An Audit Report on

Contract Management at the Texas Civil Commitment Office

- The Office, in executing Amendment Two, omitted the contract cost, which is a required essential provision that protects the interest of the State.
- The Office improperly extended the length of the contract and did not report contract amendments to oversight entities.
- The Office had processes that helped to verify vendor compliance with contract requirements, but it did not always verify the accuracy of sanctions assessed for certain staffing requirements.
- The Office did not report vendor performance for fiscal year 2022 until after auditors identified the oversight.

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State Auditor

- *Background* | p. 4
- *Audit Objective* | p. 28

This audit was conducted in accordance with Texas Government Code, Sections 321.013 and 321.0132.

The Texas Civil Commitment Office (Office) did not have an effective process for amending its contract with Management & Training Corporation (MTC) for the operation and management of the Texas Civil Commitment Center (Center) for the treatment and monitoring of sexually violent predators. As a result, the Office executed a contract amendment that did not comply with state requirements because it removed the price terms and improperly extended the length of the contract period.

The Office had processes in place to monitor whether MTC was operating and managing the Center in accordance with contract terms and other applicable requirements; however, it should strengthen certain processes for monitoring and calculating sanctions, as well as consistently report vendor performance as required.

PRIORITY

CONTRACT AMENDMENT PROCESS

The Office amended its contract with MTC that resulted in omitting the total cost from the contract and changing the contract term to 20 years.

Chapter 1 | p. 5

MEDIUM

CONTRACT MONITORING

The Office's monitoring processes help ensure that the Center is operated in accordance with contract requirements. However, opportunities exist to strengthen certain monitoring activities.

Chapter 2-A | p. 16

HIGH

VENDOR PERFORMANCE

The Office reported on MTC's performance for fiscal years 2020 and 2021, but it did not report performance for fiscal year 2022 until after auditors identified the oversight.

Chapter 2-B | p. 23

LOW

INFORMATION TECHNOLOGY

The Office appropriately restricted access and had controls to ensure the reliability of its third-party case management system. It also appropriately restricted access to its contract monitoring tools.

Chapter 3 | p. 27

For more information about this audit, contact Audit Manager Willie Hicks or State Auditor Lisa Collier at 512-936-9500.

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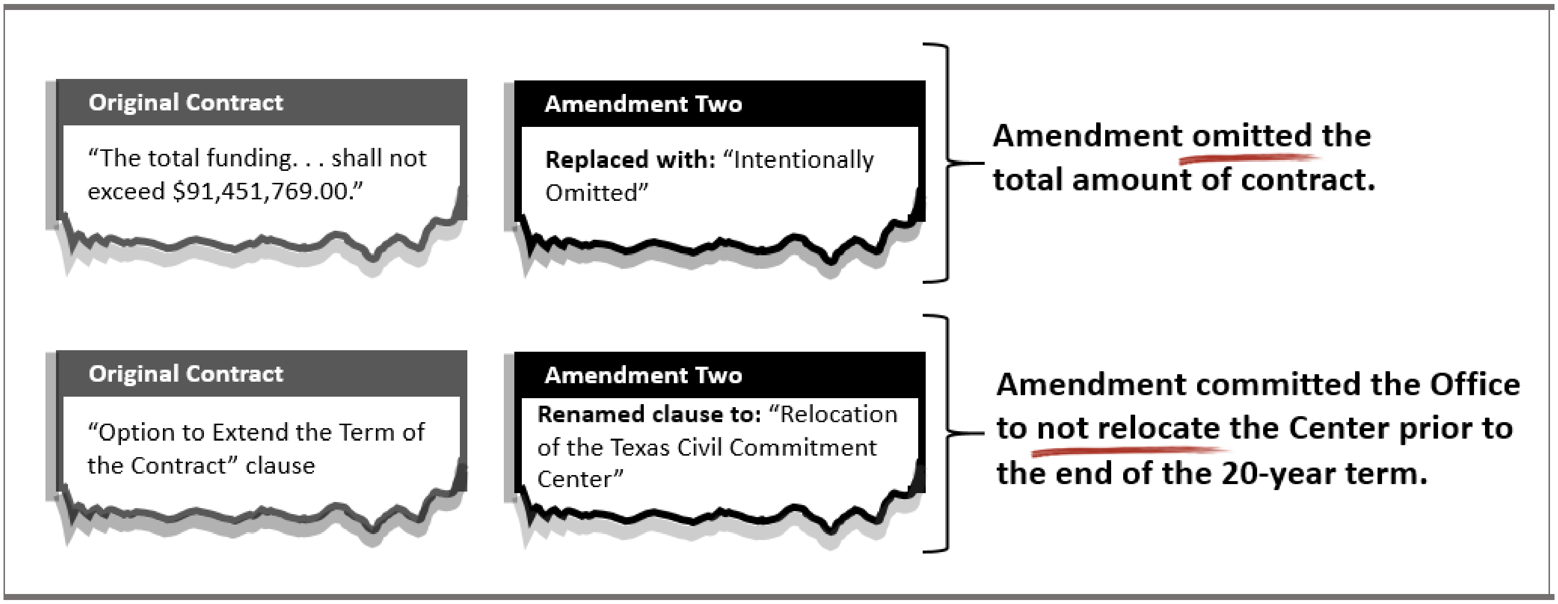
Figure 1 presents a comparison of certain terms between the original contract and the contract after execution of Amendment Two.

Figure 1

Changes in Required Terms between the Original Contract and the Amended Contract



Source: The Office's contract, including amendments, with MTC.

Summary of Management's Response

Auditors made recommendations to address the issues identified during this audit, provided at the end of certain chapters in this report. The Office agreed with most of the recommendations in this report; however, it did not agree with the finding that its contract with MTC was improperly extended and lacked required terms such as total contract cost, or that it should consider tracking vendor compliance rates when determining vendor performance.

The Office's responses to the specific recommendations are presented in each chapter and its full response letter is presented in Appendix 2.

Ratings Definitions

Auditors used professional judgment and rated the audit findings identified in this report. The issue ratings identified for each chapter were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

PRIORITY: 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(s) and reduce risks to the audited entity.

HIGH: 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(s) and reduce risks to the audited entity.

MEDIUM: Issues identified present risks or effects that if not addressed could ***moderately affect*** the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

LOW: 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.

For more on the methodology for issue ratings, see Report Ratings in Appendix 1.

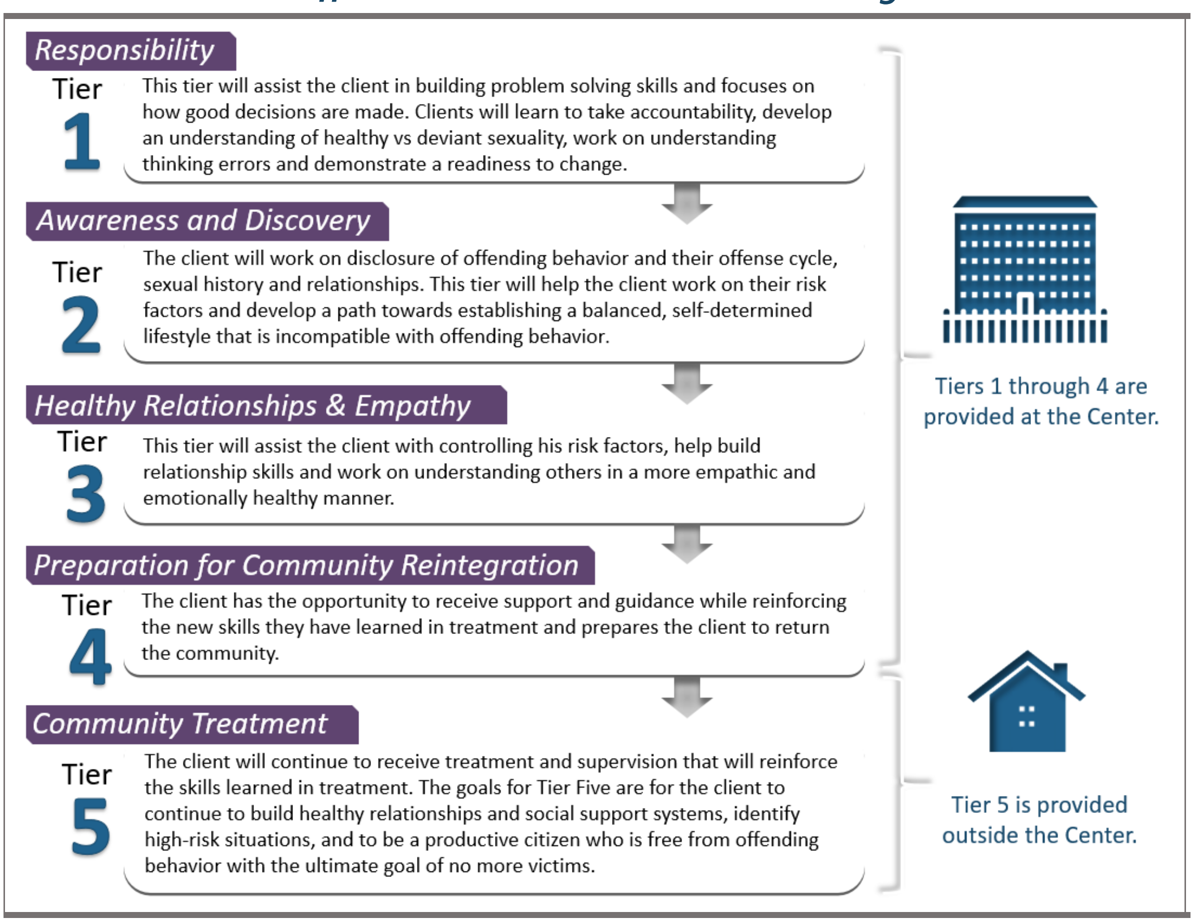
Background Information

The Texas Civil Commitment Office (Office) is responsible for the supervision and treatment of civilly committed sexually violent predators and is administratively attached to the Health and Human Services Commission. The Office has a contract with Management & Training Corporation (MTC) to operate and manage the Texas Civil Commitment Center (Center) in Littlefield, Texas, for the treatment and monitoring of sexually violent predators, which the Office calls "clients." For services MTC provided as of December 31, 2022, the Office's payments on the contract totaled $54,187,719.

