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An Audit Report on

**Selected State Entities'
Compliance with Requirements
Related to the Historically
Underutilized Business Program
and the State Use Program**

March 2011

Report No. 11-027



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Overall Conclusion

Six of the eight state entities audited fully or substantially complied, overall, with the Historically Underutilized Business (HUB) program requirements tested. Specifically:

- The University of Texas Health Science Center at Houston fully complied, overall, with HUB program requirements.
- The following five state entities substantially complied, overall, with HUB program requirements:
 - Office of the Attorney General.
 - Department of Assistive and Rehabilitative Services.
 - Texas Lottery Commission.
 - Stephen F. Austin State University.
 - University of North Texas.
- The Texas Youth Commission and the Parks and Wildlife Department minimally complied, overall, with HUB program requirements.

The Historically Underutilized Business (HUB) Program

The HUB program encourages state entities to make state contracting opportunities available to businesses owned by women and minorities. The program was created by Texas Government Code, Chapter 2161, and its rules are defined in Title 34, Texas Administrative Code, Chapter 20.

For fiscal year 2009, the Office of the Comptroller of Public Accounts (Comptroller) reported that the State paid approximately \$1.9 billion to HUBs out of \$13.6 billion spent in procurement categories that are eligible for HUB participation.

The State Use Program

The State Use Program is governed by the Texas Council on Purchasing from People with Disabilities (Council), which receives administrative assistance from the Comptroller. The Council encourages employment opportunities for Texans with disabilities through the State Use Program. Under this program, state agencies and other political subdivisions give purchasing preference to goods and services offered by businesses that employ persons with disabilities. The program was created by Texas Human Resources Code, Chapter 122, and its rules are defined in Title 40, Texas Administrative Code, Chapter 189.

Each of the eight state entities audited purchased goods and services from HUBs during fiscal year 2009. The eight state entities spent a combined total of approximately \$130.6 million on goods and services provided by HUBs.

In addition to determining overall compliance with all requirements tested, auditors determined the state entities' compliance with HUB program requirements in five areas: planning, outreach, subcontracting, reporting, and goal attainment.

State Use Program

Seven of the eight state entities audited were non-compliant, overall, with the Purchasing from People with Disabilities Program (State Use Program) requirements tested. The Office of the Attorney General was minimally compliant, overall, with State Use Program requirements tested. Seven of the eight state entities spent a combined total of approximately \$6.5 million on goods and services purchased through the State Use Program for fiscal year 2009. Of the eight state entities audited, only the University of Texas Health Science Center at Houston did not make purchases through the State Use Program during fiscal year 2009.

Key Points

Six (75 percent) of the 8 state entities audited minimally complied, overall, with the 5 HUB program planning requirements tested.

HUB program planning requirements are related to how a state entity plans to ensure that HUBs are provided reasonable contracting opportunities. Of the eight state entities audited, the Department of Assistive and Rehabilitative Services and the University of Texas Health Science Center at Houston fully complied with all five HUB program planning requirements tested. The other six state entities did not comply with two of the planning requirements tested: (1) establish state entity-specific HUB utilization goals based on a methodology established in statute and (2) estimate expected contract awards each fiscal year. Complying with these two requirements helps a state entity set HUB utilization goals that reasonably align with its operations and are attainable.

Six (75 percent) of the 8 state entities audited fully or substantially complied, overall, with the 7 HUB program outreach requirements tested.

HUB program outreach requirements are related to how a state entity ensures that (1) its management and staff are aware of products and services offered by HUBs and (2) HUBs are aware of available contracting opportunities. Four state entities did not ensure that the HUB coordinator reported HUB program matters to the entity's executive director. Three state entities did not ensure that the level of the HUB coordinator position was equal to the level of the procurement director position. An independent HUB coordinator can significantly assist a state entity in providing HUBs with reasonable contracting opportunities.

All eight state entities audited fully or substantially complied, overall, with the HUB program subcontracting requirements tested.

HUB program subcontracting requirements are related to how a state entity provides HUBs with reasonable subcontracting opportunities.

Six (75 percent) of the 8 state entities audited fully or substantially complied, overall, with the applicable HUB program reporting requirements tested.

HUB program reporting requirements are related to how a state entity monitors and reports its utilization of HUBs. Of the eight state entities audited, the Texas Youth Commission and the Parks and Wildlife Department did not comply with the applicable reporting requirements tested because they (1) did not maintain progress assessment reports on their HUB subcontractors and (2) did not prepare monthly HUB utilization reports.

Four (50 percent) of the 8 state entities audited substantially attained their HUB utilization goals, overall, during fiscal year 2009.

A state entity's "goal attainment" reflects its reported utilization of HUBs compared to its HUB utilization goals. Auditors reviewed the state entities' attainment of HUB utilization goals related to heavy construction contracts, building construction contracts, special trade construction contracts, professional services contracts, commodities contracts, and other services contracts. Four state entities audited minimally attained or did not attain their HUB utilization goals, overall, during fiscal year 2009.

Seven (88 percent) of the 8 state entities audited were non-compliant, overall, with the State Use Program requirements tested.

The state entities lacked processes and supporting documentation to show that (1) staff checked the availability of goods and services from TIBH Industries¹ vendors prior to making procurement decisions, (2) staff identified and reported all exceptions, and (3) staff classified reported exceptions in accordance with State Use Program requirements.

Opportunities exist for the Office of the Comptroller of Public Accounts (Comptroller) to strengthen certain areas of the HUB program and State Use Program.

HUB program rules concerning the development of HUB utilization goals by state entities need to be clarified. Texas Government Code, Section 2161.123, requires the State Auditor's Office to determine whether state entities developed a methodology for establishing state entity-specific HUB utilization goals. While Title 34, Texas Administrative Code, Section 20.15, directs state entities to Texas Government Code, Section 2161.123, with regard to preparing a written plan for utilizing HUBs, the Texas Administrative Code does not specify that state entities must develop a process for creating their own HUB goals. This lack of clarity in

¹ TIBH Industries was formerly known as Texas Industries for the Blind and Handicapped.

the rules was a contributing factor for those state entities that did not develop a methodology for establishing HUB utilization goals.

In addition, while no errors were identified in State Treasury amounts reported in the semi-annual and annual fiscal year 2009 HUB reports, the Comptroller's current State Treasury data compilation process does not include second level reviews to ensure that State Treasury data reported is properly compiled.

Tables 1 and 2 summarize the eight audited state entities' compliance with the HUB program requirements tested.

Table 1

State Entities' Overall Compliance with HUB Program Requirements			
Level of Compliance		Percentage of Requirements with which the State Entities Complied	State Entities
Level of Good-faith Effort	Fully Compliant	91 to 100 percent	<ul style="list-style-type: none"> ▪ The University of Texas Health Science Center at Houston
	Substantially Compliant	61 to 90 percent	<ul style="list-style-type: none"> ▪ Office of the Attorney General ▪ Department of Assistive and Rehabilitative Services ▪ Texas Lottery Commission ▪ Stephen F. Austin State University ▪ University of North Texas
	Minimally Compliant	31 to 60 percent	<ul style="list-style-type: none"> ▪ Parks and Wildlife Department ▪ Texas Youth Commission
	Non-compliant	0 to 30 percent	None

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Table 2

State Entities' Compliance with HUB Requirements Tested								
State HUB Program Requirement	Texas Youth Commission	Parks and Wildlife Department	University of North Texas	Office of the Attorney General	Stephen F. Austin State University	Texas Lottery Commission	Department of Assistive and Rehabilitative Services	The University of Texas Health Science Center at Houston
Planning								
Establish annual procurement utilization goals.	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant
Estimate expected contract awards.	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant
Comply with legislative appropriations request requirements.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Adopt HUB rules.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Comply with strategic plan requirements.	Non-compliant	Fully Compliant	Non-compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Outreach								
Comply with mentor-protégé program requirements.	Fully Compliant	Substantially Compliant	Non-compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Ensure that the HUB coordinator position is equal to the procurement director position.	Fully Compliant	Non-compliant	Fully Compliant	Non-compliant	Fully Compliant	Non-compliant	Fully Compliant	Fully Compliant
Ensure that the HUB coordinator communicates HUB program matters directly to the executive director.	Fully Compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant
Ensure that the HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach.	Non-compliant	Substantially Compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.	Non-compliant	Substantially Compliant	Non-Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant

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State Entities' Compliance with HUB Requirements Tested								
State HUB Program Requirement	Texas Youth Commission	Parks and Wildlife Department	University of North Texas	Office of the Attorney General	Stephen F. Austin State University	Texas Lottery Commission	Department of Assistive and Rehabilitative Services	The University of Texas Health Science Center at Houston
Participate in a HUB forum.	Minimally Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Substantially Compliant
Hold in-house marketing presentations sponsored by HUB vendors.	Non-compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Subcontracting								
Ensure that solicitation documents include a statement of subcontracting opportunities.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Ensure that potential contractors or subcontractors are certified HUB vendors.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.	Fully Compliant	Substantially Compliant	Fully Compliant	Substantially Compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Reporting								
Report accurate HUB expenditure and other supplemental information.	Minimally Compliant	Non-compliant	Minimally Compliant	Minimally Compliant	Substantially Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Comply with monthly internal HUB usage reports requirements.	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant	Non-compliant	Fully Compliant	Fully Compliant
Comply with progress assessment reports requirements.	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Not Applicable	Fully Compliant
Comply with group purchasing reports requirements.	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Fully Compliant	Not Applicable	Not Applicable	Not Applicable

