accordance with Texas Government Code, Chapter 2155. For example, the Agency posted the solicitations in the *Electronic State Business Daily* for the required number of days, and it complied with the proposal opening requirements specified in the solicitations. In addition, the Agency ensured that management reviewed and approved all five solicitations prior to their postings.

Proposals. For the four⁵ vendor proposals tested that were awarded a contract, the Agency ensured that each proposal included all of the information as required by the solicitation before it accepted the proposal. Specifically, the Agency verified that each proposal (1) included a section to address information such as vendor minimum qualifications and a Historically Underutilized Business (HUB) subcontracting plan, (2) was signed, and (3) was received by the response due date. In addition, the Agency verified that each vendor was eligible to contract with the State.

⁴ The risk related to the issues discussed in Chapter 2-A is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

⁵ Auditors did not review the proposals related to the Excavation A/E procurement because the Agency did not make an award to a vendor that submitted a proposal for those services (see Chapter 2-B for more information).

Evaluations. The Agency implemented consistent evaluation procedures for the five applicable procurements tested. Specifically:

- The evaluation criteria included quantitative and qualitative factors that reflected the requirements specified in the solicitation and did not include language that would unduly restrict competition.
- The Agency used a standardized scoring matrix and point scale to evaluate each proposal.
- The evaluation teams consisted of at least three evaluators, as recommended by the *State of Texas Contract Management Guide*.
- The Agency ensured that the evaluation scores were sufficiently accurate. The errors that auditors identified did not have an effect on the award recommendations.

Vendor selection. For three of four⁶ procurements tested, the Agency complied with the statutory requirements for vendor selection. Specifically, the Agency identified the most qualified vendors based on demonstrated competence and qualifications to perform the services before the Agency considered price as a selection factor. However, for Cobb-Excavation A/E, the Agency awarded those services as a contract amendment to a vendor that did not reply to the solicitation (see Chapter 2-B).

Certifications. The Agency purchaser responsible for overseeing the five applicable procurements tested was a Certified Texas Procurement Manager as required by Texas Government Code, Section 656.051.

⁶ Auditors did not test Flintco-1801 Congress CMR because that contract was in negotiations during audit fieldwork.

The Agency Did Not Consistently Report Contract Information to the *Electronic State Business Daily* as Required

Chapter 2-B
Rating:
Medium ⁷

The Agency did not fully comply with all statutory requirements to report information to the *Electronic State Business Daily* (see text box) for Cobb-Excavation A/E, Balfour-CMA, and contract amendment No. 5 for Cobb-Site Services.

For certain procurements audited, the Agency awarded services through contract amendments to an existing vendor or awarded multiple contracts under one solicitation. This practice resulted in the Agency not consistently reporting to the *Electronic State Business Daily* the award of services that resulted from each posted solicitation as required.

Electronic State Business Daily

The *Electronic State Business Daily* is the system that state agencies are required to use to:

- Advertise procurements that will exceed \$25,000 in value without regard to the source of funds the agency will use for the procurement.
- Report the results of each procurement solicitation.

Source: Texas Government Code, Section 2155.083.

Not posting the award of services or reporting incomplete information about an award to the *Electronic State Business Daily* system reduces the transparency of the procurement process.

The Agency did not report information related to the award of Cobb-Excavation A/E services to the *Electronic State Business Daily*.

The Agency posted the solicitation to the *Electronic State Business Daily* to request excavation A/E services. However, when the Agency could not reach an agreement with the most qualified vendor that responded to the solicitation, it did not follow the procurement process required by Texas Government Code, Section 2254.004, which states that an Agency should negotiate with the next most qualified respondent. Instead, the Agency awarded those services for approximately \$2.3 million to Cobb-Site Services as contract amendment No. 3, even though Cobb had not responded to the solicitation. After it executed that amendment, the Agency cancelled the solicitation and did not report the award of those services to Cobb.

The Agency did not consistently report complete vendor award information for Balfour-CMA to the *Electronic State Business Daily*.

After the Agency posted as required a solicitation to procure construction manager-agent services, it awarded two contracts to Balfour. The initial contract was for 120 days for a total of \$811,897, and the second contract was for an additional \$19.8 million for the remainder of the services. The Agency reported to the *Electronic State Business Daily* accurate information

⁷ The risk related to the issues discussed in Chapter 2-B is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

on the first contract, but it did not report any information on the second contract. After auditors brought this to the Agency's attention, the Agency reported information on the second contract to the *Electronic State Business Daily*.

For Cobb-Site Services (contract amendment No. 5), the Agency did not report the award of geotechnical services to the *Electronic State Business Daily*.

The Agency reported complete information for the original contract for Cobb-Site Services. However, to procure geotechnical instrumentation and monitoring services, the Agency awarded a contract amendment (No. 5) to Cobb-Site Services for approximately \$1.5 million without issuing a solicitation in the *Electronic State Business Daily*. Because the Agency did not issue a solicitation to procure those services, it could not report the award to the *Electronic State Business Daily*.

Recommendation

The Agency should align its contracting practices with state procurement requirements to help ensure that it reports complete information on its contract awards to the *Electronic State Business Daily* as required.

Management's Response

The Texas Facilities Commission ("TFC" or "Agency") agrees with the SAO's assessment and recommendation and will work toward aligning our practices with state procurement requirements and help ensure that TFC provides complete contract award information on the Electronic State Business Daily (ESBD).

The Agency would like to use this response to lay out a unique set of circumstances that led to the business decision in question. The Agency received two responses to the solicitation and identified Brierly as the most qualified vendor for the excavation A/E services. In fact, the overall evaluation scores reflect that Brierly is highly qualified. The negotiation between TFC and Brierly did not result in an executed contract. In a review of the other respondent's overall score and qualifications, it was determined that the required relevant experience and qualifications were not sufficient to award the services and the respondent deemed unqualified for award. In looking for a solution to this dilemma, one highly qualified respondent and one unqualified respondent, and considering the overall construction schedule, the Agency determined that it was acceptable to amend Cobb's contract to include Brierly as a subcontractor. In their original submittal Cobb, as the Site Services Engineer, indicated relevant experience and qualifications that clearly demonstrated Cobb's ability to manage Brierly's

work. Additionally, the A/E excavation services align with the responsibilities and purview of the Site Services Engineer's scope. By amending Cobb's contract, this afforded the Agency a mechanism for the single qualified vendor to work on the project, and for TFC to stay within schedule on a critical aspect of the project. It is TFC's position that since there was not a next most qualified respondent, the amendment to the Cobb contract was within the spirit and the letter of Section 2254.004 of the Texas Government Code.