The Office provides treatment services to clients through a five-tier rehabilitation program. Tiers 1 through 4 are provided by MTC at the Center; Tier 5 is provided while the client is residing outside the Center. As of February 2023, the Office indicated that the Center housed 435 clients. Figure 2 summarizes the type of treatment each tier provides to a client.

Figure 2

The Office's Five-tier Rehabilitation Program



Source: The Office.

PRIORITY

Chapter 1
Contract Amendment Process

As of May 2023, the Texas Civil Commitment Office (Office) had executed two contract amendments to its contract with Management & Training Corporation (MTC). While Amendment One changed certain compliance standards related to client treatment services provided at the Texas Civil Commitment Center[1] (Center), the Office's execution of Amendment Two, which changed the contract term from 5 years (with options to extend it another 4 years) to 20 years, did not ensure that changes to the contract complied with State procurement requirements.

The Office omitted the total cost from the contract.

The Office replaced the original $91.5 million total cost of the contract with "intentionally omitted" when it executed Amendment Two, which was effective June 15, 2022. The Office did not develop new contract cost estimates or projections based on the amended 20-year contract term. The amended contract still contained a pricing schedule[2], but that schedule extended only to August 31, 2024, while the amended scope of the contract is through August 31, 2039.

Both the *State of Texas Procurement and Contract Management Guide* and the *Health and Human Services System Procurement and Contract Management Handbook* require contracts to contain essential clauses, including a cost clause, to protect the interests of the State.

[1] Amendment One revised certain compliance standards and added other reporting requirements for MTC's assessments of clients and treatment services provided. The amendment was executed on June 22, 2020, and effective July 1, 2020.

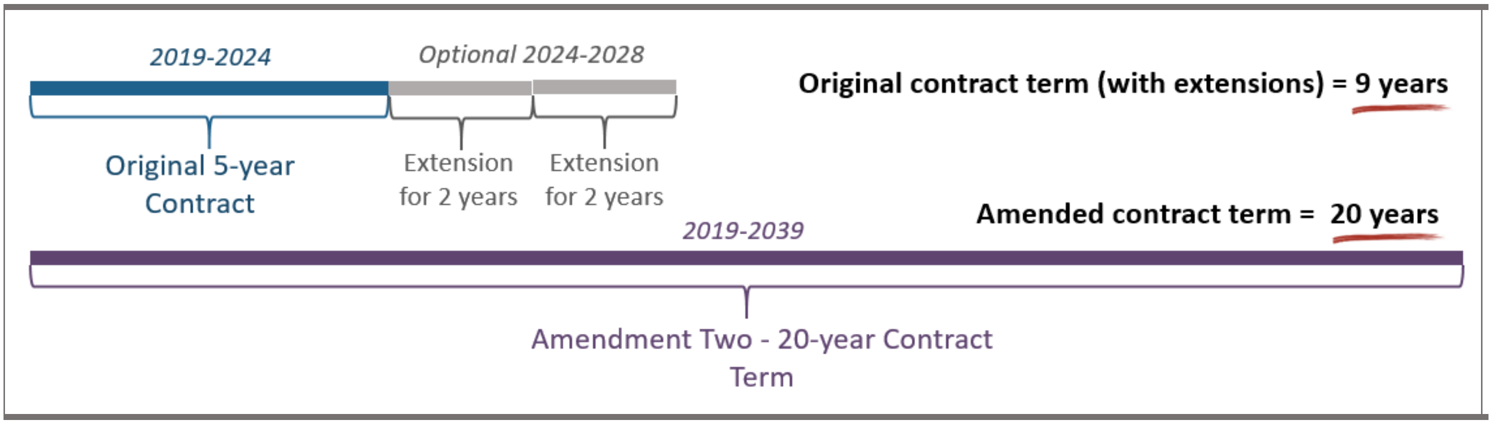
[2] The pricing schedule lists the per diem rate per client for each fiscal year of the original contract term from September 1, 2019, through August 31, 2024.

The Office improperly extended the length of the contract.

Amendment Two modified the original contract term of 5 years (with options to extend it another 4 years) to a new term of 20 years (see Figure 3).

Figure 3

Original Contract versus Amended Contract Term



Source: The Office's contract, including amendments, with MTC.

The *State of Texas Procurement and Contract Management Guide* requires contract changes to remain within the scope of that contract's solicitation. A material or substantial change in the scope of work for the contract may require a new solicitation to ensure compliance with the State's competitive procurement requirements. Texas Government Code, Section 2155.088, defines a material change to a contract as one that (1) extends the length of the contract for 6 months or more or (2) increases the amount to be paid under the contract by at least 10 percent.

In addition, Amendment Two replaced the option to extend the term of the contract with an agreement to not relocate the Center from the facility currently owned by MTC prior to the end of the 20-year term. If the contract is terminated, the Office is required to list the MTC-owned facility as the "preferred site" for future services. This restriction significantly altered the scope of work presented in the original solicitation.

The Office indicated that it consulted with the Office of the Comptroller of Public Accounts (Comptroller's Office) on the appropriateness of extending the contract term. Based on documentation provided by the Office, the Comptroller's Office advised that the *State of Texas Procurement and Contract Management Guide* recommended a maximum four-year term as a general best practice, but recognized business needs and other considerations may dictate a longer term.

The Comptroller's Office recommended the use of a Request For Information[3] to collect information that could assist the Office in deciding whether to continue a current contract or resolicit. However, the Comptroller's Office specified that an amendment to extend a contract term beyond what was in the original solicitation could violate statutory competitive bidding requirements. It also advised that the amendment, if determined to be beyond the scope of the original solicitation, could be voided with significant consequences. Based on the advice of the Comptroller's Office, Office management informed members of its Board of those risks in a June 2020 meeting. Amendment Two was executed two years later in June 2022.

The Office did not comply with requirements in the General Appropriations Act for reporting contract amendments.

The Office did not report the two contract amendments to the governor, the lieutenant governor, the speaker of the House of Representatives, and the Legislative Budget Board (LBB), as required by the General Appropriations Act. Figure 4 on the next page summarizes the reporting requirements that state agencies must follow after executing an amendment.

[3] *The State of Texas Contract Management and Procurement Guide* states that a Request for Information (RFI) is a research method used to gather information directly from the industry about a particular type of product or service. One of the benefits of the RFI process is that information pertinent to an agency's business need is obtained in real time directly from the vendor community. The information obtained might include applicable industry standards, best practices, potential performance measures, cost structures or pricing methodologies, and feedback on innovative items.

Figure 4

Reporting Requirements for Contract Amendments

A state agency is required to:

- Notify the LBB before the 30th calendar day after executing the contract and each amendment.
- Notify the governor, the lieutenant governor, and the speaker of the House of Representatives no later than the 30th day after the date of discovery that the expected total value of the contract subsequent to an amendment exceeds the total value of the initial contract by 10 percent. [a] [b]

[a] The notice must include the amount of the cost increase, the reason for the cost increase, and any opportunity the state agency had to lessen the cost or to purchase the service from another vendor.

[b] As previously discussed, the Office did not develop a new contract cost estimate or projection for the amended 20-year contract term; however, it is reasonable to conclude that the total value of the contract would exceed the initial value by 10 percent or more.

Source: Article IX, Section 7.04 (d), (g) and (h), the General Appropriations Act (87th Legislature).

By not reporting the amendments as required, the Office avoided the oversight processes that were designed to promote transparency, accountability, and responsible contract management within the State. In addition, Article IX, Section 7.04 (f), the General Appropriations Act (87th Legislature), allows the LBB to determine and notify state oversight entities if a reported contract does not meet state procurement and contracting requirements. The LBB may also make recommendations for measures such as enhanced monitoring, consulting with the Contract Advisory Team, or contract cancellation.

Members of the Board did not complete statutorily required training from the Comptroller's Office.

The five members of the Office's Board did not receive the required contract management training provided by the Comptroller's Office. Texas Government Code, Section 656.053, requires members of the governing body of a state agency to complete at least one course of the Comptroller's Office's contract management training.

Recommendations

The Office should:

- Ensure that its contract amendment process consistently complies with state procurement requirements, including having all required terms, complying with competitive bidding requirements, and reporting to state oversight entities.
- Report all contract amendments, including the amount of and reasons for a cost increase of 10 percent or more, to the Legislative Budget Board and other oversight entities as required by the General Appropriations Act.
- Ensure that members of the Board receive the required contract management training provided by the Comptroller's Office.

Management's Response

1. The Texas Civil Commitment Office can terminate the contract with MTC at any time if such termination is in the best interest of the state.
2. Auditors have cited no statutory provision that limits the length of a contract extension.
3. The contract extension saved the state approximately $23 million in construction costs in a time period in which state agencies underwent a 5% budget reduction. The extension also ensured that civilly committed sexually violent predators remained housed in a confined treatment facility.
4. The contract amendment does not guarantee services at the current location and does not prohibit the relocation of services to a different location.
5. The current location was the only location willing to accept the sexually violent predators supervised by the Texas Civil Commitment Office.

While TCCO agrees with the recommendations in Chapter 1, TCCO does not agree that the Center contract was improperly extended and does not agree that the amendment lacked required terms. A detailed explanation and information regarding implementation of the recommendations are set forth below.

The audit report states that a total cost is a required essential term that protects the interests of the state. A different sentence in the report states that the amendment did not comply with state requirements in part because it removed the price terms. TCCO strongly disagrees with these statements. The State of Texas Procurement and Contract Management Guide does list specific terms that are required, essential clauses to be included in state contracts. However, total cost of the contract is not included in the listing of required clauses appearing as Appendix 24 to the guide. Additionally, the body of the guide on page 85 discussing essential provisions states "financial provisions (e.g. price and payment terms)" are to be included. It does not state a total cost is required. This statement also links to page 56 of the guide where price and payment terms are further discussed. This section also does not require a total cost. Price and payment provisions are included in the contract; accordingly, this requirement is met.