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State Entities' Compliance with HUB Requirements Tested

State HUB Program Requirement	Texas Youth Commission	Parks and Wildlife Department	University of North Texas	Office of the Attorney General	Stephen F. Austin State University	Texas Lottery Commission	Department of Assistive and Rehabilitative Services	The University of Texas Health Science Center at Houston
Goal Attainment								
Attain the heavy construction contract utilization goal.	Fully Compliant	Non-compliant	Not Applicable	Not Applicable	Non-compliant	Not Applicable	Not Applicable	Not Applicable
Attain the building construction contract utilization goal.	Fully Compliant	Minimally Compliant	Fully Compliant	Not Applicable	Fully Compliant	Not Applicable	Not Applicable	Minimally Compliant
Attain the special trade construction contract utilization goal.	Minimally Compliant	Minimally Compliant	Minimally Compliant	Non-compliant	Non-compliant	Minimally Compliant	Non-compliant	Fully Compliant
Attain the professional services contract utilization goal.	Non-compliant	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Non-compliant	Fully Compliant
Attain the other services contract utilization goal.	Non-compliant	Minimally Compliant	Fully Compliant	Substantially Compliant	Non-compliant	Substantially Compliant	Minimally Compliant	Substantially Compliant
Attain the commodities contract utilization goal.	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Overall Compliance Rate ^a	46%	54%	68%	75%	78%	79%	87%	96%
^a The overall compliance rate is the percentage of the total applicable requirements tested with which the state entity fully or substantially complied.								

Tables 3 and 4 summarize the audited state entities' compliance with the State Use Program requirements tested.

Table 3

State Entities' Overall Compliance with State Use Program Requirements Tested		
Level of Compliance	Percentage of Requirements with which the State Entities Complied	State Entities
Fully Compliant	91 to 100 percent	<ul style="list-style-type: none"> ▪ None
Substantially Compliant	61 to 90 percent	<ul style="list-style-type: none"> ▪ None
Minimally Compliant	31 to 60 percent	<ul style="list-style-type: none"> ▪ Office of the Attorney General
Non-compliant	0 to 30 percent	<ul style="list-style-type: none"> ▪ Department of Assistive and Rehabilitative Services ▪ Texas Youth Commission ▪ Texas Lottery Commission ▪ Stephen F. Austin State University ▪ University of North Texas ▪ The University of Texas Health Science Center at Houston ▪ Parks and Wildlife Department

Table 4

State Entities' Compliance with State Use Program Requirements Tested								
State Use Program Requirements	Texas Youth Commission	Parks and Wildlife Department	The University of North Texas	Office of the Attorney General	Stephen F. Austin State University	Texas Lottery Commission	Department of Assistive and Rehabilitative Services	The University of Texas Health Science Center at Houston
Check the availability of products and services from TIBH Industries-related businesses prior to making a purchasing decision.	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant
Designate a State Use Program coordinator to ensure compliance with State Use Program requirements.	Non-compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant	Fully Compliant
Report purchase exceptions to the Comptroller of Public Accounts and the Texas Council on Purchasing from People with Disabilities.	Non-compliant	Non-compliant	Non-compliant	Fully Compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant
Ensure that reported exceptions are properly classified.	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant	Non-compliant
Overall Compliance Rate ^a	0%	25%	25%	50%	25%	25%	25%	25%
^a The overall compliance rate is the percentage of the applicable requirements tested with which the state entity fully or substantially complied.								

Auditors also communicated less significant issues to the state entities' management separately in writing.

Summary of Management's Response

With one exception, the state entities audited agreed with most of the recommendations in this report, and their responses are presented immediately following each set of recommendations in the Detailed Results section. The Office of the Attorney General did not agree with the findings and recommendations related to (1) the development of a process to establish HUB utilization goals and (2) attaining HUB utilization goals.

Summary of Information Technology Review

Auditors examined the general controls and application controls of selected financial and purchasing applications in each state entity's financial accounting system. The financial and purchasing applications reviewed for each state entity had the necessary controls in place to ensure that processed and reported financial transactions were sufficiently valid and reliable.

In addition, auditors examined the Comptroller's TCPPD Web portal that state entities use to report (1) State Use Program purchases and (2) purchases of products and services that were available through the State Use Program but were purchased elsewhere. The TCPPD Web portal did not have the controls necessary to ensure the accuracy and completeness of the data reported.

Summary of Objectives, Scope, and Methodology

The audit objectives were to determine whether the selected state entities (1) comply with statutory requirements and rules established by the Comptroller to implement HUB requirements, (2) make a good-faith effort to comply with statutory requirements and HUB rules, and (3) report complete and accurate information to the Comptroller. In addition, auditors determined whether the state entities complied with requirements regarding the State Use Program.

The scope of this audit included a review of HUB program activities and State Use Program activities at five selected agencies and three higher education institutions. Auditors reviewed HUB program activities in five areas: planning, outreach, subcontracting, reporting, and goal attainment. Auditors also examined select reporting processes related to the HUB program and State Use Program performed by the Comptroller.

The audit methodology consisted of selecting state entities to audit; testing to determine compliance with the Texas Government Code, the Texas Human Resources Code, and the Texas Administrative Code; and testing samples of supporting documentation.

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Detailed Results

The Texas Youth Commission (TYC) minimally complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, TYC fully or substantially complied with 12 (46 percent) of the 26 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

TYC reported that it purchased approximately \$12.4 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). However, TYC should strengthen its management of its HUB program to ensure that it complies with HUB program requirements. Of the five areas tested, TYC:

- Did not comply, overall, with the requirements tested in the area of reporting.
- Minimally complied, overall, with the requirements tested in the areas of planning, outreach, and goal attainment.
- Substantially complied, overall, with the requirements tested in the area of subcontracting.

In addition, TYC purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). TYC reported approximately \$762,000 in purchases made through the State Use Program for fiscal year 2009. However, TYC did not comply with the four State Use Program requirements tested.

Chapter 1-A

Planning Requirements

For fiscal year 2009, TYC minimally complied, overall, with the HUB program planning requirements tested. While TYC fully complied with 2 (40 percent) of 5 requirements tested (see text box), it did not comply with three requirements. Specifically:

- TYC did not develop a process to establish agency-specific annual HUB utilization goals. Texas Government Code, Section 2161.123(d)(5), requires state entities to establish HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors. However, TYC lacks a process for setting agency-specific HUB utilization goals. As a result, TYC cannot determine whether it is providing HUBs with reasonable contracting opportunities.

Planning Requirements

TYC fully complied with the following HUB program planning requirements:

- Comply with legislative appropriations request requirements.
- Adopt HUB rules.

- TYC did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, TYC lacks critical information for establishing HUB utilization goals that align with its business needs.
- TYC did not include information about its HUB program in its strategic plan. TYC did not develop and include the following information required by Texas Government Code, Section 2161.123, in its strategic plan:
 - ♦ A plan for increasing its use of HUB vendors in purchasing and public works contracting.
 - ♦ A policy or mission statement relating to increasing its use of HUB vendors.
 - ♦ Goals that it must meet in carrying out the policy or mission statement.
 - ♦ Specific programs that it would manage to meet the goals stated.

Defining the objectives and goals of the HUB program are significant planning activities that assist state entities in identifying procurement opportunities for HUBs.

Recommendations

To comply with the planning requirements in Texas Government Code, Chapter 2161, TYC should:

- Establish goals for contracting with HUBs in each procurement category that are based on clearly documented, scheduled fiscal year expenditures and the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards it expects to make for that fiscal year and revise this estimate as new information requires.
- Include in its strategic plan:
 - ♦ A plan to increase the agency's use of HUB vendors.
 - ♦ A policy or a mission statement relating to increasing its use of HUB vendors.
 - ♦ Goals to be met in carrying out its policy or mission statement.
 - ♦ Specific programs to be managed to meet the goals stated in the plan.

Management's Response

Management agrees with the recommendations.

1. To comply with the planning requirements of the Texas Government Code, Chapter 2161, TYC should:

- a. Establish goals for contracting with HUBs in each procurement category that are based on clearly documented, scheduled fiscal year expenditures and the availability of HUB vendors in each procurement category.**

TYC will establish annual HUB participation goals based on the annual procurement plan. A methodology will be defined to factor the availability of HUB vendors for each category of expenditure; and the annual goals will reflect local availability of qualified HUB vendors. This methodology will be applied to FY 2012 HUB goals. The Director of Contracts, Procurement and Support Services will oversee implementation and monitoring of the established goals.

In Progress – Projected to be fully implemented May 1, 2011

- b. No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards it expects to make for the fiscal year and revise this estimate as new information requires.**

TYC is implementing a policy requiring the development of an annual procurement plan. This plan will be the basis for making estimates for contract awards. The procurement plan will be presented to the TYC Board annually, with periodic updates as appropriate. The policy will be presented to the TYC Board in March 2011. Following approval by the TYC Board, the policy will be published in the Texas Register for public comment.