Person(s) Responsible: Director of Procurement

Target Implementation Date: August 31, 2019

The Agency Did Not Fully Comply With Conflict of Interest and Nondisclosure Requirements

Chapter 2-C
Rating:
Medium ⁸

The Agency did not ensure that Commission members, evaluation team members, and vendors consistently complied with applicable conflict of interest and nondisclosure requirements. It should strengthen its processes to ensure that (1) Commission members disclose potential conflicts of interests as required, (2) all evaluators sign the required forms in a timely manner, and (3) vendors complete all required Certificates of Interested Parties.

While auditors identified weaknesses in the Agency's conflict of interest processes, auditors did not identify potential conflicts of interest for the four procurements tested.

Conflict of Interest - Commission Members

To comply with conflict of interest disclosure requirements in Texas Government Code, Section 2261.252, the Agency's policy states that Texas Facilities Commission members must sign a conflict of interest form annually. However, the Agency does not enforce that policy. In addition, while the Agency has a process for Commission members to disclose potential conflicts of interest prior to approving a contract award, it did not consistently follow that process for the procurements tested. Prior to the award of a contract, the Agency is supposed to send an email to all Commission members, the executive director, general counsel, and the director of procurement asking each recipient to disclose any financial interest in the proposed award within 24 hours of receiving the email. However, for two of four applicable procurements tested, the Agency did not send the emails prior to the Commission meeting as required. Specifically:

- The Cobb-Site Services contract was awarded by the Commission on April 20, 2016; however, the email was sent on May 2, 2016.
- The Zachry-Excavation CMR contract was awarded by the Commission on April 19, 2017; the email was sent on that same date.

⁸ The risk related to the issues discussed in Chapter 2-C is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Conflict of Interest - Evaluation Team Members

For all four procurements tested, the Agency ensured that all but one evaluation team member signed the required conflict of interest forms. In addition, for two of the four procurements, the evaluation team members signed the forms prior to contract award as required by Texas Government Code, Section 2262.004. However, for the two other procurements, the team members did not sign the forms until after the contract award. Specifically:

- Balfour-CMA. None of the seven evaluation team members, including the purchaser, signed conflict of interest forms prior to the contract award date. Six evaluation team members signed the required form approximately 20 months after contract award date, and one evaluation team member did not sign a conflict of interest form.
- Zachry-Excavation CMR. All six evaluation team members, including the purchaser, signed the conflict of interest form approximately 10 months after the contract award date.

Certificate of Interested Parties Requirement

Title 1, Texas Administrative Code, Section 46.4 (c) requires state agencies to file a Certificate of Interested Parties for changes made to an existing contract, including an amendment, change order, or extension of a contract if the business entity submitted a Certificate of Interested Parties for the existing contract and:

- There is a change to the disclosure of interested parties;
- The changed contract requires an action or vote by the governing body of the entity or agency; or
- The value of the changed contract is at least \$1 million greater than the value of the existing contract.

Nondisclosure Form

A nondisclosure form requires the evaluation team member to not divulge any information concerning the submittal/evaluation to anyone who is not part of the evaluation team.

Source: *State of Texas Contract Management Guide*, Version 1.16.

Conflict of Interest - Vendor Disclosures

The Agency generally ensured that vendors filed a Certificate of Interested Parties with the Texas Ethic Commission. However, the Agency did not comply with a new requirement, effective as of January 1, 2017, that requires vendors to file a Certificate of Interested Parties for certain contracts amendments (see text box for information about that requirement). Specifically, the Agency did not ensure that the Cobb-Site Services vendor filed a new Certificate of Interested Parties for contract amendments No. 3, No. 4, and No. 5.

Nondisclosure Form

For four of five procurements tested, the Agency ensured that evaluation team members signed a nondisclosure form prior to having access to proposal documents, as required by the *State of Texas Contract Management Guide* (see text box for information about the nondisclosure form). However, for Flintco-1801 Congress CMR, two of six evaluation team members did not sign the nondisclosure form prior to having access to proposal documents. Not signing the required forms prior to gaining access to vendor responses increases the risk that evaluation team members may disclose information pertaining to the solicitation process.

Recommendations

The Agency should ensure that:

- Commission members comply with Agency policy related to disclosing conflicts of interest.
- All evaluation team members complete conflict of interest forms as required by statute.
- Vendors comply with all Certificate of Interested Parties requirements.
- All employees complete required nondisclosure forms prior to gaining access to proposal documents.

Management's Response

TFC agrees with the assessment and recommendations. TFC will ensure that Commission members comply with Agency policy relating to disclosure of conflicts of interest, will require that all evaluation team members complete conflict of interest forms, require that vendors comply with all Certificate of Interested Parties requirements, and all employees complete a required non-disclosure form prior to gaining access to proposal documents. Finally, the Agency has addressed the Vendor Disclosure issue and has received disclosure statements from all vendors subject to this audit, those disclosure statements have been sent to the SAO.

Person(s) Responsible: Contract Administrative Manager, Legal Services Division

Target Implementation Date: August 31, 2019

While the Agency Did Not Ensure That Vendors Met All Insurance Requirements, It Complied With Most Monitoring and Reporting Requirements

While the Agency ensured that the vendor subject to bond requirements obtained sufficient bond coverage, it did not ensure that each vendor met all minimum liability insurance coverage requirements in the contracts. In addition, the Agency had monitoring processes to help ensure that it received deliverables as required by the contracts and complied with most payment requirements. However, it did not maintain documentation to show that certain payments were reviewed by Balfour-CMA as required by its contract.

The Agency generally reported required contract information to the Legislative Budget Board. However, it should strengthen its processes to ensure that it reports the information within the required timeframes and reports vendor performance information to the Office of the Comptroller of Public Accounts (Comptroller's Office) as required.

Chapter 3-A

The Agency Did Not Ensure That Each Vendor Met All Liability Insurance Coverage Requirements

Chapter 3-A
Rating:
High⁹

For four of the five procurements tested for insurance coverage, the Agency did not ensure that each vendor met all minimum liability insurance coverage requirements in the contracts and contract amendments. Specifically, while Balfour-CMA had the insurance coverage required by the contract, the Agency did not ensure that the other four procurements met 20 (33.3 percent) of 60 minimum liability insurance coverage contract requirements (see Table 2 on the next page).