The audit report also cites a provision in the amendment which states TCCO agrees not to relocate the Center during the term of the contract and that if the contract is terminated and TCCO issues a solicitation, the Center will be listed as a preferred site for services. This provision is essentially meaningless. The Center is a specific brick and mortar location in Littlefield, Texas. This reading of the language is further confirmed in the fact that the Center itself and the services are discussed as separate ideas further in the same section. The state does not own the land or the several buildings on the property. TCCO could not and would not relocate a brick-and-mortar multi-building Center. This provision also is not a prohibition against terminating the contract. TCCO retains the ability to terminate the contract with no notice as per the terms and conditions of the contract if such a termination is in the state's best interest. The provision further does not prohibit the state from relocating the services or obtaining additional services elsewhere if such services were available.

Further, the agreement to list the Center as a preferred site for services also has no practical impact on the state. The provision requires two conditions precedent to listing the Center as a preferred site for services: 1) TCCO's contract with MTC is terminated and 2) TCCO issues a solicitation. As a practical matter, both conditions would not be met to invoke the clause requiring the Center to be listed as a preferred site. Due to the length of time the state procurement process takes and TCCO's need to have continual services for the clients, TCCO could never terminate the contract with MTC prior to having already issued a request for proposals (RFP) and obtaining services elsewhere (if assuming another provider started offering such services). This is further evidenced by the order of the events in 2019 when MTC was awarded the contract – the existing contract with the first vendor remained in place until after an RFP had been issued, responses received, and a contract awarded to a new vendor. Only after the award was made from the RFP was the existing contract terminated. There is also no prohibition against seeking additional services elsewhere or relocating services to a different location without terminating the MTC contract, which has no guarantee of volume or number of clients housed at the Center. Finally, even assuming TCCO were to list the Center as a preferred site for services, it does not guarantee that location would be chosen as the future location for services; however, retaining the state employee case management staff that oversee this population would further the state's best interest by providing continuity of care to a dangerous client population.

The report states that the Office improperly extended the length of the contract. TCCO disagrees with the finding that the contract extension was improper. While the extension is outside standard recommended contract terms, TCCO's business needs necessitated a longer contract and the extension is in the best interest of the state as described in further detail below. The state Procurement and Contract Management Guide, on page 58, states that while as a general policy it is recommended that the maximum duration for a contract be four to five years, "individual business needs may dictate a different period." Page 85 further states that the "Guide must recognize the unique contracting needs of the individual agencies and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of the State."

TCCO is required by statute to provide appropriate and necessary housing and supervision to civilly committed sexually violent predators. Each individual in TCCO's program has been convicted of at least two sexually violent offenses and has been determined to have a behavioral abnormality which makes the individual likely to engage in a repeated predatory act of sexual violence. Accordingly, TCCO is required to provide intensive supervision and treatment to the individual until such time as he has been released from commitment by the committing court. TCCO is an extremely small state agency allotted only 37 FTEs to accomplish the monumental task of working to keep the public safe from these sexually violent predator clients while at the same time providing appropriate treatment and supervision. As a 37 FTE agency that does not have a state-owned facility, TCCO cannot directly provide the necessary housing, supervision, and treatment services to clients without the use of contracted services.

Prior to locating the Texas Civil Commitment Center in Littlefield, Texas, TCCO visited more than 130 locations in an attempt to find suitable housing and treatment for sexually violent predator clients. No suitable location that was willing to accept sexually violent predator clients was located. Additionally, TCCO had previously issued an unsuccessful RFP in 2014 to locate services. In 2015, TCCO issued a subsequent RFP and received one responsive proposal which was to provide housing, including 24/7 security and an onsite medical clinic, and sex offender treatment at the Texas Civil Commitment Center. The proposal met TCCO's needs and TCCO contracted with that entity in 2015. In 2018 after experiencing issues with the first vendor, TCCO issued an RFP seeking an additional or different vendor. In response to that RFP, TCCO received two proposals. However, only one proposal was responsive. As a result, in 2019 TCCO contracted with MTC to provide security and sex offender treatment at the Texas Civil Commitment Center. At that time, the Texas Civil Commitment Center was owned by the City of Littlefield and leased to MTC.

The original capacity of the Center in 2015 was 346 sexually violent predator clients. In 2020, the capacity had been expanded through internal reconfigurations to 372 with an additional 26-bed expansion pending. However, it was clear that at least one additional building was necessary to expand the capacity to allow for the average intake of 35 clients per year. On May 27, 2020 MTC submitted a request to TCCO to extend the contract to August 31, 2039 which would allow MTC the opportunity to plan for the expansion of the Center to include multiple construction projects at no cost to the state to result in a final capacity of 750 clients. At the same time, on May 20, 2020 TCCO had been notified via a letter from Governor Abbott to submit plans for a 5% reduction in budgets for fiscal years 2020 and 2021.

In considering the request and with knowledge of the difficulty in locating services for this population, TCCO sought guidance from experts. Specifically, TCCO spoke with an HHSC Associate Commissioner over procurement as well as a Deputy Chief Counsel over Statewide Contracts at the Comptroller's Office to determine whether an 11-year extension for a total term of 20 years was permitted by state law. TCCO spoke with the HHSC Associate Commissioner because HHSC procurement and contracting services issues TCCO's procurements as part of the administrative attachment. TCCO was further referred to the Comptroller's Office Deputy Chief Counsel by the HHSC Associate Commissioner. In discussion with both experts, it was stated that the Procurement and Contract Management Guide generally recommends a four-year or five-year contract term as a maximum term, there may be cases in which an agency's individual business need dictates a longer term and there is not a maximum limit set forth in state law. The HHSC Associate Commissioner also cited TCCO to a provision in the General Appropriations Act regarding the extension of contracts that had already been in effect for multiple years as of August 31, 2019. This provision was not applicable to the MTC contract as it had an effective date of September 1, 2019. Neither expert cited to other provisions of the General Appropriations Act. Additionally, TCCO discussed the potential risks of an extension with the Comptroller's Office Deputy Chief Counsel at length. One of the risks to an extension that was discussed was the risk for a protest or challenge by another potential vendor arguing that the extension violated competitive procurement requirements and that the potential vendor would have bid were they aware of the possibility of a term longer than the 9-year term in the original contract. If successful, such a challenge could have significant consequences. TCCO believed such a challenge to be a remote possibility as only one responsive bid was received to the 2018 RFP. In this case, the services to be performed, requirements, clients, and location all remained the same and the original solicitation and resulting contract explicitly allowed for amendments.

In reviewing the business need for a longer contract term, the provision of housing and treatment services in a confined treatment facility for sexually violent predators is a unique need. The Center is the only facility of its kind in the state and the Texas program is one of only 21 in the country. The marketplace of vendors who provide both security and treatment services to sexually violent predators is only two vendors in the United States – the vendor TCCO contracted with in 2015 and

MTC. The number of locations in the state willing to accept sexually violent predator clients in their community is even less – after visiting more than 130 locations, only one location (Littlefield, Texas) was willing to allow these clients in their community that also had a facility that was appropriately conducive to a treatment environment. Additionally, TCCO has multiple mechanisms to verify that the marketplace of vendors has not changed throughout the term of the contract. Prior to extending the contract, TCCO was aware of the marketplace of vendors and no alternative suitable vendors existed outside a vendor TCCO had already utilized and terminated the contract. First, TCCO can issue periodic requests for information to seek information from the marketplace regarding any new vendors that may be providing security and treatment services for civilly committed sexually violent predators. Second, there are only 21 civil commitment programs for sexually violent predators in the United States. TCCO staff is very involved in the Sex Offender Civil Commitment Programs Network which is a trade organization of sorts for similar programs in other states. TCCO has staff members who sit on the board of the organization, is actively involved in discussion of issues with other states and attends conferences to obtain relevant updates. Through this participation, TCCO is aware the only two vendors providing both confined security and treatment services for civilly committed sexually violent predators are TCCO's former vendor and TCCO's current vendor. Another vendor provides treatment services but does so inside a state-owned and operated facility. TCCO has no such facility. TCCO reviewed the guidance from HHSC and the Comptroller's Office and presented the risks and benefits to the TCCO Board in an open meeting. After a lengthy discussion of the risks and benefits of the extension, to include the risk of not having a place to house civilly committed sexually violent predators and the benefit of cost savings to the state, the Board voted to approve the contract extension on June 18, 2020.

Auditors have cited no statutory provision that limits the length of a contract extension. Additionally, there was no harm to the state in issuing the extension. In fact, the extension saves the state money and means that services are provided, at rates agreed upon in the very different economic climate in 2019, and the state does not have to pay the approximately $23 million in construction costs to build the expansion buildings. The state is receiving the benefit of the expansion without cost.

While TCCO disagrees with the findings discussed above, TCCO agrees with the recommendation regarding the contract amendment process and will continue strive to do so. The agency's Staff Attorney and Special Projects Coordinator will remain responsible for these tasks.

With regard to amendment reporting, TCCO agrees the amendment was not formally reported to the LBB in a timely fashion. However, TCCO has since rectified this oversight by reporting the contract amendment in the two HHSC systems (SCOR and CAPPS Financial) that flow into the LBB contract reporting and will do so upon execution for future amendments as well. The agency's Staff Attorney and Special Projects Coordinator hold responsibility for ongoing implementation. Additionally, TCCO has spoken with LBB contract oversight leadership regarding available training and will schedule additional training for TCCO staff responsible for contract oversight. It is, however, important to note that the reporting completion is not related to attempting to evade transparency or oversight. Rather, while TCCO may not have complied with the letter of the requirement, the spirit of the requirement in informing stakeholders was met by TCCO discussing this expansion publicly and in several different forums. A State Representative and Chair of a committee with oversight over TCCO was present at the meeting when the extension was approved. TCCO verbally informed the offices of two State Senators who have interest in the program and provided presentations to legislative committees that expansion at no cost was secured. TCCO also referenced that expansion at no cost to the state was proposed and approved by TCCO's board in routine quarterly status reports sent to LBB staff.