The new policy will be applied for the first time to the FY 2012 procurement plan due to significant budget revisions related to statewide savings requirements. HUB goals will be applied to planned procurements as part of the procurement plan to be submitted to the TYC Board before the end of FY 2011.

In Progress – Projected to be fully implemented August 31, 2011

- c. Include in its strategic plan:**

(1) A plan to increase the agency's use of HUB vendors.

(2) Goals to be met in carrying out its policy or mission statement.

(3) *Specific programs to be managed to meet the goals stated in the plan.*

TYC includes specific HUB goals and a statement regarding its planned efforts to increase HUB participation in its biennial legislative appropriation requests.

TYC has a section in its FY 2011-2015 strategic plan on its HUB program that lists goals, strategies, and plans to increase HUB participation. This section will be strengthened to include a methodology for adjusting HUB participation goals for specific categories, plans to meet those goals, and specific outreach efforts to engage HUB vendors.

In Progress – Projected to be completed by June 1, 2011, and will be included in the next submission of the agency’s strategic plan in 2012.

Chapter 1-B

Outreach Requirements

For fiscal year 2009, TYC minimally complied, overall, with HUB program outreach requirements tested. Of the seven outreach requirements tested:

- TYC did not comply with three outreach requirements. Specifically:
 - ♦ The HUB coordinator’s job description did not include the responsibilities required by Title 34, Texas Administrative Code, Section 20.26 (34 TAC 20.26). The job description of TYC’s HUB coordinator position did not include responsibilities listed in 34 TAC 20.26, which require that the HUB coordinator’s responsibilities include facilitating state entity compliance with HUB program requirements, reporting, contract administration, and outreach.
 - ♦ The HUB coordinator’s job description did not include contract management responsibilities required by 34 TAC 20.26. The job description for TYC’s HUB coordinator position did not include contract management-specific responsibilities as defined by Title 34, Texas Administrative Code, Section 20.26. Specifically, the HUB coordinator’s responsibilities did not include assisting in the development of procurement specifications and HUB subcontracting plans and evaluating contracts for compliance with HUB program requirements.
 - ♦ TYC did not comply with in-house marketing presentation requirements. TYC lacked documentation to show that it complied with the following HUB forum requirements in Title 34, Texas Administrative Code, Section 20.27:

- Design its own HUB forum.
 - Sponsor presentations by HUB vendors or invite HUB vendors to make presentations to staff about the goods and services offered.
 - Identify and invite HUBs to make marketing presentations.
- TYC minimally complied with one requirement. While TYC had documentation showing that the HUB coordinator attended HUB-related forums, it lacked documentation showing that it complied with all HUB forum requirements in Texas Government Code, Section 2161.066. The purpose of forums is to increase both HUBs understanding of state entities' contracting opportunities and entities' awareness of available HUBs. TYC did not ensure that it:
 - ♦ Informed contractors and vendors about presentations relevant to subcontracting opportunities for HUB vendors and small businesses.
 - ♦ Sent senior management to HUB-related forums.
 - TYC fully complied with three outreach requirements (see text box).

Outreach Requirements

TYC fully complied with the following HUB program outreach requirements:

- Comply with mentor-protégé program requirements.
- Ensure that the HUB coordinator position is equal to the procurement director position.
- Ensure that the HUB coordinator communicates HUB program matters directly to the executive director.

Recommendations

To fully comply with the outreach requirements in Texas Government Code, Chapter 2161, and Title 34, Texas Administrative Code, Sections 20.26 and 20.27, TYC should:

- Include facilitating compliance, reporting, contract administration, and outreach in the HUB coordinator's responsibilities.
- Include assisting in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts for compliance in the HUB coordinator's contract management responsibilities.
- Maintain documentation to demonstrate that:
 - ♦ It designed a HUB forum for the agency.
 - ♦ It sponsored and invited HUB vendors to make presentations to management and staff about goods and services offered as part of the agency's HUB forum program.

- ♦ It informed contractors and vendors about presentations relevant to subcontracting opportunities for HUB vendors and small businesses,
- ♦ Its senior management or procurement personnel attended HUB-related forums

Management's Response

Management agrees with the recommendations.

2. To fully comply with the outreach requirements of the Texas Government Code, Chapter 2161, and Title 34, Texas Administrative Code, Sections 20.26 and 20.27, TYC should:

a. Include facilitating compliance, reporting, contract administration, and outreach in the HUB coordinator's responsibilities.

The Director of Contracts, Procurement and Support Services is designated as the TYC HUB coordinator. The job description for the position was revised to include these responsibilities and those of the State Use coordinator (Chapter 1-F, below).

Fully Implemented February 11, 2011

b. Include assisting in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts for compliance in the HUB coordinator's contract management responsibilities.

The Director of Contracts, Procurement and Support services is designated as TYC HUB coordinator. The job description for the position was revised to include these responsibilities.

Training was conducted for TYC procurement staff on January 11 – 14, 2011. The training included sections on HUB participation, HUB subcontracting requirements, specification writing, and deliverables-based specifications. A total of 27 staff members completed the training.

In Progress - Projected to be fully implemented May 1, 2011

c. Maintain documentation to demonstrate that:

(1) It designed a HUB forum for the agency.

(2) It sponsored and invited HUB vendors to make presentations to management and staff about goods and services offered as part of the agency's HUB forum program.

(3) *It informed contractors and vendors about presentations relevant to subcontracting opportunities for HUB vendors and small businesses.*

(4) *Its senior management or procurement personnel attended HUB-related forums.*

TYC will document a project to host or co-host a HUB forum in FY 2011. The HUB forum will focus on professional services. HUB vendors will be invited to provide information regarding their qualifications and to submit applications for a provider enrollment solicitation that will be open at the time. Prime contractors will be invited to present information regarding subcontracting opportunities. TYC executive staff will routinely participate in forums. Comptroller of Public Accounts (CPA) staff will be invited to provide information on registering with CPA to become certified HUBs. The Director of Contracts, Procurement and Support Services will organize the forum.

TYC Procurement staff has attended or are scheduled for the following:

- *September 17, 2010 - Attended Texas Association of African American Chambers of Commerce Economic and Education Opportunity Forum.*
- *September 23, 2010 - Invited one HUB (Burgoon) to present marketing program.*
- *September 24, 2010 – Attended HHS HUB Forum.*
- *December 7 – 8, 2010 - Scheduled to attend Small, Minority, Women and Veterans Business Owners Contracting Conference and Purchasing Agents and Supplier Directors Roundtable. The roundtable was cancelled by its sponsors, but two staff attended the Conference.*
- *February 15, 2011 - Scheduled to attend a HUB Forum focused on construction.*

In Progress – Projected to be fully implemented August 31, 2011

Subcontracting Requirements

Subcontracting Requirements

TYC fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.

For fiscal year 2009, TYC substantially complied, overall, with HUB program subcontracting requirements tested. TYC fully complied with 4 (80 percent) of 5 subcontracting requirements tested (see text box). However, TYC did not comply with one subcontracting requirement. Although TYC reported that it reviewed HUB subcontracting plans from each contractor bidding on contract solicitations, TYC lacked documentation necessary to show that it reviewed and evaluated the subcontracting plans prior to awarding the contracts as required by Title 34, Texas Administrative Code, Section 20.14.

Recommendation

To fully comply with the subcontracting requirements in Title 34, Texas Administrative Code, Section 20.14, TYC should develop and implement a process to document its review and evaluation of bidding contractors' HUB subcontracting plans prior to the award of a contract.

Management's Response

Management agrees with the recommendation.

- 3. To fully comply with the subcontracting requirements of Title 34, Texas Administrative Code, Section 20.14, TYC should develop and implement a process to document its review and evaluation of bidding contractor's HUB subcontracting plans prior to the award of a contract.**

A process to evaluate subcontracting plans was implemented in FY 2010 and will be revised as needed to conform to the new HUB policy.

Additionally, TYC is implementing deliverables-based contracting, which entails documenting all requirements and specifications as separate deliverables with acceptance criteria for each deliverable. This division of requirements facilitates subcontracting to the extent that each deliverable can have specific vendor requirements, can be separately priced, and can be separately delivered if appropriate.

In Progress – Projected to be fully implemented March 31, 2011

Reporting Requirements

For fiscal year 2009, TYC did not comply, overall, with the HUB program reporting requirements tested. Of the three reporting requirements tested:

- TYC did not comply with two requirements. Specifically:
 - ♦ TYC did not comply with monthly internal HUB usage report requirements because it did not prepare a monthly report showing its use of HUBs. Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Section 20.16 require state entities to prepare a monthly report that includes the following information related to their use of HUBs:
 - The state entity's usage of HUB vendors.
 - The state entity's purchases from state term contracts paid with State Treasury funds and non-Treasury funds.
 - Information regarding subcontractors and suppliers.
 - Identification of all HUB vendors and subcontractors.
 - Information on the detailed progress payments made to subcontractors, professionals, consultants, and suppliers.
 - ♦ TYC did not comply with progress assessment report requirements because it could not provide auditors with complete records of the progress assessment reports it received from its prime contractors. TYC lacked copies of the progress assessment reports it received from prime contractors for the first six months of fiscal year 2009. Title 34, Texas Administrative Code, Section 20.14, requires state entities to collect and maintain monthly progress assessment reports from their prime contractors (see text box).
- TYC minimally complied with the requirement to report accurate HUB expenditure and other supplemental information. While TYC reported accurate and complete HUB vendor expenditures for fiscal year 2009, it lacked supporting documentation for the following:
 - ♦ Subcontractor payment amounts. As discussed above, TYC did not have the progress assessment reports it used to calculate the subcontractor payment amounts for the first six months of fiscal year 2009. As a result, its reported subcontractor payment amounts were inaccurate.