⁹ The risk related to the issues discussed in Chapter 3-A is rated as High because they present risks or results that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.

Table 2

Compliance with Minimum Liability Insurance Coverage Requirements			
Insurance Coverage Type	Insurance Coverage Required by Contract	Insurance Obtained ^a	Unmet Insurance Coverage
Cobb-Site Services			
Commercial General Liability (Each Occurrence)	\$2,000,000	\$1,000,000	\$(1,000,000)
Commercial General Liability (General Aggregate)	\$4,000,000	\$2,000,000	\$(2,000,000)
Products and Completed Operations Aggregate	\$4,000,000	\$2,000,000	\$(2,000,000)
Personal and Advertising Injury	\$2,000,000	\$1,000,000	\$(1,000,000)
Contractual Liability	\$2,000,000	\$0	\$(2,000,000)
Cobb-Excavation A/E			
Commercial General Liability (Each Occurrence)	\$2,000,000	\$1,000,000	\$(1,000,000)
Commercial General Liability (General Aggregate)	\$4,000,000	\$2,000,000	\$(2,000,000)
Products and Completed Operations Aggregate	\$4,000,000	\$2,000,000	\$(2,000,000)
Personal and Advertising Injury	\$2,000,000	\$1,000,000	\$(1,000,000)
Contractual Liability	\$2,000,000	\$0	\$(2,000,000)
Professional Liability	\$10,000,000	\$5,000,000	\$(5,000,000)
Zachry-Excavation CMR			
Commercial General Liability (Each Occurrence)	\$5,000,000	\$2,000,000	\$(3,000,000)
Commercial General Liability (General Aggregate)	\$5,000,000	\$4,000,000	\$(1,000,000)
Products and Completed Operations Aggregate	\$10,000,000	\$4,000,000	\$(6,000,000)
Personal and Advertising Injury	\$5,000,000	\$2,000,000	\$(3,000,000)
Umbrella/Excess Liability	\$12,000,000	\$10,000,000	\$(2,000,000)
Flintco-1801 Congress CMR			
Umbrella/Excess Liability	\$14,000,000	\$10,000,000	\$(4,000,000)
Pollution Liability	\$5,000,000	\$0	\$(5,000,000)
Professional Liability	\$5,000,000	\$0	\$(5,000,000)
Cyber/Privacy Liability	\$1,000,000	\$0	\$(1,000,000)
^a This amount is based on the vendors' insurance certificates for the procurement as of July 2018.			

Source: The Agency.

The Agency allowed services and construction work to commence for those four procurements even though they had not obtained the required liability insurance coverage.

The Agency does not have a consistent and effective process for verifying that its vendors meet the contractual minimum insurance requirements. The Agency has written policies and procedures for approving vendor insurance policies, which include required reviews by the Agency's insurance analyst and Legal Services Division. For Balfour-CMA, Cobb-Site Services, and Zachry-Excavation CMR, the Agency's outside legal counsel performed the reviews.

The outside legal counsel notified the Agency that Cobb-Site Services and Zachry-Excavation CMR did not fully comply with the minimum liability insurance requirements. However, the Agency did not ensure that the vendor obtained sufficient insurance before work commenced. For Cobb-Excavation A/E and Flintco-1801 Congress CMR, the Agency performed internal reviews, but those reviews did not identify the unmet insurance requirements. If the Agency does not ensure that vendors have the required minimum insurance coverage, there is an increased risk that the State's interests will not be fully protected.

The Agency verified that Zachry-Excavation CMR obtained the required bond coverage.

The Agency verified that Zachry-Excavation CMR obtained the bond coverage for the approved phase as required by the contract. The contract required the vendor to obtain payment and performance bonds equal to the guaranteed maximum price for each phase of the design package. The Agency terminated its contract with Zachry for the excavation CMR services effective June 30, 2018. The other procurements tested were not required to obtain bonds as of September 2018.

Recommendation

The Agency should ensure that vendors obtain the minimum liability insurance coverage amount for each type of insurance required by the contract prior to allowing the vendor to commence work.

Management's Response

TFC agrees with the Auditors that in one particular procurement insurance was not verified before work began. TFC will work to ensure that this lapse in verification will not happen again. TFC has provided the Auditors with documentation indicating that the insurance coverage for each of the procurements listed in Table 2 tested met minimum liability insurance coverage requirements in the contract and amendments. The documentation, written by TFC's outside counsel, whom TFC relied upon for insurance review and compliance, illustrates that TFC had effective insurance coverage for three of the procurements listed in Table 2. In addition, it is important to note that based on outside counsel's recommendations, TFC has minimized its risk and exposure and should have sufficient insurance coverage for all five of the procurements tested.

Person(s) Responsible: Contract Administrative Manager, Legal Services Division

Target Implementation Date: August 31, 2019

Auditor Follow-up Comment

The State Auditor's Office reviewed the additional documentation the Agency provided, and stands by its conclusion that the Agency did not ensure that the vendors listed in Table 2 obtained the minimum liability insurance coverage for each type of insurance required by the contracts and amendment.

Chapter 3-B

The Agency Had Monitoring Processes to Help Ensure That It Received Deliverables and Processed Payments as Required; However, It Should Ensure That All Payment Reviews Are Documented

Chapter 3-B
Rating:
Low ¹⁰

The Agency had monitoring processes to help ensure that it received deliverables as required by the contracts and complied with most payment requirements. However, it did not ensure that certain payment reviews were documented.

The Agency ensured that it received key contract deliverables as required.

For Balfour-CMA, the Agency ensured that it received key deliverables as required in its contracts. Those deliverables included the development and execution of a monthly program management plan, coordination of design and construction reviews, review of changes and change orders, and provision of assistance to the Agency with its pre-qualification and solicitation processes for the Project. Additionally, the Agency received key deliverables as outlined in the contract and amendment for Cobb-Site Services and Cobb-Excavation A/E. Examples of those deliverables included project management services, surveys, assessments, and designs.

¹⁰ The risk related to the issues discussed in Chapter 3-B is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

The Agency complied with most payment requirements; however, it should improve certain aspects of its process to help ensure that all payment reviews are documented.