TCCO was not aware of the existence of the Comptroller's Governing Bodies webinar training; TCCO agrees this training was not completed prior to the start of the audit. Upon becoming aware of the training, TCCO reached out to the Comptroller's Office training division and the staff there initially was also not aware of the training's existence or how to access the training. TCCO also spoke with staff at the Governor’s Appointments Office who was also not aware of the training. After working with a different staff member in the training division, the webinar was located and instructions provided for registration. TCCO is committed to training and continuing education; as of May 23, 2023, all TCCO Board members as well as TCCO's Executive Director and Staff Attorney have completed the training.

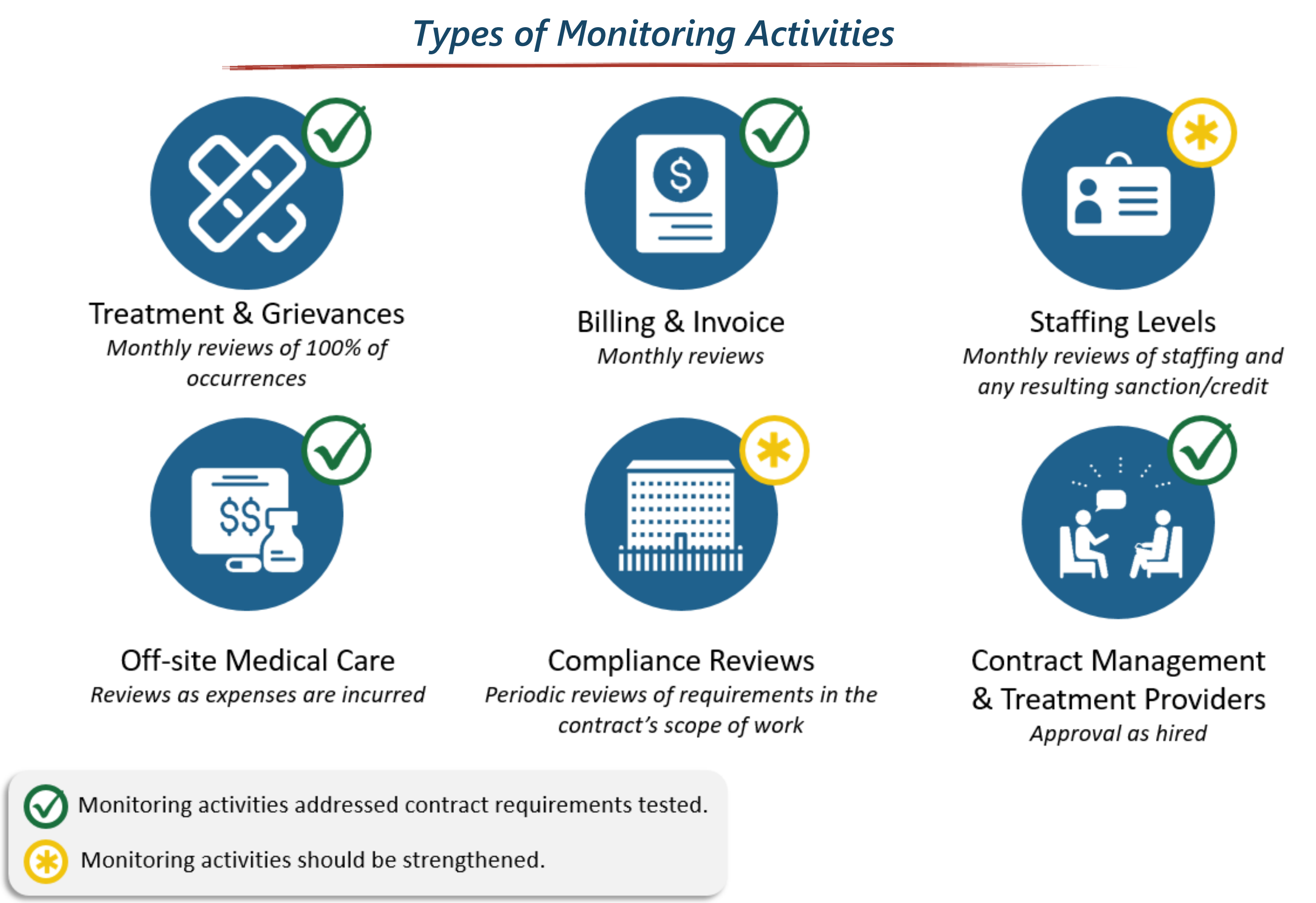
MEDIUM

Chapter 2-A
Contract Monitoring

The Office's monitoring processes help to ensure that the Center is operated and managed in accordance with contract requirements.

The Office had processes and related controls that help to verify MTC's compliance with the contract requirements for treatment and operational services provided to the Center. However, opportunities exist to strengthen certain monitoring activities. Figure 5 summarizes monitoring activities the Office performed to verify MTC's compliance from September 1, 2019, to December 31, 2022.

Figure 5



Sources: The Office and auditors' test results.

The Office had adequate monitoring processes and controls over the following areas[4]:

Client treatment and grievances. All 8 treatment-related sanctions that auditors tested, totaling $731,831, and all 8 grievance-related sanctions tested, totaling $112,710, were properly supported, accurate, and complied with contract requirements.

Billing and invoicing. All 8 invoices that auditors tested, totaling $11,020,730, were properly supported, accurate, and complied with contract requirements.

Reimbursements for off-site medical care. All 3 reimbursements auditors tested, totaling $983,484, were properly supported, accurate, and complied with contract requirements.

Qualified staff. The Office properly verified and approved the qualifications for the 5 MTC employees whom auditors tested as required by the contract. The Office ensured that the 4 sex offender treatment providers and the facility manager met the minimum qualification requirements.

The Office should develop and document a contract monitoring plan to help ensure that it consistently performs compliance reviews.

The Office did not perform a risk assessment or have a documented contract monitoring plan to determine the priority of monitoring activities and the timing of those activities. Both the *State of Texas Procurement and Contract Management Guide* and the *Health and Human Services System Procurement and Contract Management Handbook* require the development of planning and monitoring tools to assess the risks associated with a contract to effectively focus monitoring resources. For example, a monitoring plan could help the Office ensure that its compliance reviews provide adequate coverage throughout the term of the contract (see text box on the next page for more information about compliance reviews).

[4] The audit results described are based on a sample of documents tested for each area identified. See Appendix 1 for more information about the populations from which samples were selected.

The Office conducts those reviews to monitor contractor compliance with certain requirements in the contract's scope of work. Examples of requirements monitored include those related to security, transportation, staff training, maintenance, health and food services, and other client necessities.

For fiscal years 2021 and 2022, the Office had a 4-month gap (November 2020 through February 2021) and an 8-month gap (August 2021 through March 2022) during which the compliance reviews were not conducted. The Office asserted those gaps were due to employee vacancies. Instead of compliance reviews, the Office relied upon its on-site visits and its daily monitoring communications with MTC to address client incidents, medical issues, staffing concerns, and other contract compliance issues identified during those gap periods.

Compliance Reviews

For its compliance reviews, the Office identifies the contract sections that will be reviewed.

The review process includes holding entrance and exit conferences with MTC, and the reviews are usually conducted on-site. Upon completion, the Office sends a report to MTC that explains the noncompliance issues identified during the review. MTC is required to respond to the report with a corrective action plan within 20 days.

Sources: The Office and the contract between the Office and MTC.

The Office should strengthen its processes for following up on corrective action plans.

The Office appropriately followed up on MTC's corrective action plans for 4 (67 percent) of 6 compliance reviews tested. However, the Office (1) did not follow up on the corrective action plan for one review and (2) did not send the review results to MTC for the other review, which would have prompted the requirement for a corrective action plan.

The contract requires MTC to submit a corrective action plan within 20 days of receiving a report detailing the noncompliance the Office identified during a compliance review.

The Office should strengthen its verification process over MTC's staffing levels at the Center.

The Office had processes to monitor MTC's staffing levels at the Center to verify that staff vacancy levels complied with applicable contract requirements from September 1, 2019, through December 31, 2022. However, it did not ensure that MTC increased staffing levels with corresponding increases in the client population. As a result, the Office did not assess sanctions against MTC for not increasing staffing levels in concert with population levels required by the contract.

Additionally, the Office did not always verify the accuracy of the sanctions assessed for MTC's noncompliance for other staffing requirements. Specifically, for 8 sanctions tested, totaling $350,894:

- Six (75 percent) sanctions were incorrectly calculated. The miscalculations resulted in 2 sanctions being overstated, totaling $14,379, and 4 sanctions being understated, totaling $23,834.
- The remaining sanctions tested were properly supported, accurate, and complied with contract terms.

Inadequate monitoring and enforcement of sanctions for not meeting staffing level requirements increases the risk that MTC may provide substandard services that could threaten the health, safety, and quality of treatment services provided to clients at the Center.

Recommendations

The Office should:

- Develop, document, and implement a periodic risk assessment and contract monitoring plan as required.
- Strengthen its processes to ensure that it consistently follows up on identified noncompliance from compliance reviews, including receiving and responding to corrective action plans.
- Identify and verify compliance with all staffing level requirements.
- Strengthen its processes for verifying that sanctions are accurately calculated.

Management's Response

1. The Texas Civil Commitment Office utilizes a robust contract monitoring continuum to monitor the contractor's compliance but recognizes there is opportunity to strengthen processes.
2. As part of the contract monitoring continuum, the Texas Civil Commitment Office completes a 100% compliance review of treatment activities each month for all clients at the Texas Civil Commitment Center (currently 446 clients), which is the most crucial aspect of the services provided.

TCCO agrees with the recommendations of Chapter 2A; however, TCCO feels important context regarding compliance review activities is lacking from the report. A detailed explanation of those activities and information regarding implementation of the recommendations are set forth below.