Progress Assessment Reports

Prime contractors that are awarded a contract must submit a monthly progress assessment report to the contracting state entity as documentation of their compliance with the approved HUB subcontracting plan. The progress assessment report lists all subcontractors (both HUBs and non-HUBs) working on a contract. In addition, the progress assessment report lists the payments that each subcontractor received for the reported monthly period.

- ♦ Supplemental information. TYC did not have documentation showing how it calculated the amounts for (1) competitive and non-competitive bids and proposals and (2) contract awards reported in TYC's semi-annual HUB report. However, TYC did have supporting documentation for the numbers in its annual HUB report.

Texas Government Code, Section 2161.122, requires state entities to report accurate HUB expenditure and other supplemental information. If TYC does not report accurate and complete information, there is increased risk that decision makers will not have reliable information to successfully manage and evaluate TYC's HUB program.

Recommendations

To fully comply with the reporting requirements in Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Sections 20.14 and 20.16, TYC should:

- Develop a monthly HUB usage report that includes:
 - ♦ Its usage of HUB subcontractors.
 - ♦ Purchases from state term contracts paid with State Treasury funds or non-Treasury funds.
 - ♦ Identification of and other required information regarding all HUB subcontractors.
 - ♦ Information about the detailed progress payments made to subcontractors, professionals, consultants, and suppliers.
- Ensure that its HUB coordinator receives and maintains a complete record of progress assessment reports for each prime contractor.
- Maintain documentation necessary to support the HUB expenditure amounts and other supplemental information it reports in its semi-annual and annual HUB report.

Management's Response

Management agrees with the recommendations.

4. To fully comply with the reporting requirements of Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Sections 20.14 and 20.16, TYC should:

a. Develop a monthly HUB usage report that includes:

- (1) Its usage of HUB subcontractors.*
- (2) Purchases from state term contracts paid with state treasury funds or non-treasury funds.*
- (3) Identification of and other required information regarding all HUB subcontractors.*
- (4) Information about the detailed progress payments made to subcontractors, professionals, consultants, and suppliers.*

TYC will modify the monthly report currently generated to track HUB usage to include, in addition to HUB subcontractor payments, other required information regarding HUB subcontractors. Certain information on detailed progress payments made to subcontractors, professionals, consultants and suppliers is tracked in the TYC accounting system. Information on purchases made from state term contracts is tracked and published by the Comptroller of Public Accounts (CPA) semi-annually, based on actual payments made during each reporting period. Additional information requirements will be identified and made a part of the appropriate reports.

In Progress – Projected to be fully implemented May 1, 2011

- b. Ensure that its HUB coordinator receives and maintains a complete record of progress assessment reports for each prime contractor.***

Reporting procedures are being changed to require copies of prime contractor progress assessment reports are forwarded to the HUB coordinator.

In Progress – Projected to be fully implemented April 1, 2011

- c. Maintain documentation necessary to support the HUB expenditure amounts and other supplemental information it reports in its semi-annual and annual HUB report.***

Documentation will be maintained to support all supplemental information submitted in semi-annual and annual HUB reports.

In Progress – Projected to be fully implemented April 1, 2011

Goal Attainment

For fiscal year 2009, TYC minimally attained its annual HUB utilization goals (see text box for more information about goal attainment). TYC did not develop a process to establish its own HUB utilization goals as statutorily required (see Chapter 1-A). Instead, TYC adopted the statewide HUB utilizations goals defined by the Office of the Comptroller of Public Accounts. For its six annual HUB utilization goals, TYC:

- Did not attain its goals for (1) professional service contracts and (2) all other services contracts.
- Minimally attained its goal for special trade construction contracts.
- Fully attained or exceeded its goals for (1) heavy construction contracts, (2) building construction contracts, and (3) commodities contracts.

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

Table 5 shows TYC's attainment of its fiscal year 2009 HUB utilization goals.

Table 5

TYC's Attainment of Its HUB Utilization Goals Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts	11.90%	42.00%	352.94%
Building Construction Contracts	26.10%	41.50%	159.00%
Special Trade Construction Contracts	57.20%	29.30%	51.22%
Professional Services Contracts	20.00%	5.59%	27.95%
All Other Services Contracts	33.00%	5.69%	17.24%
Commodities Contracts	12.60%	38.00%	301.59%

By adopting statewide goals and not establishing HUB utilization goals that were specific to its operations, TYC may have set goals that did not align with its operational needs. This may have contributed to TYC not attaining certain goals.

Recommendation

TYC should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

Management agrees with the recommendation.

5. TYC should identify and consider factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

As part of the strategic planning process, TYC will identify and consider factors that affect its ability to meet HUB participation goals. Where appropriate, those factors will be considered in setting future goals for the agency. This process will be implemented in coordination with next strategic planning process in FY 2012.

FY 2012 goals will be developed using a model that considers the total number of HUBs qualified to deliver specific professional and other services based on license, certification, and education requirements as a percentage of to the total number of individuals qualified to deliver the service. This will require research on the total number of individuals licensed and certified to provide those services and the number currently certified as HUBs by the Comptroller of Public Accounts. This will allow TYC to revise its HUB goals appropriately and target individuals for future HUB certification and contracting.

In Progress – Projected to be fully implemented August 31, 2011

Chapter1-F

State Use Program

Although TYC purchased goods and services through the State Use Program during fiscal year 2009, it did not comply with the four State Use Program requirements tested. Specifically:

- TYC lacked documentation showing that its purchasers checked the availability of TIBH Industries vendor products or services before making a procurement decision. TYC lacked policies and procedures for ensuring that its staff check the availability of products and services offered by TIBH Industries vendors prior to making a purchasing decision. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.

- TYC did not designate an employee as its State Use Program coordinator. Texas Human Resources Code, Section 122.0095, requires state entities to designate an employee to ensure compliance with State Use Program requirements.
- TYC did not submit State Use Program reports or exception reports during fiscal year 2009. TYC did not have a process in place to identify and report exceptions (see text box for the definition of an exception). Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.
- TYC did not develop a process to properly classify exceptions. TYC did not have a process to ensure that identified exceptions were classified correctly when reported as required by Title 40, Texas Administrative Code, Section 189.2.

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

Complying with State Use Program requirements is essential for ensuring that decision makers receive reliable information to successfully manage and evaluate TYC's State Use Program.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, TYC should:

- Develop, document, and implement a process to check the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.
- Designate an employee as its State Use coordinator with official job duties and responsibilities necessary to ensure compliance with State Use Program requirements.
- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, TYC could consider a process based on a monthly review of a sample of purchases.
- Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.

Management's Response

Management agrees with the recommendations.

6. To fully comply with the State Use Program requirements in Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, TYC should:

- a. Develop, document, and implement a process to check the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.**

Requisition forms will be changed to include a check-box for purchasers to verify that the availability of requested materials or services from TIBH has been checked before any other source is pursued. This revised form and process will be included in the contract and procurement manual.

In Progress – To be fully implemented May 1, 2011

- b. Designate an employee as its State Use coordinator with official job duties and responsibilities necessary to ensure compliance with the State Use Program requirements.**

The Director of Contracts, Procurement and Support services is designated as the TYC State Use Coordinator. The job description for the position was revised to include these responsibilities.

Fully implemented February 11, 2011

- c. Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, TYC could consider a process based on a monthly review of a sample of purchases.**

TYC will document and implement a process to identify and report exceptions. This report will be required monthly from each purchaser.

In Progress – To be fully implemented May 1, 2011

- d. Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.**

The process to identify and report exceptions will include a methodology for properly classifying exceptions in accordance with the State Use Program requirements.

In Progress – To be fully implemented May 1, 2011

The Parks and Wildlife Department (Department) minimally complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the Department fully or substantially complied with 14 (54 percent) of the 26 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The Department reported that it purchased approximately \$11.1 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). However, the Department should strengthen its management of its HUB program to ensure that it complies with HUB program requirements. Of the five areas tested, the Department:

- Did not comply, overall, with requirements tested in the areas of reporting and goal attainment.
- Minimally complied, overall, with the requirements tested in the area of planning.
- Substantially complied, overall, with the requirements tested in the area of outreach.
- Fully complied, overall, with the requirements tested in the area of subcontracting.

In addition, the Department purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The Department reported approximately \$1.0 million in purchases made through the State Use Program in fiscal year 2009. However, the Department did not comply with 3 (75 percent) of the 4 State Use Program requirements tested.

Chapter 2-A

Planning Requirements

For fiscal year 2009, the Department minimally complied, overall, with the HUB program planning requirements tested. While the Department fully complied with 3 (60 percent) of 5 planning requirements tested (see text box), it did not comply with two requirements. Specifically:

Planning Requirements

The Department fully complied with the following HUB program planning requirements:

- Comply with legislative appropriations request requirements.
- Adopt HUB rules.
- Comply with strategic plan requirements.