IMPACT

The Agency uses IMPACT, a Web-based, third-party application, as a project management system to track construction projects' budgets, timelines, and progress. It serves as the Agency's repository for construction documents. IMPACT has approval and routing capabilities that allow architects/engineers, vendors, and Agency employees to submit, approve, and route payment requests and propose and approve change orders. Source: Texas Facilities Commission.

All eight payments made for Balfour-CMA, Cobb-Site Services and applicable contract amendments, and Zachry-Excavation CMR that auditors tested had sufficient support, were for allowable expenditures, and had the Agency's final approval. Those 8 payments totaled \$2,140,591. However, the Agency had no documentation showing that Balfour-CMA reviewed any of the 4 Cobb vendor payments, which totaled \$646,483, as required by the contract.

While the Agency's project management system, IMPACT (see text box), is designed to allow for review and approval of requests for payments, the Agency did not provide approver capability for Balfour-CMA in that system. The Agency asserted that Balfour-CMA provided the reviews and recommendations for the four payments tested to the Agency via email; however, the Agency could not provide those emails to auditors because they had been deleted in compliance with the Agency's 30-day email retention policy.

Recommendation

The Agency should ensure that requests for payments receive all required reviews from the CMA and retain documentation of those reviews.

Management's Response

TFC agrees with the auditor's assessment and will ensure that requests for payments receive all required reviews from the CMA and retain documentation for those reviews.

Person(s) Responsible: Director of Project Management, Facilities Design and Construction

Target Implementation Date: August 31, 2019

The Agency Complied With Most Contract Reporting Requirements

Chapter 3-C
Rating:
Low ¹¹

The Agency generally reported required contract information to the Legislative Budget Board; however, the Agency should strengthen its processes to ensure that it reports the information within the required timeframes and reports vendor performance information to the Comptroller's Office as required.

The Agency complied with most requirements to report contract information to the Legislative Budget Board.

The Agency reported contract information to the Legislative Budget Board for the applicable contracts and contract amendments tested. However, while the Agency reported the contract amendment information for Cobb-Geotechnical Services (contract amendment No. 5), it reported that information 118 days after the amendment's execution. Texas Government Code, Section 2254.006, requires state agencies to report contract information no later than the 10th day after a contract's or amendment's execution date.

The Agency did not report vendor performance to the Comptroller's Office as required.

For the two applicable procurements audited, the Agency did not report vendor performance to the Vendor Performance Tracking System at the Comptroller's Office as required. Specifically:

- The Agency issued two contracts to Balfour-CMA under one solicitation. The first contract was executed for 120 days and completed on January 20, 2017, but the Agency could not close that contract after completion because the contract was tied to the same purchase order as the second active contract. As a result, the Agency had not reported on the vendor's performance for the first contract.
- The Agency terminated its contract with Zachry-Excavation CMR effective June 30, 2018. As of August 14, 2018, the Agency had not reported on the vendor's performance for that procurement.

Agencies are required to report vendor performance no later than 30 days after contract completion or termination, according to the Title 34, Texas Administrative Code, Section 20.115. It is important for the Agency to report vendor performance as required because state entities use the information

¹¹ The risk related to the issues discussed in Chapter 3-C is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

in the Vendor Performance Tracking System to help evaluate vendors when awarding contracts.

Recommendations

The Agency should:

- Ensure that it reports all contract and contract amendment information to the Legislative Budget Board within the required timeframe.
- Report vendor performance information to the Comptroller's Office as required by:
 - ♦ Issuing separate purchase orders for each contract to help ensure that it can report vendor performance to the Comptroller's Office's Vendor Performance Tracking System within 30 days of a contract's completion or termination as required.
 - ♦ Ensuring that it reports vendor performance on terminated contracts.

Management's Response

TFC agrees and will provide better oversight to ensure that the Agency reports all contract and contract amendment information to the LBB within the required timeframe, report vendor performance to the Comptroller's Office within 30 days of the contract's completion or termination and ensure that the Agency is reporting on vendor's performance on terminated contracts.

Person(s) Responsible: Director of Procurement

Target Implementation Date: August 31, 2019

The Agency Complied With Most Requirements for Contract Planning and Formation; However, It Should Strengthen Some Aspects of Those Processes

Chapter 4
Rating:
Medium ¹²

The Agency had processes to help ensure that it performed most required activities related to contract planning and formation. However, the Agency should strengthen its processes to ensure that (1) its policies and procedures address all applicable areas, (2) it has support for and consistently develops cost estimates, and (3) its contracts include all required vendor affirmations.

Policies and Procedures

The Agency developed the *Texas Facilities Commission Contract Manual* (Manual) as required by Texas Government Code, Section 2261.256. The Agency's Manual incorporates the *State of Texas Contract Management Guide* and includes sufficient policies that cover all contract procurement phases. However, the Agency should strengthen its policies and procedures by including specific guidance for certain processes for awarding contracts and contract amendments to help ensure consistency (see Chapter 2-B for additional information about the Agency's processes to award contracts and amendments). Specifically:

- **Contract Amendments.** While the Manual contains some procedures related to the review and approval of contract amendments, it does not include specific guidance related to evaluating the effect of an amendment to the contract's objective, deliverables, schedule, and cost. In addition, the Manual does not include guidance on when a contract amendment is appropriate as opposed to when a new contract should be procured. Not having detailed policies and procedures related to the contract amendment process increases the risk that the Agency may amend a contract without full consideration of the effects.
- **Two-step Contracting Process.** Agency management asserted that it had adopted a two-step contracting process that allows the Agency to award a short-term contract to assess a vendor's timeliness and quality of deliverables before it awards a second contract to that vendor for the full services described in the solicitation. However, the Manual does not include guidance describing when it is appropriate to apply this two-step procurement methodology. In addition, the Manual does not provide guidance regarding whether the Agency should award two contracts or

¹² The risk related to the issues discussed in Chapter 4 is rated as Medium because they present risks or results that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

one contract and then a contract amendment if it determines to award the rest of services to the vendor.

In addition, while the Agency established procedures related to identifying (1) contracts that require enhanced contract monitoring and (2) levels of purchasing accountability and staff responsibilities related to purchasing, the Agency did not post those procedures on its Web site as required by Texas Government Code, Section 2261.256(c). Statute also requires state agencies to submit to the Comptroller's Office a link to the Agency's Web site that includes those procedures.