Compliance review activities conducted by TCCO can be best classified as being on a continuum with the least formal activity being a staff member addressing an issue in the moment with immediate correction, such as an employee not securing a door, to the most formal being the reports titled "Compliance Review" which consist of formal entrance and exit conferences, generally with advance notice, and a formal report following the exit conference. The next level on the compliance review continuum would be instances in which TCCO receives a phone call or text message from a staff member or even a client at the Center who is authorized to have a cell phone reporting an issue. Such issues are then reviewed and addressed with the contractor to correct or rectify the issue. The vast majority, and most valuable of TCCO's compliance review activities, exist in the middle of the continuum and are unannounced, informal reviews in which a contractor is not aware that a compliance review is happening or not aware that staff will be arriving on site to conduct the review. The informal, unannounced reviews allow staff to observe actual operations in real time.

Auditors stated that no compliance reviews were conducted during an eight-month period from late 2021 to early 2022. However, during the time period referenced by auditors, TCCO staff visited the Texas Civil Commitment Center on 26 occasions for a combined 84 days. During each visit, staff observe and monitor the operations of the Center and address any issues that have arisen. Additionally, even if staff is not personally on-site at the Center such as when the facility was subject to COVID-related quarantine for a four-month period in late 2020 and early 2021 or in between the 26 compliance review visits in the referenced eight-month time period, TCCO continued the work of addressing issues as they arose and working with Center staff and administration to improve operations. TCCO has also recently assigned a contract monitor to be present on-site at the Center full-time to provide even more rapid response to issues and even more visibility into Center operations.

TCCO consistently performs a compliance review of 100% of treatment activities on a monthly basis for all clients at the Center (446 as of June 15, 2023). These compliance reviews are the most crucial reviews that TCCO performs as the provision of treatment to clients is necessary for the continued success of the program and to maintain constitutional standards. The monthly treatment compliance review involves the review of documentation of services provided to every client at the Texas Civil Commitment Center, a review of every activity that was due for that client in the month and then also a quality assurance review to determine whether the work performed meets acceptable standards. This information is then compiled into a monthly penalty report and all instances of noncompliance are reported to the contractor and an appropriate financial sanction is applied. As a result of these intensive monthly compliance reviews and associated financial sanctions, TCCO applied penalties of $1,001,454 in FY 2021 and $1,612,092 in FY 2022. TCCO's ongoing monitoring and management of this most crucial aspect of the contract has resulted in improved performance to the extent that FY 2023 penalties have been substantially reduced with a total of $205,370.00 for the first seven months of the fiscal year.

TCCO agrees that processes can be strengthened for documenting onsite compliance visits and following up on corrective action plans. TCCO will draft and implement a policy regarding contract monitoring activities to include a risk assessment, contract monitoring plan, ensuring written documentation is maintained of each onsite compliance visit by TCCO staff and to formalize the process for submitting site visit and compliance review reports to the contractor and following up on corrective action plans. This project will be overseen by the TCCO Deputy Director and will be completed by September 1, 2023.

TCCO agrees that the process for verifying MTC staffing levels as part of the invoice review can be strengthened. Historically, this process has been a painstaking, manual review process which leaves room for computation and other errors. TCCO's Chief Financial Officer has already begun the process of strengthening this verification procedure. The Chief Financial Officer, with assistance from TCCO's Data Analyst, has designed an automated review tool that will complete a final review of each MTC monthly invoice. This tool is currently being utilized alongside manual review to allow for testing, review, and adjustment of the tool to ensure it meets TCCO's needs. The tool will compare all fees and credits that have been tabulated by MTC and then recalculate the same data so that TCCO can compare and modify any deviations. By implementing this new automated process all payments will be processed more accurately and in a more expeditious time frame. Our goal is to have a fully operational tool by September 1, 2023.

HIGH

Chapter 2-B
Vendor Performance

The Office reported on MTC's performance for fiscal years 2020 and 2021, but it did not report performance for fiscal year 2022 timely.

Texas Government Code, Section 2155.089, requires state entities to report vendor performance to the Comptroller's Office at least once each year for contracts that exceed $5 million. As Figure 6 shows[5], the Office reported a grade of "B" for MTC's performance for fiscal year 2020, and it reported a grade of "C" for MTC's performance in fiscal year 2021. However, it did not report MTC's performance for fiscal year 2022 until after auditors identified the oversight. The Office reported a grade of "C" for MTC in May 2023.

Figure 6

Reported Vendor Performance [a]

FY 2020	B
FY 2021	C
FY 2022 [b]	C

[a] Agencies are asked to rate vendor performance on a scale from A to F each fiscal year (FY).

[b] Amendment Two, which changed the contract's term to 20 years, became effective in fiscal year 2022 (see Chapter 1).

Consistently reporting vendor performance is important because the purpose of the Vendor Performance Tracking System is to provide state agencies with past vendor performance information to assist them in making a best-value determination when awarding contracts.

The Office assessed the highest amount of treatment-related sanctions in fiscal year 2022.

The contract contains 11 compliance standards, 2 of which are directly related to client treatment services that MTC is required to provide: group therapy and individual treatment (see text box for details). For the reporting periods discussed above, the highest amount of treatment-related sanctions was assessed in fiscal year 2022 largely

Client Treatment Requirements

The contract requires MTC to make available to each client housed at the Center:

- The agreed-upon hours of sex offender **group therapy** on a weekly basis.
- At least one **individual treatment** session every 90 days.

Source: The contract between the Office and MTC.

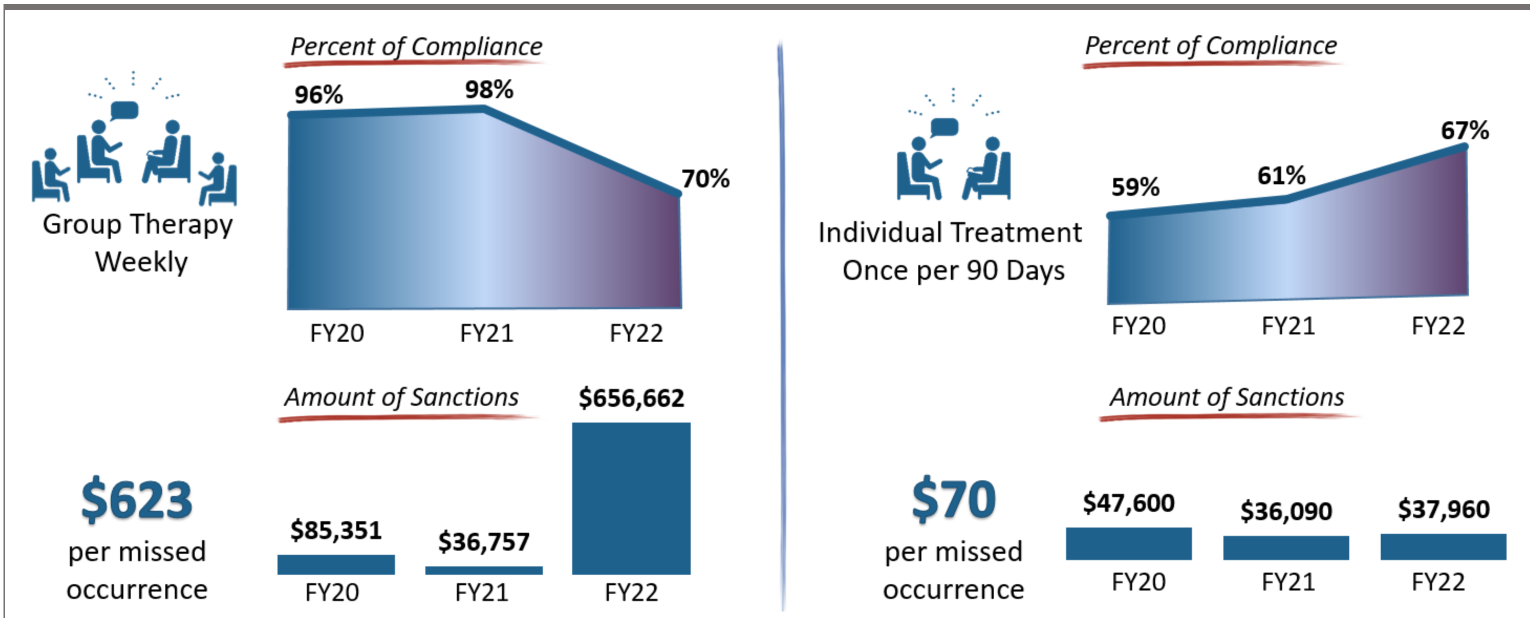
[5] The information in Figure 6 is from the Comptroller's Office's Vendor Performance Tracking System and Amendment Two.

due to a sharp decrease in MTC's compliance with the group therapy requirement.

As Figure 7 shows, based on the Office's monitoring documentation, MTC met the group therapy compliance standard 70 percent of the time in fiscal year 2022, a significant decrease from fiscal years 2020 and 2021. During the same time period, MTC's fulfillment of the individual treatment compliance standard increased from fiscal years 2020 and 2021.

Figure 7

Compliance and Assessed Sanctions for Treatment-related Requirements [a]



[a] Not all totals are equally dividable by the penalty amount due to insignificant differences in the sanction calculations.

Sources: The Office's monitoring documentation and the contract between the Office and MTC.

The Office should track the vendor's compliance rates.

The Office's monitoring processes did not include determining MTC's compliance rates. Auditors used the Office's monitoring documentation to determine MTC's compliance rates with the treatment-related compliance standards discussed above. The *State of Texas Procurement and Contract Management Guide* states that agencies should compare actual performance in the current period to prior periods in reporting performance. Tracking compliance could help the Office evaluate and report overall vendor performance, as well as help it determine whether additional monitoring is warranted.

Recommendations

The Office should:

- Report vendor performance yearly, as required.
- Consider tracking vendor compliance rates in determining vendor performance.