- The Department did not develop a process to establish agency-specific annual HUB utilization goals. Texas Government Code, Section 2161.123(d)(5), requires state entities to establish annual HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendor. However, the Department lacks a process to set agency-specific HUB utilization goals. As a result, the Department cannot determine whether it is providing HUBs with reasonable contracting opportunities.

- The Department did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, the Department lacks critical information for establishing HUB utilization goals that align with its business needs.

Recommendations

To comply with the planning requirements in Texas Government Code, Chapter 2161, the Department should:

- Establish goals for contracting with HUBs in each procurement category that are based on clearly documented, scheduled fiscal year expenditures and the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards that it expects to make for that fiscal year and revise this estimate as new information requires.

Management's Response

Prior to this audit, Texas Parks and Wildlife Department (TPWD) adopted the statewide HUB goals based upon consistent guidance from the Texas Procurement and Support Services (TPASS) division within the Comptroller's office that doing so was both acceptable and appropriate in lieu of developing agency-specific goals. TPASS also advised those organizations that developed agency specific goals to utilize a sound, replicable methodology that would include an explanation of variance from the statewide HUB aspirational goals. In light of these SAO audit recommendations, TPWD is presently developing an internal process to gather forecasting data from all divisions to: (1) aid in setting TPWD specific aspirational HUB goals and (2) estimate the total value of contract awards for each fiscal year.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *March 31, 2011.*

Outreach Requirements

For fiscal year 2009, the Department substantially complied, overall, with HUB program outreach requirements tested. Of the seven outreach requirements tested:

- The Department fully complied with the requirement to participate in a HUB forum.
- The Department substantially complied with four outreach requirements. Specifically:
 - ♦ The Department established a mentor-protégé program. However, the Department lacked documentation showing that it reported new and terminated mentor-protégé agreements to the Office of the Comptroller of Public Accounts (Comptroller) within 21 days as required by Title 34, Texas Administrative Code, Section 20.28. In addition, the Department did not document its renewal of one mentor-protégé agreement. The Department also lacked documentation showing that the protégés were certified as HUB vendors at the time that the mentor-protégé agreements were executed.
 - ♦ The HUB coordinator's job description included most of the responsibilities required by Texas Government Code, Section 2161.062. However, the HUB coordinator's responsibilities did not include the coordination of training for the recruitment and retention of HUB vendors.
 - ♦ The HUB coordinator's job description included two of three contract management responsibilities required by Title 34, Texas Administrative Code, Section 20.26. Specifically, under the position's job description, the HUB coordinator should be involved in the development of HUB subcontracting plans and in the evaluation of contracts for compliance with HUB program rules. However, the job description did not define the HUB coordinator's responsibilities related to the development of procurement specifications. Auditors previously reported on the Department's non-compliance with this requirement (see *An Audit Report on Selected Entities' Compliance with Historically Underutilized Business Requirements*, State Auditor's Office Report No. 03-018, February 2003).
 - ♦ The Department complied with most in-house marketing requirements defined by Title 34, Texas Administrative Code, Section 20.27. However, the Department lacked documentation showing that it identified and invited HUBs to make marketing presentations about the types of goods and services they provide as required by Title 34, Texas Administrative Code, Section 20.27 (b)(3).

- The Department did not comply with two requirements. Specifically:
 - ♦ The HUB coordinator position was not equal to the procurement director position. The Department's HUB coordinator reported to the procurement director. However, Texas Government Code, Section 2161.062(e), requires that, within an agency's structure, the HUB coordinator position be at least equal to the position of the procurement director.
 - ♦ The HUB coordinator position did not report HUB program matters to the executive director. Instead, the HUB coordinator position reported HUB program matters to the procurement director, who reported to the executive director. Title 34, Texas Administrative Code, Section 20.26, requires that the HUB coordinator be identified in a responsive role that reports, communicates, and provides information to a state entity's executive director.

It is important that the Department comply with these requirements to help ensure that the HUB coordinator is able to advise and assist the Department in meeting HUB program requirements.

Recommendations

To fully comply with the outreach requirements in Texas Government Code Chapter 2161, and Title 34, Texas Administrative Code, Chapter 20, the Department should:

- Report all new and terminated mentor-protégé agreements to the Comptroller within required time frames.
- Document the renewal of existing mentor-protégé agreements.
- Identify and invite HUB vendors to make presentations to the Department about the products and services the vendors offer.
- Modify the HUB coordinator position so that:
 - ♦ The position is equal within the agency's structure to the procurement director position.
 - ♦ The position's responsibilities includes the coordination of training programs for the recruitment and retention of HUB vendors.
 - ♦ The position's contract management responsibilities includes assisting in the development of procurement specifications.
 - ♦ The position communicates information about the HUB program directly to the Department's executive director.

Management's Response

Mentor—protégé Agreements:

TPWD is implementing a process to ensure that adequate records are maintained and archived for all activity between TPWD and TPASS related to mentor- protégé agreements. Reporting has always been, and will continue to be submitted in a timely fashion in accordance with the statutory requirements. In the SAO's specific audit sample, the HUB status of the protégé was validated and the agreement was sent to TPASS within the 21-day timeframe. TPASS also verified and approved the validity of the agreement prior to posting it on their web site; and, the renewal was confirmed via email with TPASS.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *March 31, 2011.*

HUB Vendor Presentations to TPWD:

TPWD will invite HUB vendors to headquarters and to field offices to make presentations about the goods and services they offer. A HUB expo will be sponsored and held by TPWD headquarters in Austin on May 5, 2011. The TPWD HUB Coordinator will continue to attend pre-bid and proposers conferences to provide HUB program guidance to potential contractors and to support and attend statewide HUB outreach forums, events, and other efforts. The TPWD HUB Coordinator attended every statewide HUB Expo event sponsored or supported by TPASS and also attended every minority/women trade organizations' economic opportunity forums announced by TPASS. During FY 09, the TPWD HUB Coordinator attended 12 pre-bid/proposal conferences for TPWD construction projects across the state in order to ensure HUB Subcontracting Plan (HSP) requirements were properly explained to potential respondents.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *Implemented.*

TPWD HUB Coordinator Classification Title and Group:

While it is true that in FY 09 the HUB Coordinator position (Program Specialist VI) was one salary group lower than the Purchasing Manager (Manager III) position, that difference resulted from an SAO classification increase to salary groups for the classification title series of Manager with no corresponding salary group increase for the classification title series of Program Specialist. In FY 08, the salary group was equal for both positions.

However, at the beginning of FY 11, TPWD reorganized its centralized procurement function and remedied the defect by designating the Director of Purchasing & Contracting as the agency HUB Coordinator; the position that had previously been designated HUB Coordinator was retained as HUB Administrator and reports directly to the TPWD HUB Coordinator.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *Implemented.*

TPWD HUB Coordinator Job Description:

The TPWD HUB Coordinator functional job description and TPWD HUB Policy BF-05-04 have been updated to incorporate HUB Coordinator responsibilities described in Texas Government Code Chapter 2161.062 and Title 34, Texas Administrative Code, Section 20.26.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *Implemented.*

TPWD HUB Coordinator Communication to the Executive Director:

TPWD executive management believes the agency complied in FY 09, and continues to comply with the requirement that the HUB Coordinator report HUB program matters to the executive director. Per statute and rule, the HUB Coordinator is required to advise and assist the executive director and directors on issues related to the HUB program; currently, the executive director, executive management, and division directors receive quarterly reports from the HUB Coordinator. In response to the audit, TPWD will improve the visibility of the HUB Coordinator's continued advisory role to executive management, particularly during development of the statewide strategic plan, the LAR, and the annual operating budget.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *Implemented.*

Subcontracting Requirements

Subcontracting Requirements

The Department fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

For fiscal year 2009, the Department fully complied with four of the five HUB program subcontracting requirements tested (see text box). The Department also substantially complied with the requirement to ensure that prime contractors show evidence of a good-faith effort in the development of HUB subcontracting plans. However, 3 (27 percent) of the 11 contracts that auditors reviewed lacked documentation showing that the contractors contacted HUB vendors as required by Title 34, Texas Administrative Code, Section 20.14. Specifically, the three contracts lacked documentation showing that the contractors performed one or more of the following required tasks:

- Used the Centralized Master Bidders List, the *HUB Directory*, Internet resources, or other directories to search for HUB vendors.
- Notified minority and women trade organizations and development centers about potential subcontracting opportunities.
- Provided notice of HUB subcontracting opportunities to three or more HUB vendors per subcontracting opportunity.

HUB Subcontracting Plans

A HUB subcontracting plan is a document that a prime contractor must complete to subcontract work. In the subcontracting plan, the prime contractor must identify HUB vendors contacted for subcontracting opportunities, as well as the subcontractors selected as part of a prime contractor's response to a solicitation by a state entity.

Texas Government Code, Section 2161.252, and Title 34, Texas Administrative Code, Section 20.14, require each state entity that considers entering into a contract with an expected value of \$100,000 or more to complete a HUB subcontracting plan, and that state entities must reject any prime contractor that does not submit a HUB subcontracting plan.