Contract Planning

The Agency performed the required planning activities necessary to identify project needs for each of the four procurements tested. As part of those planning activities for each procurement, the Agency (1) involved appropriate project participants, (2) selected an appropriate procurement method, (3) submitted the solicitation, if applicable, to the Contract Advisory Team for review, and (4) included in the statement of work all elements required by the *State of Texas Contract Management Guide*. In addition, the Agency ensured that Commission members completed at least one contract management training course as required by Texas Government Code, Section 656.053. However, the Agency should strengthen its processes related to documenting and developing cost estimates.

The Agency did not maintain sufficient documentation to support its cost **estimates and subsequent updates to the Project's comprehensive budget.**

The Agency developed a comprehensive budget for the Project that included cost estimates for each construction component, which included two buildings, a parking garage, and other infrastructure. However, it did not have sufficient documentation supporting those cost estimates. For example, the comprehensive Project budget included an estimated cost for construction manager-agent services. However, the Agency did not retain documentation to support its original or updated cost estimates. As a result, the Agency did not have documentation supporting why its contract with Balfour-CMA was \$6,108,517, or 42.1 percent higher than originally estimated. The Agency records retention schedule states that building construction project files such as planning, design, and construction records should be maintained for the life of the asset plus 10 years.

The Agency did not develop specific cost estimates for two of four procurements tested.

While the Agency developed a comprehensive cost estimate for the Phase I of the Project, it did not develop cost estimates for all of the specific components tested. Specifically, the Agency did not develop cost estimates during the planning phase of the Cobb-Site Services and Cobb-Excavation A/E procurements. Therefore, auditors could not determine whether the final contracted cost for those services were reasonable based on the comprehensive Project budget. Not creating specific cost estimates for each procurement increases the risk that the Agency could pay a higher cost than intended for those services.

Contract Formation

The Agency complied with contract formation requirements for all four procurements tested. Specifically, for each procurement, the Agency:

- Ensured that the solicitation’s statement of work and executed contracts or contract amendment were consistent.
- Used an appropriate payment methodology as described by the *State of Texas Contract Management Guide*.
- Reviewed and approved the contracts or contract amendments as required by Agency policy.

The Agency also included in the executed contracts all but one of the clauses required by the *State of Texas Contract Management Guide*. That clause, related to hurricane relief certification, was not included in the three¹³ applicable procurements tested.

Recommendations

The Agency should:

- Include in its policies and procedures sufficient guidance on its contracting processes to help ensure consistency.
- Post on its Web site (1) contracts that require enhanced contract monitoring and (2) levels of purchasing accountability procedures. In addition, it should provide a link to that Web site to the Comptroller’s Office as required.

¹³ Auditors did not test Cobb-Excavation A/E for required clauses because it was executed as a contract amendment.

- Maintain documentation to support its cost estimates and subsequent updates and create a specific cost estimate for each procurement.
- Include all required clauses in its contracts.

Management's Response

TFC agrees that there is room for improvement in this area and will work on implementing the Auditor's recommendations to include sufficient guidance on the contracting process to help ensure consistency, and post on TFC's website: (1) contracts that require enhanced contract monitoring, (2) levels of purchasing accountability procedures, (3) provide a link to the website to the Office of the Comptroller of Public Accounts, (4) create a specific cost estimate for each formal (>\$25,000) procurement and maintain documentation to support cost estimates, and include all required clauses in its contracts.

Person(s) Responsible: Contract Administrative Manager, Legal Services Division

Target Implementation Date: August 31, 2019

The Agency Should Strengthen Certain Controls Over Its Information Systems

Chapter 5
Rating:
High ¹⁴

The Agency should implement and strengthen certain controls over three of the four information technology systems that support the contracting processes audited to help ensure compliance with applicable rules and Agency policies and procedures.

For one system, the Uniform Statewide Accounting System (USAS), the Agency had adequate user access controls. For the other three systems—IMPACT, GUI Fund Accounting System (GFAS), and Automated Procurement System (APS)—auditors identified the weaknesses discussed below.

IMPACT—The Agency uses this project management system to track construction projects, timelines, and progress. It is also a repository for the Agency’s construction documents. However, the Agency did not have adequate controls to ensure the reliability of its data. As a result, auditors determined that the IMPACT data was of undetermined reliability for purposes of this audit.

Although a third-party vendor manages IMPACT, the Agency controls user access. Auditors identified some instances in which the user access may not be appropriate. For example, IMPACT had (1) accounts with excessive access and (2) shared accounts with rights to modify access, both of which increase the risk of unauthorized activity.

The Agency’s purchase order with the third-party vendor that manages IMPACT requires the vendor to permit access to auditors to test controls over the system’s application and database. However, the vendor did not permit that access after the Agency and auditors requested it for this audit. In addition, the Agency did not ensure that the vendor submitted an annual Statement on Standards for Attestation Engagements (SSAE) 18¹⁵ report for the IMPACT application and database, as required by the contract. Because the Agency did not ensure the vendor submitted those reports, auditors could not determine whether user access, password configuration, or change management controls for the IMPACT database were operating effectively. In addition, auditors could not test the application’s change management controls.

¹⁴ The risk related to the issues discussed in Chapter 5 is rated as High because they present risks or results that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.

¹⁵ This is a third-party report on the effectiveness of the vendor’s controls over the IMPACT application and database. Prior to May 2017, it was referred to as an SSAE 16 report.

The Agency has adequate edit checks for selected key data related to vendor payment requests in the IMPACT system. The vendor provided an SSAE 18 report for the server that houses IMPACT, and that report indicated there were adequate general controls over the server.

GUI Fund Accounting System (GFAS)—The Agency has adequate edit checks for selected key expenditure data fields in GFAS, which is the Agency’s internal financial accounting system. It also had adequate application, database, and server controls in place to help ensure that the data was complete and reliable for the purposes of this audit. However, the Agency continues to accept a risk associated with a lack of adequate segregation of duties in its change management process for GFAS, which was previously reported in *An Audit Report on the Texas Facilities Commission’s Compliance with Requirements Related to the Historically Underutilized Business and State Use Programs* (State Auditor’s Office Report No. 17-030, April 2017).