Management's Response

1. The Texas Civil Commitment Office tracks vendor compliance with required treatment services by total sanctions as well as broken out by activity and therapist.
2. The Texas Civil Commitment Office will implement a policy to include a suspense system for vendor performance report due dates.

TCCO agrees with the first recommendation of Chapter 2B regarding vendor performance reporting. TCCO does not agree with the recommendation regarding tracking vendor compliance rates in the manner set forth in the report as such compliance is already tracked. A detailed explanation of the tracking of vendor compliance and the implementation of the recommendation regarding vendor performance reporting are set forth below.

TCCO agrees the FY 2022 vendor performance report was not submitted timely. Historically, TCCO has relied upon a listing of upcoming report due dates received from HHSC as TCCO submits the reports to HHSC for upload into the state system and such a listing was not received for FY 2022 year-end. The submission of vendor performance reports will be included in the policy referenced above to be developed by September 1, 2023 and will no longer rely upon external prompting; rather, such dates will be calendared to ensure timely completion in the future.

With regard to tracking compliance rates, auditors have recommended that TCCO consider tracking compliance percentages. TCCO does not agree with this recommendation and does not feel that tracking by percentage is necessary. TCCO already tracks compliance as part of the 100% compliance review of treatment activities each month by noting

> the number of items that are subject to a sanction as well as tracking separately the number of items that were not completed or that were completed late. TCCO completes a 100% review of all treatment activities monthly and a sanction is applied to every instance of noncompliance. TCCO documents the number of items to which a sanction was applied in the report provided to the contractor and also maintains a breakdown of such items by therapist and activity. To add the step of calculating a percentage is a distinction without a difference that would not impact the already 100% review that TCCO completes every month. Additionally, assigning a percentage may actually disincentivize a vendor to perform well in items that have a high quantity of deliverables – it is much less impactful to say that “98% of activities were completed in accordance with requirements" than to say "15 activities were late and resulted in a penalty of $15,000.”

LOW

Chapter 3
Information Technology

The case management system had adequate access and application controls.

The third-party case management system, Corrections Software Solutions (CSS), which the Office relied on for monitoring treatment services that MTC provided to clients at the Center, including the determination of sanctions, had adequate controls to ensure the reliability of those treatment service records. Additionally, users' access was appropriate and restricted to each user's business needs.

The Office appropriately restricted user access to its shared drive with contract monitoring documentation.

The Office had processes and controls to ensure that user access to the shared network drive—which contained data on MTC treatment services, billing adjustments, and supporting documentation—was appropriate. Specifically, users were current employees and contractors with a business need to access the shared drive.

Appendix 1

Objective, Scope, and Methodology

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

- Jerod Heine, MBA, CISA (Project Manager)
- Daniel Aung Thu (Assistant Project Manager)
- Erica Chapa, CPA, CFE
- Nick Dufour
- Alex Franklin, MPP
- Jennifer Grant, CFE
- Lauren Ramsey
- Henry Vander Vennet
- Robert G. Kiker, CFE, CGAP (Quality Control Reviewer)
- Willie Hicks, CIA, MBA, CGAP (Audit Manager)

Objective

The objective of this audit was to determine whether the Texas Civil Commitment Office (Office) has processes and related controls to help ensure that the Texas Civil Commitment Center (Center) is operated and managed in accordance with contract terms and other applicable requirements.

Scope

The scope of this audit included the Office's contract management processes for monitoring and amending its contract with Management & Training Corporation (MTC) for the provided services related to the Center from September 1, 2019, through December 31, 2022.

The scope also included a review of significant internal control components related to the Office's contract monitoring processes.

Methodology

We conducted this performance audit from January 2023 through May 2023 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. In addition, during the audit, matters not required to be reported in accordance with *Government Auditing Standards* were communicated to Office management for consideration.

Addressing the Audit Objective

During the audit, we performed the following:

- Interviewed the Office's management and staff to gain an understanding of the activities related to monitoring, sanctioning, and amending its contract with MTC.
- Identified the relevant criteria:
  - Texas Government Code, Chapters 656, 2155, 2251, and 2261.
  - Texas Administrative Code, Title 1, Part 10, Chapter 202; and Title 34, Part I, Chapter 20.
  - The General Appropriations Acts (86th and 87th Legislatures).
  - The contract, including amendments, between the Office and MTC.
  - *State of Texas Procurement and Contract Management Guide*, Versions 1.3 and 2.1.
  - *Health and Human Services System Procurement and Contract Management Handbook*, Version 1.1
- Tested the design of the Office's contract monitoring processes to determine whether they were sufficient to identify whether MTC is performing according to terms of the contract.

- Tested user access to and verified application controls over (1) the case management data in the Corrections Software Solutions (CSS) system and (2) the Office's shared network drive used to store case management documentation.
- Verified whether the CSS system was hosted in a secure environment and controls were suitably designed and operating effectively.
- Reviewed and analyzed Office vendor payment data to determine its reliability for population identification and sample selection.
- Verified whether the Office's contract management handbook was consistent with the *State of Texas Procurement and Contract Management Guide* and verified the contract manager licenses.
- Tested compliance reviews, including any corrective action taken, to determine whether the Office ensured that MTC provided treatment services in accordance with contract requirements.
- Tested monthly vendor payments to determine accuracy and timeliness.
- Tested billing adjustments related to sanctions, grievances, and staff vacancies and overtime to determine whether the amounts were supported, accurate, and complied with contract requirements.
- Verified whether reimbursements for off-site medical expenses incurred by clients and paid by MTC were supported, accurate, and complied with contract requirements.
- Verified whether MTC employees located at the Center were qualified and held applicable certifications and licenses.

Sampling. Auditors selected the nonstatistical samples described in Figure 8 on the next page for tests of compliance and controls. The samples were not representative of their populations; therefore, it would not be appropriate to project those test results to the population. Figure 8 shows the population, the sample size, and the sampling methodology used for testing.

Figure 8

Total Populations and Samples Selected for Testing

Description	Population	Sample Size	Sampling Methodology [a]	Representative Determination
Periodic Compliance Reviews	29	6	Risk-based Sample	Not Representative
MTC Vendor Payments	40 monthly invoices totaling $48,936,239	8 [b]	Risk-based Sample	Not Representative
Off-site Medical Expense Reimbursements	14 reimbursements totaling $5,248,903	3 [c]	Random Sample	Not Representative
MTC Employees Requiring TCCO Approval [d]	14	5	Risk-based Sample	Not Representative

[a] The risk-based samples were chosen to address specific risk factors identified in the population; the selected items had a high potential for error.

[b] The sample included monthly vendor payments with billing adjustments related to sanctions, grievances, and staff vacancies and overtime.

[c] The random sample selection was designed to ensure that the sample could be evaluated in the context of the population.

[d] The contract requires the Office to approve certain management positions and sex offender treatment providers prior to hire.

Data Reliability and Completeness

Auditors (1) observed the Office's extraction of requested data populations, (2) reviewed data queries and report parameters, (3) analyzed the populations for reasonableness and completeness, and (4) reviewed the results of an independent examination that assessed the information technology controls over the CSS system. Auditors determined that the following data sets were sufficiently reliable for the purposes of this audit:

- Population of vendor payments between September 1, 2019, and December 31, 2022.
- Data from the CSS system that the Office used to monitor the treatment services provided by MTC between September 1, 2019, and December 31, 2022.

Additionally, auditors verified that (1) access was appropriately restricted and (2) applicable amounts were accurately calculated for the spreadsheets that the Office used to determine sanctions and grievance deductions. Auditors determined that those spreadsheets were complete, valid, and sufficiently reliable for the purposes of this audit.

Report Ratings

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.

Appendix 2

Texas Civil Commitment Office's Response Letter

TEXAS CIVIL COMMITMENT OFFICE

MARSHA MCLANE
EXECUTIVE DIRECTOR

June 16, 2023

Ms. Lisa Collier
State Auditor
1501 N. Congress Avenue
Austin, Texas 78701

Re: Texas Civil Commitment Office Management Responses

Dear Ms. Collier,

As requested, attached please find the Texas Civil Commitment Office's management responses to the State Auditor's Office report on Contract Management at the Texas Civil Commitment Office. The management responses consist of an executive summary and more detailed response specific to each of the findings listed within the report. If you have any questions, please do not hesitate to reach out via phone or email.

Sincerely,

Marsha McLane

Marsha McLane
Executive Director

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Texas Civil Commitment Office Management Response to State Auditor's Office Report on Contract Management at the Texas Civil Commitment Office

1. The Texas Civil Commitment Office can terminate the contract with MTC at any time if such termination is in the best interest of the state.
2. Auditors have cited no statutory provision that limits the length of a contract extension.
3. The contract extension saved the state approximately $23 million in construction costs in a time period in which state agencies underwent a 5% budget reduction. The extension also ensured that civilly committed sexually violent predators remained housed in a confined treatment facility.
4. The contract amendment does not guarantee services at the current location and does not prohibit the relocation of services to a different location.
5. The current location was the only location willing to accept the sexually violent predators supervised by the Texas Civil Commitment Office.
6. The Texas Civil Commitment Office utilizes a robust contract monitoring continuum to monitor the contractor's compliance but recognizes there is opportunity to strengthen processes.

Executive Summary

The Texas Civil Commitment Office (TCCO) contracts with the Management & Training Corporation (MTC) for the operation of the Texas Civil Commitment Center (TCCC). The TCCC is a confined treatment facility that provides security and treatment to civilly committed sexually violent predators and is the only location in the state that was willing to accept TCCO's clients. The priority finding in the report concerns an amendment to TCCO's contract with MTC which extended the length of the contract by eleven years. TCCO does not agree the extension was improper. Prior to entering into the extension, TCCO sought advice from state procurement and contracting experts and determined that the length of the contract was supported by TCCO's compelling business needs. Auditors have also cited no statutory provision limiting the length of a contract extension. The extension of the contract with MTC saved the state approximately $23 million in construction costs for additional housing buildings at the Center at a time when state agencies were being asked to reduce budgets by 5% and prevented the risk of not having a place to house civilly committed sexually violent predators. TCCO agrees the amendment was not formally reported in a timely fashion and will ensure any future amendments are formally reported as required. However, TCCO complied with the spirit of transparency by reporting the extension to state senate offices, testifying regarding the expansion before the legislature, and discussing the expansion in routine status reports. Finally, in monitoring the contract with MTC, TCCO utilizes a robust continuum of compliance review activities and performs a 100% monthly review of required treatment activities for all clients which is the most crucial aspect of the contract.