Progress Assessment Reports

Prime contractors awarded a contract must submit monthly progress assessment reports to the contracting state entity as documentation of their compliance with the approved HUB subcontracting plan. The progress assessment reports list all subcontractors (both HUBs and non-HUBs) working on a contract and list the payments that each subcontractor received for the reported monthly period.

The Department lacked documentation that it reviewed and approved changes in the HUB subcontracting plans after it awarded the contracts.

Based on the progress assessment reports that the prime contractors submitted (see text box for more information about HUB subcontracting plans and progress assessment reports), 6 (55 percent) of 11 prime contractor reviewed were not reporting the HUBs listed and approved in their original HUB subcontracting plans, and the Department did not have documentation showing it had reviewed and approved the changes. The Department reported that its prime contractors reported changes in HUBs via a telephone call. But Title 34, Texas Administrative Code, Section 20.14, requires all proposed changes to an approved subcontracting plan to be received for prior review and approval by the state entity before the changes can be made effective. If the Department does not review and approve changes made to the HUB subcontracting plans, there is an increased risk that prime contractors' may reduce subcontracting opportunities to HUBs.

Recommendations

To fully comply with the subcontracting requirements in Title 34, Texas Administrative Code, Section 20.14, the Department should:

- Obtain and maintain the documentation necessary to support that a contractor has performed the following:
 - ♦ Used the Centralized Master Bidders List, the HUB Directory, Internet resources, or other directories to search for HUB vendors.
 - ♦ Notified minority and women trade organizations and development centers of potential subcontracting opportunities and that it gave these organizations and development centers at least five working days to respond.
 - ♦ Provided notice of HUB subcontracting opportunities to three or more HUB vendors per subcontracting opportunity.
- Develop and implement a process to ensure that prime contractors receive prior approval for any changes made to original or subsequent HUB subcontracting plans.

Management's Response

We are currently developing a better process for tracking and managing any changes made to the original HSP by the awarded contract vendor.

TPWD was fully compliant with 4 of 5 criteria, but was found to be only substantially compliant in ensuring the respondent met good faith effort requirements on their HSPs. One error cited during the field work related to an instance in which the agency allowed a respondent to cure its HSP after-the-fact; that particular respondent was a state certified HUB who was proposing as a prime contractor whose proposal that would result in best value if the HSP defect could be cured; rather than disqualify the proposal, the agency allowed the HUB respondent to cure its HSP after-the-fact – with which the auditor took exception.

Every TPWD solicitation packet requiring an HSP contains a printed “phone book” of all certified HUBs, on and off the CMBL, for every class and item identified as having a potential subcontracting opportunity. Additionally, a list of minority and women trade organizations is also included in every bid packet. A form is filled out during the review of every HSP verifying all respondents have met Good Faith Effort requirements for each area of subcontracting they identified on their HSPs.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *March 31, 2011.*

Chapter 2-D

Reporting Requirements

For fiscal year 2009, the Department did not comply with the three applicable HUB program reporting requirements tested. Specifically:

- The Department did not report accurate subcontractor payments and other supplemental information. While the Department reported accurate HUB vendor expenditures in the semi-annual and annual HUB reports required by Title 34, Texas Administrative Code, Section 20.16, the Department lacked documentation supporting the accuracy and completeness of the following supplemental information reported in its HUB reports for fiscal year 2009:
 - ♦ Subcontractor payment amounts in its semi-annual and annual HUB reports. Subcontractor payments reported for 13 (46 percent) of 28 prime contractors tested were not reported accurately. For those subcontractor payments, the Department either (1) reported amounts that were based on the amounts paid for the contract term to date instead of the amounts paid during fiscal year 2009 or (2) incorrectly calculated the reported amounts. In addition, the Department did not have a complete record of progress assessment reports to identify all subcontractor payments for reporting purposes.
 - ♦ The numbers reported for contract bids and proposals in its semi-annual report. While the Department had supporting documentation that reconciled to 7 (70 percent) of the 10 numbers it reported in its annual HUB report, 3 (30 percent) of the 10 reported numbers did not reconcile to the supporting documentation.
 - ♦ The numbers reported for competitive and non-competitive contract awards in its semi-annual and annual HUB reports.
- The Department did not comply with monthly internal HUB usage report requirements. The Department prepared monthly internal HUB usage reports as required by Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Section 20.16. However, those reports did not include all required information. Specifically, the Department's monthly internal HUB usage reports included information about the HUBs that the Department utilized each month, but they did not include:

- ♦ Purchases from state term contracts paid with State Treasury funds.
 - ♦ Information regarding subcontractors.
 - ♦ Identification of all HUB vendors/subcontractors.
 - ♦ Information on the detailed progress payments made to subcontractors, professionals, consultants, and suppliers.
- The Department did not comply with progress assessment report requirements. The Department lacked documentation showing that it monitored the HUB subcontracting plans monthly as required. The Department did not have a complete record of the progress assessment reports it received from its prime contractors. In addition, the progress assessment reports that the Department could produce did not contain documentation showing that the reports had been reviewed. Title 34, Texas Administrative Code, Section 20.14 (d)(11), required state entities to monitor for subcontractor compliance with performance expectations.

If the Department does not report accurate and complete information, there is increased risk that decision makers will not have reliable information to successfully manage and evaluate the Department's HUB program.

Recommendations

To fully comply with Texas Government Code Section 2161 and Title 34, Texas Administrative Code, Chapter 20, the Department should:

- Ensure that reported expenditure and supplemental information reconciles to supporting documentation.
- Include in its monthly HUB usage reports:
 - ♦ The Department's usage of HUB subcontractors.
 - ♦ Purchases from state term contracts paid with State Treasury funds or non-Treasury funds.
 - ♦ Identification of and other required information regarding all HUB subcontractors.
 - ♦ Information about the detailed progress payments made to subcontractors, professionals, consultants, and suppliers.
- Ensure that its HUB coordinator receives and maintains a complete record of progress assessment reports from each prime contractor.

Management's Response

Reconcile Reported and Supplemental Expenditure Information:

We are fully committed to full and accurate reporting as stipulated in the Texas Government Code and the Texas Administrative Code, and are making changes to policy, procedures, and our procurement system to implement the recommendations from this audit.

HUB Usage Report Recommendations:

The HUB Coordinator and staff acknowledge incomplete subcontractor payment data and that there was a calculation error for the HUB subcontractor payment data submitted for inclusion in the FY 2009 annual HUB report; that calculation error misstated the data by approximately 0.58% - a little more than one-half of one percent. A more rigorous process for verifying data and calculations for the subcontractor payments is under development and will be implemented prior to the agency's submission of the FY 11 semi-annual report.

The audit cited TPWD for failing to include certain information on monthly HUB usage reports, including expenditure information on term contracts. Term contract expenditures, however, are captured and reported by the Comptroller's TPASS division per instructions and guidance provided to all state agencies and public universities from TPASS.

TPWD agrees that improvement is needed and required with HUB reporting requirements, particularly improving the accuracy and quality of data received from vendors in Progress Assessment Reports (PARs); the department will focus on ensuring the receipt of prime contractors' PAR data is more timely and accurate and that processes are developed and deployed to improve data gathering and data reporting.

A detail of the total spending for each HUB subcontractor was reported in both the semi-annual and annual Internal HUB Report (contract/project, prime vendor, subcontractor, total paid for the reporting period and the amount on the approved HSP). In future reports, we will provide the monthly breakdown as recommended.

Progress Assessment Reports (PAR):

The accuracy and completeness of subcontractor payment amounts provided by vendors on PARs will be addressed with new tracking data and a separate internal review of data prior to submitting figures for internal reporting and for reporting to TPASS for inclusion in the semi-annual and annual statewide HUB reports. Internal policies and procedures will be improved to require that a current PAR be submitted at a prescribed location and timeline for any

contract award greater than \$100,000 in which the agency has received and approved a valid HSP; one policy and procedural consideration for TPWD management is to determine whether or not to withhold payment if a current PAR is not received.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *August 31, 2011.*

Chapter 2-E

Goal Attainment

For fiscal year 2009, the Department did not attain its annual HUB utilization goals (see text box for more information about goal attainment). The Department did not develop a process to establish its own HUB utilization goals (see Chapter 2-A). Instead, the Department adopted the statewide HUB utilization goals defined by the Comptroller. For its six annual HUB utilization goals, the Department:

- Minimally attained its goals for (1) building construction contracts, (2) special trade construction contracts, and (3) all other services contracts.
- Did not attain its goals for (1) heavy construction contracts and (2) professional services contracts.
- Fully attained its goal for commodities contracts.

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

Table 6 on the next page shows the Department's attainment of its fiscal year 2009 HUB utilization goals.

Table 6

The Department's Attainment of Its HUB Utilization Goals			
Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts	11.90%	0.02%	0.20%
Building Construction Contracts	26.10%	11.10%	42.53%
Special Trade Construction Contracts	57.20%	22.70%	39.69%
Professional Services Contracts	20.00%	0.00%	0.00%
All Other Services Contracts	33.00%	11.00%	33.33%
Commodities Contracts	12.60%	16.00%	126.98%

By adopting statewide goals and not establishing HUB utilization goals that were specific to its operations, the Department may have set goals that did not align with its operational needs. This may have contributed to the Department not attaining certain goals.