Automated Procurement System (APS)—While the Agency appropriately limited access to APS to current employees, it did not ensure that it restricted access based on a user’s job duties. The Agency uses APS for managing and routing requisitions, purchase orders, and purchase order change notices. In addition, the Agency had not documented the user roles for APS until auditors requested that documentation. Without adequately documenting the user roles, there is an increased risk that the Agency may not assign the appropriate access rights. Auditors determined that the Agency had sufficient controls, such as edit checks, for key data fields tested, and it had sufficient controls over the system’s database and server. However, the Agency did not have sufficient controls over its change management process to ensure that system changes were appropriately approved, sufficiently documented, and had adequate segregation of duties.

To minimize security risks, auditors communicated details about the identified information system weaknesses directly to the Agency’s management in writing.

Recommendations

The Agency should:

- Improve its controls to ensure that access to IMPACT and APS is appropriately restricted based on job duties.
- Ensure that its third-party vendor that manages IMPACT complies with contract requirements, including submitting required SSAE reports.

- Review and properly update change management documentation based on necessary changes to APS.

Management's Response

TFC agrees with most of assessment and recommendation in this area; however, the Agency is willing to accept some risk. The Agency is working with IMPACT to improve restricted access based on job duties and ensure that the third-party vendor complies with contract requirements. Additionally, password configuration requirements have been implemented as recommended by the SAO. Unfortunately, TFC may have some risk associated with APS due to how the system is currently configured and how it interfaces with other Agency programs.

Person(s) Responsible: Director of Project Management, Facilities Design and Construction

Target Implementation Date: August 31, 2019

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas Facilities Commission (Agency) procures and manages selected Capitol Complex Master Plan contracts in accordance with applicable requirements to help ensure that the Agency awards contracts properly, the Agency has support for expenditures, and contractors perform in accordance with contract terms.

Scope

The scope of the audit covered selected Capitol Complex Project (Project), Phase I, contracts and corresponding contract amendments awarded as of February 28, 2018. In addition, auditors tested Agency payments to the vendors as of May 2018 and vendors' compliance with liability insurance requirements as of July 2018. The third-party vendor that manages IMPACT—the Agency's project management system—did not permit access to auditors to test controls over the system's application and database.

Methodology

The audit methodology consisted of collecting and reviewing contract planning, procurement, formation, and oversight documentation for the audited procurements; conducting interviews with Agency staff; reviewing statutes and rules, including Office of the Comptroller of Public Accounts requirements and Agency policies and procedures; and performing selected tests and other procedures.

The selection methodology for the contracts and contract amendments audited was risk based and considered factors such as contract dollar amount and contract type.

Data Reliability and Completeness

Auditors' procedures to review the Agency's contract expenditure data in the GUI Fund Accounting System (GFAS) for completeness included (1) generating a query for expenditure data associated with the Project; (2) observing the data extracted from the query; (3) reviewing parameters used to extract data and comparing the results of the query. Auditors reconciled expenditure information in GFAS to the expenditure information in the Uniform Statewide Accounting System (USAS) and determined that the

data was sufficiently reliable for the purposes of this audit. In addition, auditors tested the segregation of duties and application controls for expenditure data in GFAS.

The Agency did not have sufficient controls to ensure the reliability of procurement-related information in IMPACT, its project management system. Auditors determined that the IMPACT data was of undetermined reliability for purposes of this audit.

Sampling Methodology

Auditors selected primarily through random selection a nonstatistical sample of invoices that the vendor submitted to the Agency. In some cases, auditors selected additional invoices for testing based on risk. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population. In addition, auditors tested the one approved payment for Zachry-Excavation construction manager-at-risk (CMR) as of May 2018.

Information collected and reviewed included the following:

- The Agency's contracts with:
 - ♦ Balfour Beatty Construction, LLC for construction manager-agent (CMA) services (Balfour-CMA).
 - ♦ Cobb Fendley & Associates, Inc. for site services engineering services (Cobb-Site Services).
 - ♦ Zachry Construction Corporation for excavation CMR services (Zachry-Excavation CMR).
 - ♦ Flintco, LLC for CMR services for the construction of an office building at 1801 Congress Avenue (Flintco-1801 Congress CMR).
- The Agency's contract amendments with:
 - ♦ Cobb Fendley & Associates, Inc. for excavation architect/engineer (A/E) services (Cobb-Excavation A/E) (Contract amendment No. 3)
 - ♦ Cobb Fendley & Associates, Inc. for utilities A/E services (Cobb-Utilities A/E) (Contract amendment No. 4).
 - ♦ Cobb Fendley & Associates, Inc. for site services engineering-related services and geotechnical and monitoring services (Contract amendments No. 1, No. 2, and No. 5).
- Agency policies and procedures and contract manual.

- Statement on Standards for Attestation Engagements (SSAE) 18 reports.
- Agency solicitation and bid documentation, evaluation criteria and documentation, and related supporting documentation.
- Agency contract procurement documentation, including planning documentation, approvals, meeting minutes, memos, and other supporting documentation.
- Agency personnel training and certification records, nondisclosure forms, and conflict of interest forms.
- Status updates and spreadsheets that the Agency used to monitor the procurements audited.
- Emails and other documentation related to the procurements audited.
- Agency contract expenditures from GFAS.
- Project deliverables, payment requests, purchase change orders, and project budgets in IMPACT.
- Original and final solicitations, final versions of the risk assessments and needs assessments, tabulation spreadsheets, and other procurement documentation within the Agency's Automated Procurement System (APS).
- Agency payment documentation, including vendor invoices, approvals, and other supporting documentation.
- Information related to the procurements audited in the Legislative Budget Board's contract database.

Procedures and tests conducted included the following:

- Interviewed Agency management and staff.
- Tested selected planning, procurement, formation, and monitoring processes for compliance with the *State of Texas Contract Management Guide*, the *State of Texas Procurement Manual*, Agency policies and procedures, and applicable rules and statutes.
- Reviewed applicable conflict of interest and nondisclosure documents.
- Tested procurement documentation to determine whether the Agency appropriately procured the contracts and contract amendments audited.

- Tested payments for selected contracts to determine whether the Agency appropriately processed and approved the payments.
- Tested monitoring documentation to determine whether the Agency appropriately monitored the procurements audited.
- Tested information technology data to determine whether the Agency had effective controls in place.