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Chapter 1: Contract Amendment Process

Recommendations:

- The Office should ensure that its contract amendment process consistently complies with state procurement requirements, including having all required terms, complying with competitive bidding requirements, and reporting to state oversight entities.
- The Office should report all contract amendments, including the amount of and reasons for a cost increase of 10% or more, to the Legislative Budget Board and other state oversight entities as required by the General Appropriations Act.
- The Office should ensure that members of the Board receive the required contract management training provided by the Comptroller's Office.

Management Response:

1. The Texas Civil Commitment Office can terminate the contract with MTC at any time if such termination is in the best interest of the state.

2. Auditors have cited no statutory provision that limits the length of a contract extension.

3. The contract extension saved the state approximately $23 million in construction costs in a time period in which state agencies underwent a 5% budget reduction. The extension also ensured that civilly committed sexually violent predators remained housed in a confined treatment facility.

4. The contract amendment does not guarantee services at the current location and does not prohibit the relocation of services to a different location.

5. The current location was the only location willing to accept the sexually violent predators supervised by the Texas Civil Commitment Office.

While TCCO agrees with the recommendations in Chapter 1, TCCO does not agree that the Center contract was improperly extended and does not agree that the amendment lacked required terms. A detailed explanation and information regarding implementation of the recommendations are set forth below.

The audit report states that a total cost is a required essential term that protects the interests of the state. A different sentence in the report states that the amendment did not comply with state requirements in part because it removed the price terms. TCCO strongly disagrees with these statements. The State of Texas Procurement and Contract Management Guide does list specific terms that are required, essential clauses to be included in state contracts. However, total cost of the contract is not included in the listing of required clauses appearing as Appendix 24 to the guide. Additionally, the body of the guide on page 85 discussing essential provisions states "financial provisions (e.g. price and payment terms)" are to be included. It does not state a total cost is required. This statement also links to page 56 of the guide where price and payment terms are further discussed. This section also does not require a total cost. Price and payment provisions are included in the contract; accordingly, this requirement is met.

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The audit report also cites a provision in the amendment which states TCCO agrees not to relocate the Center during the term of the contract and that if the contract is terminated and TCCO issues a solicitation, the Center will be listed as a preferred site for services. This provision is essentially meaningless. The Center is a specific brick and mortar location in Littlefield, Texas. This reading of the language is further confirmed in the fact that the Center itself and the services are discussed as separate ideas further in the same section. The state does not own the land or the several buildings on the property. TCCO could not and would not relocate a brick-and-mortar multi-building Center. This provision also is not a prohibition against terminating the contract. TCCO retains the ability to terminate the contract with no notice as per the terms and conditions of the contract if such a termination is in the state's best interest. The provision further does not prohibit the state from relocating the services or obtaining additional services elsewhere if such services were available.

Further, the agreement to list the Center as a preferred site for services also has no practical impact on the state. The provision requires two conditions precedent to listing the Center as a preferred site for services: 1) TCCO's contract with MTC is terminated and 2) TCCO issues a solicitation. As a practical matter, both conditions would not be met to invoke the clause requiring the Center to be listed as a preferred site. Due to the length of time the state procurement process takes and TCCO's need to have continual services for the clients, TCCO could never terminate the contract with MTC prior to having already issued a request for proposals (RFP) and obtaining services elsewhere (if assuming another provider started offering such services). This is further evidenced by the order of the events in 2019 when MTC was awarded the contract – the existing contract with the first vendor remained in place until after an RFP had been issued, responses received, and a contract awarded to a new vendor. Only after the award was made from the RFP was the existing contract terminated. There is also no prohibition against seeking additional services elsewhere or relocating services to a different location without terminating the MTC contract, which has no guarantee of volume or number of clients housed at the Center. Finally, even assuming TCCO were to list the Center as a preferred site for services, it does not guarantee that location would be chosen as the future location for services; however, retaining the state employee case management staff that oversee this population would further the state's best interest by providing continuity of care to a dangerous client population.

The report states that the Office improperly extended the length of the contract. TCCO disagrees with the finding that the contract extension was improper. While the extension is outside standard recommended contract terms, TCCO's business needs necessitated a longer contract and the extension is in the best interest of the state as described in further detail below. The state Procurement and Contract Management Guide, on page 58, states that while as a general policy it is recommended that the maximum duration for a contract be four to five years, "individual business needs may dictate a different period." Page 85 further states that the "Guide must recognize the unique contracting needs of the individual agencies and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of the State."

TCCO is required by statute to provide appropriate and necessary housing and supervision to civilly committed sexually violent predators. Each individual in TCCO's program has been convicted of at least two sexually violent offenses and has been determined to have a behavioral abnormality which makes the individual likely to engage in a repeated predatory act of sexual violence. Accordingly, TCCO is required to provide intensive supervision and treatment to the individual until such time as he has been released from commitment by the committing court. TCCO is an extremely small state agency allotted only 37 FTEs to accomplish the monumental task of working to keep the public safe from these sexually violent predator clients while at the same time providing appropriate treatment and supervision. As a 37 FTE agency that does not have a state-owned facility, TCCO cannot directly

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provide the necessary housing, supervision, and treatment services to clients without the use of contracted services.

Prior to locating the Texas Civil Commitment Center in Littlefield, Texas, TCCO visited more than 130 locations in an attempt to find suitable housing and treatment for sexually violent predator clients. No suitable location that was willing to accept sexually violent predator clients was located. Additionally, TCCO had previously issued an unsuccessful RFP in 2014 to locate services. In 2015, TCCO issued a subsequent RFP and received one responsive proposal which was to provide housing, including 24/7 security and an onsite medical clinic, and sex offender treatment at the Texas Civil Commitment Center. The proposal met TCCO's needs and TCCO contracted with that entity in 2015. In 2018 after experiencing issues with the first vendor, TCCO issued an RFP seeking an additional or different vendor. In response to that RFP, TCCO received two proposals. However, only one proposal was responsive. As a result, in 2019 TCCO contracted with MTC to provide security and sex offender treatment at the Texas Civil Commitment Center. At that time, the Texas Civil Commitment Center was owned by the City of Littlefield and leased to MTC.

The original capacity of the Center in 2015 was 346 sexually violent predator clients. In 2020, the capacity had been expanded through internal reconfigurations to 372 with an additional 26-bed expansion pending. However, it was clear that at least one additional building was necessary to expand the capacity to allow for the average intake of 35 clients per year. On May 27, 2020 MTC submitted a request to TCCO to extend the contract to August 31, 2039 which would allow MTC the opportunity to plan for the expansion of the Center to include multiple construction projects at no cost to the state to result in a final capacity of 750 clients. At the same time, on May 20, 2020 TCCO had been notified via a letter from Governor Abbott to submit plans for a 5% reduction in budgets for fiscal years 2020 and 2021.

In considering the request and with knowledge of the difficulty in locating services for this population, TCCO sought guidance from experts. Specifically, TCCO spoke with an HHSC Associate Commissioner over procurement as well as a Deputy Chief Counsel over Statewide Contracts at the Comptroller's Office to determine whether an 11-year extension for a total term of 20 years was permitted by state law. TCCO spoke with the HHSC Associate Commissioner because HHSC procurement and contracting services issues TCCO's procurements as part of the administrative attachment. TCCO was further referred to the Comptroller's Office Deputy Chief Counsel by the HHSC Associate Commissioner. In discussion with both experts, it was stated that the Procurement and Contract Management Guide generally recommends a four-year or five-year contract term as a maximum term, there may be cases in which an agency's individual business need dictates a longer term and there is not a maximum limit set forth in state law. The HHSC Associate Commissioner also cited TCCO to a provision in the General Appropriations Act regarding the extension of contracts that had already been in effect for multiple years as of August 31, 2019. This provision was not applicable to the MTC contract as it had an effective date of September 1, 2019. Neither expert cited to other provisions of the General Appropriations Act. Additionally, TCCO discussed the potential risks of an extension with the Comptroller's Office Deputy Chief Counsel at length. One of the risks to an extension that was discussed was the risk for a protest or challenge by another potential vendor arguing that the extension violated competitive procurement requirements and that the potential vendor would have bid were they aware of the possibility of a term longer than the 9-year term in the original contract. If successful, such a challenge could have significant consequences. TCCO believed such a challenge to be a remote possibility as only one responsive bid was received to the 2018 RFP. In this case, the services to be performed, requirements, clients, and location all remained the same and the original solicitation and resulting contract explicitly allowed for amendments.

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In reviewing the business need for a longer contract term, the provision of housing and treatment services in a confined treatment facility for sexually violent predators is a unique need. The Center is the only facility of its kind in the state and the Texas program is one of only 21 in the country. The marketplace of vendors who provide both security and treatment services to sexually violent predators is only two vendors in the United States – the vendor TCCO contracted with in 2015 and MTC. The number of locations in the state willing to accept sexually violent predator clients in their community is even less – after visiting more than 130 locations, only one location (Littlefield, Texas) was willing to allow these clients in their community that also had a facility that was appropriately conducive to a treatment environment. Additionally, TCCO has multiple mechanisms to verify that the marketplace of vendors has not changed throughout the term of the contract. Prior to extending the contract, TCCO was aware of the marketplace of vendors and no alternative suitable vendors existed outside a vendor TCCO had already utilized and terminated the contract. First, TCCO can issue periodic requests for information to seek information from the marketplace regarding any new vendors that may be providing security and treatment services for civilly committed sexually violent predators. Second, there are only 21 civil commitment programs for sexually violent predators in the United States. TCCO staff is very involved in the Sex Offender Civil Commitment Programs Network which is a trade organization of sorts for similar programs in other states. TCCO has staff members who sit on the board of the organization, is actively involved in discussion of issues with other states and attends conferences to obtain relevant updates. Through this participation, TCCO is aware the only two vendors providing both confined security and treatment services for civilly committed sexually violent predators are TCCO's former vendor and TCCO's current vendor. Another vendor provides treatment services but does so inside a state-owned and operated facility. TCCO has no such facility. TCCO reviewed the guidance from HHSC and the Comptroller's Office and presented the risks and benefits to the TCCO Board in an open meeting. After a lengthy discussion of the risks and benefits of the extension, to include the risk of not having a place to house civilly committed sexually violent predators and the benefit of cost savings to the state, the Board voted to approve the contract extension on June 18, 2020.