Recommendation

The Department should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

In light of the SAO's evaluation methodology that combines agency HUB goal attainment on a pass/fail basis in concert with measuring the department's good faith effort in pursuing those same HUB goals, TPWD is presently developing an internal process to gather forecasting data from all divisions to aid in setting TPWD specific aspirational HUB goals.

TPWD adopted the statewide HUB program aspirational goals published in the two HUB Disparity Studies partly because the TPASS division of the Texas Comptroller's office has consistently advised client state agencies that doing so was acceptable and appropriate. TPWD did not anticipate an audit methodology would combine goal attainment with good faith effort and would have adopted TPWD specific aspirational HUB goals had we known goal attainment would be combined with good faith effort analysis.

Improvement in Results in FY 10 Compared to FY 09:

TPWD HUB expenditures were \$11.12 million and \$14.48 million in FY 09 and FY 10 respectively, which is an increase of \$3.36 million in FY 10 over FY 09. The percentage of HUB expenditures compared to all expenditures was 12.9% and 16.3% in FY09 and FY10 respectively. FY 10 was the first year TPWD was removed from the list of the top 25 agencies, spending more than \$5 million, with the lowest HUB program spend; we believe this improvement is a result of our increased outreach efforts during FY 10.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *March 31, 2011.*

Chapter 2-F

State Use Program

Although the Department purchased goods and services through the State Use Program during fiscal year 2009, it did not comply, overall, with the State Use Program requirements tested. While the Department fully complied with the requirement that it designate an employee to ensure program compliance, it did not comply with three other requirements tested. Specifically:

- The Department lacked documentation showing that its purchasers consistently checked the availability of TIBH Industries vendor products or services before making a procurement decision. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available. To help accomplish this, the Department's internal policies require Department purchasers to document their verification of available products and services offered by TIBH Industries vendors when making a purchasing decision. However, 28 (93 percent) of 30 non-TIBH Industries vendor purchase transactions that auditors reviewed totaling approximately \$33,000 did not have documentation showing that Department purchasers checked the availability of TIBH Industries vendor products or services.
- The Department did not report all purchase exceptions to the Comptroller and the Texas Council on Purchasing from People with Disabilities (Council) as required. Although the Department has developed a process to identify exceptions, that process did not ensure that all exceptions were reported to the Comptroller and Council as required (see text box for the definition of an exception). Auditors identified a sample of 30 non-TIBH Industries' vendor purchase transactions that should have been reported as a purchase exception. However, only 2 of those 30 transactions indicated that a purchaser checked for TIBH Industries availability. None

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

of the 30 transactions was reported as an exception to the State Use Program coordinator as required by the Department's purchasing procedures. As discussed above, the Department's purchasers did not consistently document their verification of available products and services offered by TIBH Industries vendors. As a result, the Department's State Use Program coordinator did not have the information necessary to determine which purchases of non-TIBH Industries vendor products should be reported as exceptions to the Comptroller and the Council. Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.

- The Department did not ensure that reported exceptions were properly classified. Two (50 percent) of the 4 exceptions that the Department reported to the Comptroller and Council during fiscal year 2009 lacked adequate supporting documentation to determine whether the exception was classified correctly as required by Title 40, Texas Administrative Code, Section 189.2. As discussed above, the Department did not ensure that its purchasers provided the State Use Program coordinator the documentation necessary to properly classify exceptions.

If the Department does not have a reliable process to identify and classify exceptions, it faces increased risk that decision makers will not have accurate and complete information to manage and evaluate the Department's State Use Program.

In addition, while the Department designated an employee as the State Use Program coordinator, it did not develop a job description that defined that employee's job duties and responsibilities. As a result, it is not clear whether the State Use Program coordinator has the responsibilities necessary to ensure compliance with State Use Program requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 8, Texas Administrative Code, Section 189.2, the Department should:

- Ensure that its purchasers comply with internal policies by (1) consistently performing documented checks of the availability of products or services offered by TIBH Industries vendors prior to making a purchase decision and (2) providing all required documentation to the State Use Program coordinator.
- Report all exceptions to the Comptroller and the Council. In lieu of requiring purchasers to report all exceptions to the State Use Program coordinator on a monthly basis, the Department could consider

implementing an exception-reporting process based on a monthly review of a sample of purchases.

- Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.
- Develop a job description for the State Use Program coordinator that defines the position's job duties and responsibilities to allow the position to ensure compliance with State Use Program requirements.

Management's Response

Procurement compliance audits are conducted quarterly on both purchase orders and procurement cards. The internal TPWD purchasing manual contains a step-by-step procedure for following the procurement hierarchy. The quarterly audits are designed to ensure compliance in regards to purchasing items from TIBH and TCI, and that all necessary steps were taken to report exceptions or obtain required waivers. Training of inter-divisional staff on these requirements and properly documenting exceptions by all staff participating in procurement functions is ongoing.

Responsible Party: *The Michelle Croft, Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *August 31, 2012.*

The agency is currently developing a checks and balances feature into our automated system which would require purchasers to respond to a prompt verifying TIBH products were considered/checked before the purchase was finalized. This would provide a mechanism for capturing the necessary documentation needed by the State Use Program coordinator.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *August 31, 2012.*

The functional job description for the TPWD position designated as TPWD's State Use Coordinator has been updated to incorporate State Use Program requirements and responsibilities described in Texas Human Resources Code, Chapter 122 and Title 8, Texas Administrative Code, Section 189.2.

Responsible Party: *The Purchasing & Contracting Director and TPWD HUB Coordinator.*

Implementation Date: *Implemented.*

The University of North Texas (University) substantially complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the University fully or substantially complied with 17 (68 percent) of the 25 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The University reported that it purchased approximately \$19.6 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). Of the five areas tested, the University:

- Fully complied with all requirements tested in the area of subcontracting (see text box).
- Substantially complied, overall, with the requirements tested in the areas of reporting and goal attainment.
- Minimally complied, overall, with the requirements tested in the areas of planning and outreach.

Subcontracting Requirements

The University fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

In addition, the University purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The University reported \$83,798 in purchases made through the State Use Program for fiscal year 2009. However, the University did not comply with 3 (75 percent) of the 4 State Use Program requirements tested.

Chapter 3-A

Planning Requirements

For fiscal year 2009, the University minimally complied, overall, with the HUB program planning requirements tested. While the University fully complied with 2 (40 percent) of 5 requirements tested (see text box), it did not comply with three requirements. Specifically:

- The University did not develop a process to establish annual HUB utilization goals. Texas Government Code, Section 2161.123, requires state entities to establish annual HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors. However, the University lacks a process for setting institution-

Planning Requirements

The University fully complied with the following HUB program planning requirements

- Comply with legislative appropriations request requirements.
- Adopt HUB rules.

specific HUB utilization goals. As a result, the University cannot determine whether it is providing HUBs with reasonable contracting opportunities.

- The University did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, the University may lack critical information for establishing HUB utilization goals that align with its business needs.
- The University did not comply with strategic plan requirements because it did not develop a written plan for increasing its use of HUB vendors in purchasing and public works contracting. Texas Government Code, Section 2161.123, requires state entities to develop a written plan that includes established goals for increasing the contracting opportunities for HUBs. The University did not have a written plan for its HUB program for fiscal year 2009; the University's most recent written plan was applicable to fiscal years 2005 through 2007.

Recommendations

To comply with the planning requirements in Texas Government Code, Sections 2161.123 and 2161.183, the University should:

- Establish goals for contracting with HUBs in each procurement category that are based on (1) clearly documented, scheduled fiscal year expenditures and (2) the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards that it expects to make for that fiscal year and revise this estimate as new information requires.
- Develop and implement a written plan for increasing its use of HUB vendors for the current fiscal year, and update this plan as required for subsequent fiscal years.

Management's Response

The University of North Texas requested clarification from the Legislative Budget Board in fiscal year 2010 and was instructed that institutions of higher education were exempt from the planning requirements listed above.

UNT agrees with the recommendations and will establish practices to meet the planning requirements beginning in fiscal year 2012. The HUB Coordinator will be responsible for implementing this practice.

Chapter 3-B

Outreach Requirements

Outreach Requirements

The University fully complied with the following HUB program outreach requirements:

- Ensure that the HUB coordinator position is equal to the procurement director position.
- Participate in a HUB forum.
- Hold in-house marketing presentations sponsored by HUB vendors.

For fiscal year 2009, the University minimally complied, overall, with HUB program outreach requirements tested. The University fully complied with 3 (43 percent) of the 7 outreach requirements tested (see text box), and it substantially complied with one requirement. However, it did not comply with three requirements. Specifically:

- The HUB coordinator's responsibilities did not include required contract management responsibilities. The job description for the University's HUB coordinator did not include the contract management responsibilities of assisting in (1) the development of procurement specifications, (2) the development of HUB subcontracting plans, and (3) the evaluation of contracts for compliance with HUB program requirements. Title 34, Texas Administrative Code, Section 20.26, requires a HUB coordinator position to include those job duties.
- The HUB coordinator did not report HUB program information directly to the University president. The University's HUB coordinator reported HUB program information to the University's vice president of finance and administration, who then reported HUB program matters to the University president. Title 34, Texas Administrative Code, Section 20.26, requires a university's HUB coordinator to report, communicate, and provide HUB program information directly to the University's president. It is important for the HUB coordinator to communicate information directly to the University president so that the HUB coordinator can advise the University's president about meeting HUB requirements.
- The University did not comply with mentor-protégé program outreach requirements. Although the University had signed mentor-protégé agreements in place, the University did not:
 - ♦ Consistently report new mentor protégé agreements within 21 days to the Office of the Comptroller of Public Accounts (Comptroller) as required. Of its two mentor protégé agreements, the University

reported one agreement to the Comptroller approximately two months after the agreement was executed. The other agreement, which was executed during fiscal year 2010, was reported within the required time frame.