Criteria used included the following:

- Texas Government Code, Chapters 656, 2155, 2156, 2157, 2166, 2252, 2254, 2261, 2262, and 2269.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 1, Texas Administrative Code, Chapters 46 and 202.
- The General Appropriations Act (84th Legislature).
- *State of Texas Contract Management Guide*, versions 1.14, 1.15, and 1.16¹⁶.
- *State of Texas Procurement Manual* (2017).
- Texas Facilities Commission's *Contract Manual* (August 2016).

Project Information

Audit fieldwork was conducted from May 2018 through October 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

- Ileana Barboza, MBA, CGAP (Project Manager)
- Keith Overton-Hadnot, MBA (Assistant Project Manager)
- Kirstin Adamcik, MBA

¹⁶ These guides were in effect during the planning, procurement, and formation of the selected contracts audited for this report.

- Shaun Alvis, JD
- Kayla Barshop
- John Felchak
- Allison Fries, CFE
- Steven Michael Summers, CPA, CISA, CFE
- Ann E. Karnes, CPA (Quality Control Reviewer)
- John Young, MPAFF (Audit Manager)

Issue Rating Classifications and Descriptions

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

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

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

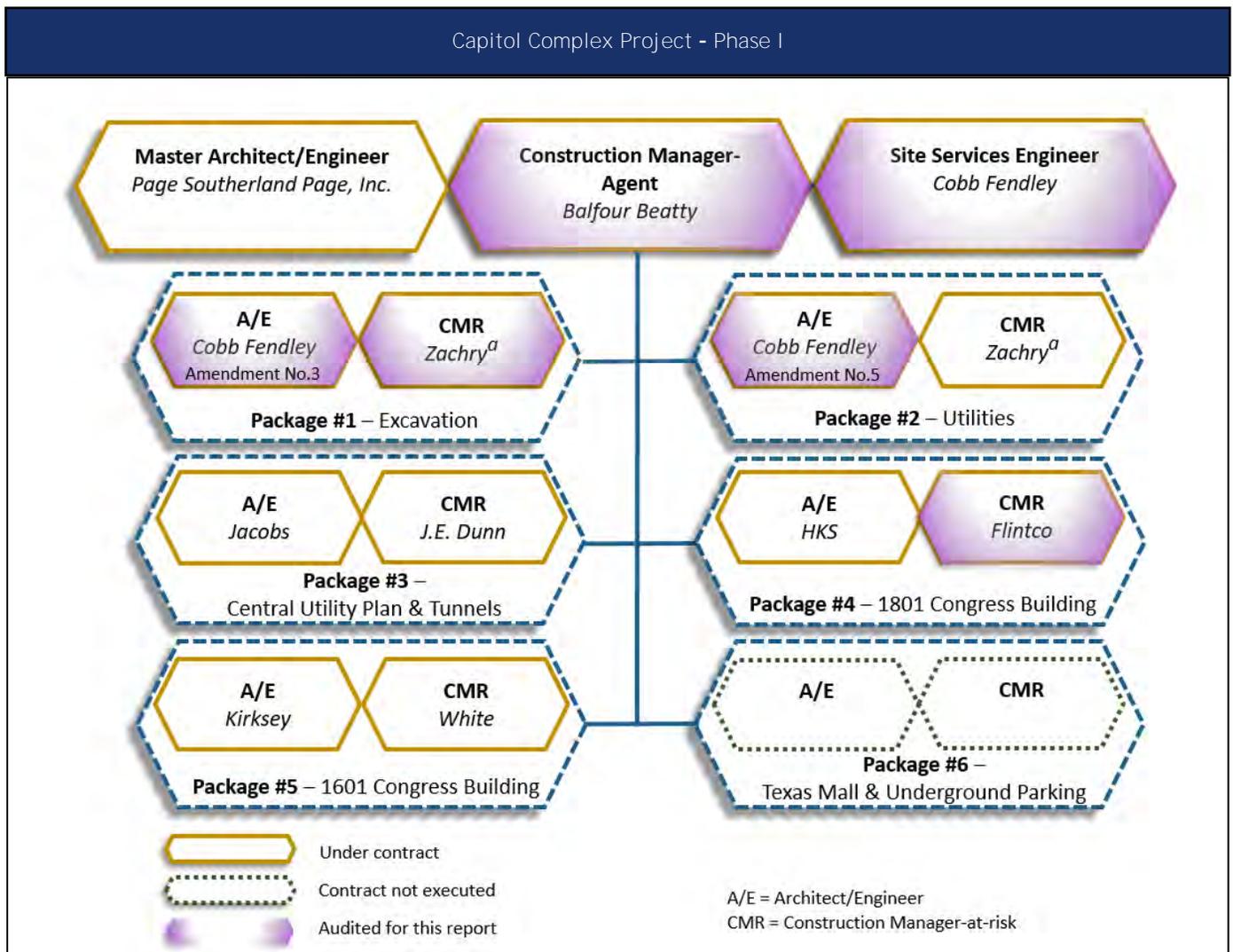
Table 3

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

List of all Capitol Complex Project - Phase I Contracts

The Texas Facilities Commission (Agency) is responsible for implementing the Capitol Complex Project (Project) Phase I. The Agency contracted with a construction manager-agent, a master architect/engineer (A/E), and a site services engineer to assist with the management and design of the Project. Phase I of the Project is divided into six construction “packages,” each of which includes an A/E and a construction manager-at-risk vendor. Figure 2 shows those six packages for Phase I of the Project as of August 7, 2018.

Figure 2



^a The Agency initially executed contracts with Zachry Construction Corporation for excavation and utilities services, and it later terminated those contracts effective June 2018. It then awarded the excavation services to J.E. Dunn Construction Company. The Agency also awarded utilities services to J.E. Dunn Construction Company through an emergency solicitation.

Source: The State Auditor’s Office created this figure based on information provided by the Agency.

As of September 30, 2018, the Agency had executed 21 contracts totaling \$457,425,655¹⁷ for Phase I of the Project (see Table 4 for details on those contracts).