Auditors have cited no statutory provision that limits the length of a contract extension. Additionally, there was no harm to the state in issuing the extension. In fact, the extension saves the state money and means that services are provided, at rates agreed upon in the very different economic climate in 2019, and the state does not have to pay the approximately $23 million in construction costs to build the expansion buildings. The state is receiving the benefit of the expansion without cost.

While TCCO disagrees with the findings discussed above, TCCO agrees with the recommendation regarding the contract amendment process and will continue strive to do so. The agency's Staff Attorney and Special Projects Coordinator will remain responsible for these tasks.

With regard to amendment reporting, TCCO agrees the amendment was not formally reported to the LBB in a timely fashion. However, TCCO has since rectified this oversight by reporting the contract amendment in the two HHSC systems (SCOR and CAPPS Financial) that flow into the LBB contract reporting and will do so upon execution for future amendments as well. The agency's Staff Attorney and Special Projects Coordinator hold responsibility for ongoing implementation. Additionally, TCCO has spoken with LBB contract oversight leadership regarding available training and will schedule additional training for TCCO staff responsible for contract oversight. It is, however, important to note that the reporting completion is not related to attempting to evade transparency or oversight. Rather, while TCCO may not have complied with the letter of the requirement, the spirit of the requirement in informing stakeholders was met by TCCO discussing this expansion publicly and in several different forums. A State Representative and Chair of a committee with oversight over TCCO was present at the meeting when the extension was approved. TCCO verbally informed the

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offices of two State Senators who have interest in the program and provided presentations to legislative committees that expansion at no cost was secured. TCCO also referenced that expansion at no cost to the state was proposed and approved by TCCO's board in routine quarterly status reports sent to LBB staff.

TCCO was not aware of the existence of the Comptroller's Governing Bodies webinar training; TCCO agrees this training was not completed prior to the start of the audit. Upon becoming aware of the training, TCCO reached out to the Comptroller's Office training division and the staff there initially was also not aware of the training's existence or how to access the training. TCCO also spoke with staff at the Governor's Appointments Office who was also not aware of the training. After working with a different staff member in the training division, the webinar was located and instructions provided for registration. TCCO is committed to training and continuing education; as of May 23, 2023, all TCCO Board members as well as TCCO's Executive Director and Staff Attorney have completed the training.

Chapter 2A: Contract Monitoring

Recommendations:

- The Office should develop, document and implement a periodic risk assessment and contract monitoring plan as required.
- The Office should strengthen its processes to ensure that it consistently follows up on identified noncompliance from compliance reviews, including receiving and responding to corrective action plans.
- The Office should identify and verify compliance with staffing level requirements.
- The Office should strengthen its processes for verifying that sanctions are accurately calculated.

Management Response:

1. The Texas Civil Commitment Office utilizes a robust contract monitoring continuum to monitor the contractor's compliance but recognizes there is opportunity to strengthen processes.
2. As part of the contract monitoring continuum, the Texas Civil Commitment Office completes a 100% compliance review of treatment activities each month for all clients at the Texas Civil Commitment Center (currently 446 clients), which is the most crucial aspect of the services provided.

TCCO agrees with the recommendations of Chapter 2A; however, TCCO feels important context regarding compliance review activities is lacking from the report. A detailed explanation of those activities and information regarding implementation of the recommendations are set forth below.

Compliance review activities conducted by TCCO can be best classified as being on a continuum with the least formal activity being a staff member addressing an issue in the moment with immediate correction, such as an employee not securing a door, to the most formal being the reports titled "Compliance Review" which consist of formal entrance and exit conferences, generally with advance notice, and a formal report following the exit conference. The next level on the compliance review continuum would be instances in which TCCO receives a phone call or text message from a staff member or even a client at the Center who is authorized to have a cell phone reporting an issue. Such issues are then reviewed and addressed with the contractor to correct or rectify the issue. The vast majority, and most valuable of TCCO's compliance review activities, exist in the middle of the continuum and are unannounced, informal reviews in which a contractor is not aware that a compliance review is happening or not aware that staff will be arriving on site to conduct the review. The informal, unannounced reviews allow staff to observe actual operations in real time.

Auditors stated that no compliance reviews were conducted during an eight-month period from late 2021 to early 2022. However, during the time period referenced by auditors, TCCO staff visited the Texas Civil Commitment Center on 26 occasions for a combined 84 days. During each visit, staff observe and monitor the operations of the Center and address any issues that have arisen. Additionally, even if staff is not personally on-site at the Center such as when the facility was subject to COVID-related quarantine for a four-month period in late 2020 and early 2021 or in between the 26 compliance review visits in the referenced eight-month time period, TCCO continued the work of addressing issues as they arose and working with Center staff and administration to improve operations. TCCO has also recently assigned a contract monitor to be present on-site at the Center full-time to provide even more rapid response to issues and even more visibility into Center operations.

TCCO consistently performs a compliance review of 100% of treatment activities on a monthly basis for all clients at the Center (446 as of June 15, 2023). These compliance reviews are the most crucial reviews that TCCO performs as the provision of treatment to clients is necessary for the continued success of the program and to maintain constitutional standards. The monthly treatment compliance review involves the review of documentation of services provided to every client at the Texas Civil Commitment Center, a review of every activity that was due for that client in the month and then also a quality assurance review to determine whether the work performed meets acceptable standards. This information is then compiled into a monthly penalty report and all instances of noncompliance are reported to the contractor and an appropriate financial sanction is applied. As a result of these intensive monthly compliance reviews and associated financial sanctions, TCCO applied penalties of $1,001,454 in FY 2021 and $1,612,092 in FY 2022. TCCO's ongoing monitoring and management of this most crucial aspect of the contract has resulted in improved performance to the extent that FY 2023 penalties have been substantially reduced with a total of $205,370.00 for the first seven months of the fiscal year.

TCCO agrees that processes can be strengthened for documenting onsite compliance visits and following up on corrective action plans. TCCO will draft and implement a policy regarding contract monitoring activities to include a risk assessment, contract monitoring plan, ensuring written documentation is maintained of each onsite compliance visit by TCCO staff and to formalize the process for submitting site visit and compliance review reports to the contractor and following up on corrective action plans. This project will be overseen by the TCCO Deputy Director and will be completed by September 1, 2023.

TCCO agrees that the process for verifying MTC staffing levels as part of the invoice review can be strengthened. Historically, this process has been a painstaking, manual review process which leaves room for computation and other errors. TCCO's Chief Financial Officer has already begun the process of strengthening this verification procedure. The Chief Financial Officer, with assistance from TCCO's Data Analyst, has designed an automated review tool that will complete a final review of each MTC monthly invoice. This tool is currently being utilized alongside manual review to allow for testing, review, and adjustment of the tool to ensure it meets TCCO's needs. The tool will compare all fees and credits that have been tabulated by MTC and then recalculate the same data so that TCCO

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can compare and modify any deviations. By implementing this new automated process all payments will be processed more accurately and in a more expeditious time frame. Our goal is to have a fully operational tool by September 1, 2023.

Chapter 2B: Vendor Performance

Recommendations:

- The Office should report vendor performance yearly, as required.
- The Office should consider tracking vendor compliance rates in determining vendor performance.

Management Response:

1. The Texas Civil Commitment Office tracks vendor compliance with required treatment services by total sanctions as well as broken out by activity and therapist.
2. The Texas Civil Commitment Office will implement a policy to include a suspense system for vendor performance report due dates.

TCCO agrees with the first recommendation of Chapter 2B regarding vendor performance reporting. TCCO does not agree with the recommendation regarding tracking vendor compliance rates in the manner set forth in the report as such compliance is already tracked. A detailed explanation of the tracking of vendor compliance and the implementation of the recommendation regarding vendor performance reporting are set forth below.

TCCO agrees the FY 2022 vendor performance report was not submitted timely. Historically, TCCO has relied upon a listing of upcoming report due dates received from HHSC as TCCO submits the reports to HHSC for upload into the state system and such a listing was not received for FY 2022 year-end. The submission of vendor performance reports will be included in the policy referenced above to be developed by September 1, 2023 and will no longer rely upon external prompting; rather, such dates will be calendared to ensure timely completion in the future.

With regard to tracking compliance rates, auditors have recommended that TCCO consider tracking compliance percentages. TCCO does not agree with this recommendation and does not feel that tracking by percentage is necessary. TCCO already tracks compliance as part of the 100% compliance review of treatment activities each month by noting the number of items that are subject to a sanction as well as tracking separately the number of items that were not completed or that were completed late. TCCO completes a 100% review of all treatment activities monthly and a sanction is applied to every instance of noncompliance. TCCO documents the number of items to which a sanction was applied in the report provided to the contractor and also maintains a breakdown of such items by therapist and activity. To add the step of calculating a percentage is a distinction without a difference that would not impact the already 100% review that TCCO completes every month. Additionally, assigning a percentage may actually disincentivize a vendor to perform well in items that have a high quantity of deliverables – it is much less impactful to say that "98% of activities were completed in accordance with requirements" than to say "15 activities were late and resulted in a penalty of $15,000."

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Copies of this report have been distributed to the following:

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The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Joan Huffman, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas Civil Commitment Office

Texas Civil Commitment Office Board

Ms. Marsha McLane, Executive Director