Table 4

Project Phase I Contracts as of September 30, 2018		
Vendor	Contract No.	Total Contract Amount
The Aegis Group, Inc.	18-120-000	\$ 24,900
Balfour Beatty Construction, LLC	16-102-000	811,897
Balfour Beatty Construction, LLC	17-042-000	19,795,920
Catholic Diocese of Austin	18-156-000	264,000
Charles N. White Construction Company	18-182-000	103,516,663
The City of Austin, Travis County, Texas	18-140-000	700,000
Coats, Rose, Yale, Ryman and Lee, P.C. ^a	16-043-00	400,000
Coats, Rose, Yale, Ryman and Lee, P.C.	18-031-000	300,000
Cobb Fendley & Associates, Inc. ^b	16-101-000	9,596,172
Flintco, LLC	18-160-000	192,723,104
Freese and Nichols, Inc.	18-130-000	25,000
HKS, Inc. ^c	18-142-000	10,680,000
Jacob Engineering Group, Inc.	18-138-000	2,177,914
J. E. Dunn Construction Company	18-152-000	54,800,600
Kirksey Architects, Inc.	18-162-000	5,402,310
Kleinfelder, Inc.	14-109-000	13,038
Page Southerland Page, LLP ^d	16-106-000	7,948,915
Sebesta, Inc.	18-166-000	2,959,869
Terracon Consultants, Inc.	18-175-000	956,800
Zachry /J.E. Dunn Construction Company ^e	18-187-000	24,102,019
Zachry/J.E. Dunn Construction Company ^f	18-197-000	20,226,534
Total		\$457,425,655
<p>^a The total contract amount includes two amendments.</p> <p>^b The contract amount includes the original contract and five amendments. The total also includes \$1,095,569 for the North Austin Complex and \$8,500,603 for the Capitol Complex projects.</p> <p>^c The total contract amount includes one amendment.</p> <p>^d The total contract amount includes two amendments.</p> <p>^e The Agency initially executed a contract with Zachry Construction Corporation for Package #1 - Excavation services in the amount of \$24,102,019 and later terminated that contract effective June 30, 2018. It then awarded the construction manager-at-risk services for the same dollar amount to J.E. Dunn Construction Company as contract 18-187-000.</p>		

¹⁷ This does not include the two executed contracts with Zachry Construction Corporation that the Agency canceled effective June 1, 2018, and June 30, 2018.

Project Phase I Contracts as of September 30, 2018		
Vendor	Contract No.	Total Contract Amount
^f The Agency initially executed a contract with Zachry Construction Corporation for Package #2 - Utilities services in the amount of \$20,226,534 and later terminated that contract effective June 1, 2018. It then awarded the construction manager-at-risk services for the same dollar amount to J.E. Dunn Construction Company as contract 18-197-000.		

Source: The Agency.

Requirements Tested for Each Procurement Audited

Auditors reviewed all or portions of the Agency's contracting processes for six procurements of services. Those six procurements resulted in five contracts and five contract amendments. Table 5 lists the requirements tested for each contract and contract amendment audited for this report.

Table 5

Requirements Tested for the Six Audited Procurements							
Requirement	Balfour - CMA	Cobb - Site Services		Cobb - Excavation A/E (Amendment No. 3) ^a	Zachry - Excavation CMR	Cobb - Utilities A/E (Amendment No. 4) ^b	Flintco - 1801 Congress CMR
		Site Services (Original Contract)	Amendments No. 1, No. 2, and No. 5				
Chapter 2-A							
Solicitation	√	√		√	√		√
Proposal	√	√			√		√
Evaluation							
▪ Criteria	√	√			√		√
▪ Score Matrix and Point Scale	√	√		√	√		√
▪ Team Size	√	√		√	√		√
▪ Mathematical Accuracy	√	√		√	√		√
Vendor Selection	√	√		√	√		
Procurement Staff Certification	√	√		√	√		√
Chapter 2-B							
Reporting to <i>Electronic State Business Daily</i>	√	√	√ ^c	√	√		√
Chapter 2-C							
Conflict of Interest							
▪ Commission Members	√	√			√		√
▪ Evaluation Team Members	√	√			√		√
▪ Vendor Disclosures	√	√	√ ^c	√	√	√	
Nondisclosure Forms	√	√		√	√		√
Chapter 3-A							
Insurance	√	√		√	√		√
Bonds					√		
Chapter 3-B							

Requirements Tested for the Six Audited Procurements							
Requirement	Balfour - CMA	Cobb - Site Services		Cobb - Excavation A/E (Amendment No. 3) ^a	Zachry - Excavation CMR	Cobb - Utilities A/E (Amendment No. 4) ^b	Flintco - 1801 Congress CMR
		Site Services (Original Contract)	Amendments No. 1, No. 2, and No. 5				
Key Deliverables	√	√		√			
Payments	√	√	√ ^d	√	√		
Chapter 3-C							
Legislative Budget Board - Contracts Database	√	√	√ ^e	√	√	√	
Vendor Performance Tracking System	√ ^f				√		
Chapter 4							
Contract Planning	√	√		√	√		
Cost Estimates	√	√		√	√		
Contract Formation	√	√		√	√		
Contract Clauses	√	√			√		
^a The Agency issued a request for qualifications solicitation; however, it awarded those services as contract amendment No. 3 to the Cobb-Site Services contract even though Cobb had not responded to the solicitation. Auditors tested this procurement for most contract requirements. ^b The Agency issued a request for qualifications solicitation. Cobb responded to that solicitation and was awarded those services. However, instead of executing a contract, the Agency awarded those services as amendment No. 4 to the Cobb-Site Services contract. Auditors tested this procurement for contract amendment requirements only. ^c This was tested only for Cobb-Site Services contract amendment No. 5. ^d This was tested only for Cobb-Site Services contract amendments No. 1 and No. 2. ^e This was tested only for Cobb-Site Services contract amendments No. 2 and No. 5. ^f This was tested only for the first Balfour-CMA contract.							

Related State Auditor's Office Work

Related State Auditor's Office Work		
Number	Product Name	Release Date
17-030	An Audit Report on the Texas Facilities Commission's Compliance with Requirements Related to the Historically Underutilized Business and State Use Programs	April 2017

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

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

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable John Zerwas, House Appropriations Committee

The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas Facilities Commission

Members of the Texas Facilities Commission

Mr. William Allensworth, Vice Chair

Mr. Steven Alvis

Ms. Patti C. Jones

Mr. Rigoberto "Rigo" Villarreal

Mr. C. Price Wagner

Mr. Mike Novak, Executive Director



This document is not copyrighted. Readers may make additional copies of this report as **needed. In addition, most State Auditor's Office** reports may be downloaded from our Web site: www.sao.texas.gov.

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9500 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

The State Auditor's Office is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government call the SAO Hotline: 1-800-TX-AUDIT.