- ♦ Establish specific eligibility and selection criteria for vendors that want to become a mentor or a protégé. The University's current selection criteria are the list of qualifications that Title 34, Texas Administrative Code, Section 20.28, specifies that state entities should consider. However, the University's selection criteria do not describe the specific work experience and technical expertise the University wants from its mentors and protégés.

In addition, the University substantially complied with one outreach requirement. Although the HUB coordinator's job description included most of the responsibilities required by Texas Government Code, Section 2161.062, and Title 34, Texas Administrative Code, Section 20.26, it did not include the required contract administration responsibilities. If the HUB coordinator is not involved in contract administration, the University faces increased risk that a prime contractor may not comply with all HUB contractual requirements.

Recommendations

To fully comply with the outreach requirements in Texas Government Code, Section 2161.62, and Title 34, Texas Administrative Code, Sections 20.26 and 20.28, the University should:

- Include assisting in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts for compliance in the HUB coordinator's responsibilities.
- Develop and document requirements for the HUB coordinator to communicate information about the HUB program directly to the University president, either in the form of a meeting or a direct report, at least annually.
- Establish specific eligibility and selection criteria for its mentor-protégé program.
- Include contract administration in the HUB coordinator's job duties and responsibilities to assist the University with compliance with the HUB contractual requirements.

Management's Response

UNT agrees with the recommendations.

As of January 1, 2011, the HUB Coordinator or Assistant HUB Coordinator is included in the development of procurement specifications, HUB subcontracting plans and evaluation of contracts for compliance.

HUB related information and data will be provided directly to the University President at least once annually by the HUB Coordinator beginning in fiscal year 2011.

The university will develop specific eligibility and selection criteria for the mentor protégé programs by May 1, 2011.

The job responsibilities for the HUB Coordinator will be updated to include contract requirements by September 1, 2011.

The Senior Director of Purchasing and Payment Services and the HUB Coordinator will be responsible for implementing these practices.

Chapter 3-C

Reporting Requirements

For fiscal year 2009, the University substantially complied, overall, with the HUB program reporting requirements tested. Specifically, the University fully complied with 2 (67 percent) of the 3 reporting requirements tested (see text box).

Reporting Requirements

The University fully complied with the following HUB program reporting requirements:

- Comply with monthly internal HUB usage reports requirements.
- Comply with progress assessment reports requirements.

However, the University minimally complied with the requirement to report accurate HUB expenditure and other supplemental information. In its semi-annual and annual HUB reports for fiscal year 2009, the University reported accurate and complete information on HUB vendor expenditures and subcontractor payment amounts. However, the University lacked adequate documentation supporting the accuracy and completeness of reported information in the semi-annual and annual HUB reports on (1) contract bids and proposals receive and (2) competitive and non-competitive contract awards. Texas Government Code, Section 2161.122, requires state entities to report accurate HUB expenditure and other supplemental information. Without accurate and complete information, decision makers may not have reliable information to successfully manage and evaluate the University's HUB program.

Recommendation

To fully comply with the reporting requirements in Texas Government Code, Section 2161.122, the University should maintain adequate supporting documentation for the information it reports, including information on contract bids and proposals and competitive and non-competitive contract awards, in its semi-annual and annual HUB reports.

Management's Response

UNT agrees with the recommendation.

The additional information will be maintained for future semi-annual and annual HUB reports. The HUB Coordinator will be responsible for implementing this practice.

Chapter 3-D

Goal Attainment

For fiscal year 2009, the University substantially attained its annual HUB utilization goals overall (see text box for more information about goal attainment). However, the University did not develop a process to establish its own HUB utilization goals (see Chapter 3-A). Instead, the University adopted the statewide HUB utilization goals defined by the Comptroller. The University elected not to adopt a statewide HUB utilization goal for heavy construction contracts because it did not have programs or projects requiring the procurement of heavy construction. For its five annual HUB utilization goals, the University:

- Fully attained its goals for (1) building construction contracts, (2) professional services contracts, (3) all other services contracts, and (4) commodities contracts.
- Minimally attained its goal for special trade construction contracts.

Table 7 on the next page shows the University's attainment of its fiscal year 2009 HUB utilization goals.

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

Table 7

The University's Attainment of Its HUB Utilization Goals Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts	Not Applicable	Not Applicable	Not Applicable
Building Construction Contracts	26.10%	30.10%	115.33%
Special Trade Construction Contracts	57.20%	23.10%	40.38%
Professional Services Contracts	20.00%	19.20%	96.00%
All Other Services Contracts	33.00%	33.70%	102.12%
Commodities Contracts	12.60%	13.20%	104.76%

By adopting statewide goals and not establishing HUB utilization goals that are specific to its operations, the University may have set goals that did not align with its operational needs. This may have contributed to it not attaining certain goals.

Recommendation

The University should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

UNT agrees with the recommendation.

The university will establish future goals based on previous year expenditures and the availability of HUB certified vendors in the DFW metroplex for each procurement category.

The HUB Coordinator will be responsible for implementing this practice.

State Use Program Requirements

Although the University purchased goods through the State Use Program during fiscal year 2009, it did not comply, overall, with the State Use Program requirements tested. While the University fully complied with the requirement that it designate an employee to ensure program compliance, it did not comply with three other requirements tested. Specifically:

- The University did not ensure that staff checked the availability of TIBH Industries vendor products and services prior to making procurement decisions. The University lacks policies and procedures for checking the availability of products and services offered by TIBH Industries vendors prior to making a purchasing decision. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.
- The University did not have a process to identify and report all exceptions. The University did not report any exceptions during fiscal year 2009 (see text box for the definition of an exception). University management stated it mistakenly believed that higher education institutions were exempt from participating in the State Use Program. Texas Human Resources Code, Section 122.0095, requires each state entity (including higher education institutions) to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.
- The University did not ensure that it properly classified exceptions. As a result of the University not reporting exceptions, it did not develop and implement a process to ensure that identified exceptions were classified in accordance with Title 40, Texas Administrative Code, Section 189.2.

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

If the University does not have a reliable process to identify and classify exceptions, it faces increased risk that decision makers will not have accurate and complete information necessary to successfully manage and evaluate the University's State Use Program.

In addition, although the University designated an employee as the State Use Program coordinator, it did not develop a job description that defined that employee's job duties and responsibilities. Without an official job description, the State Use Program coordinator may not have the responsibilities necessary to ensure compliance with State Use Program requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, the University should:

- Develop, document, and implement a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.
- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the University could consider a process based on a monthly review of a sample of purchases.
- Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.
- Develop a job description for its State Use Program coordinator that defines the position's job duties and responsibilities necessary to ensure compliance with State Use Program requirements.

Management's Response

UNT agrees with the recommendations for expenditures with state appropriated funds.

The university has established business practices to address the recommendations. The job description for the designated State Use Program coordinator will be updated by September 1, 2011 to reflect the job responsibilities associated with the State Use Program.

The Director of Purchasing will be responsible for implementing these recommendations.

The Office of the Attorney General (Attorney General) substantially complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the Attorney General fully or substantially complied with 18 (75 percent) of the 24 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The Attorney General reported that it purchased approximately \$11.1 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). Of the five areas tested, the Attorney General:

- Fully complied, overall, with the requirements tested in the area of subcontracting.
- Substantially complied, overall, with the requirements tested in the areas of outreach, reporting, and goal attainment.
- Minimally complied, overall, with the requirements tested in the area of planning.

In addition, the Attorney General purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The Attorney General reported approximately \$2.0 million in purchases made through the State Use Program for fiscal year 2009. However, the Attorney General did not comply with 2 (50 percent) of the 4 State Use Program requirements tested.

Chapter 4-A

Planning Requirements**Planning Requirements**

The Attorney General fully complied with the following HUB program planning requirements:

- Comply with legislative appropriations request requirements.
- Adopt HUB rules.

For fiscal year 2009, the Attorney General minimally complied, overall, with the HUB program planning requirements tested. While the Attorney General fully complied with 2 (40 percent) of the 5 planning requirements tested (see text box), it did not comply with two requirements. Specifically:

- The Attorney General did not develop an internal process to establish annual HUB utilization goals. Texas Government Code, Section 2161.123, requires state entities to establish annual HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors. However, the Attorney General lacks a process for setting agency-specific goals. Instead, the Attorney General adopted statewide HUB utilization goals defined by the Comptroller. As a result, the Attorney General cannot determine whether it is providing HUBs with reasonable contracting opportunities.

- The Attorney General did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, the Attorney General may lack critical information for establishing HUB utilization goals that align with its business needs.

In addition, the Attorney General substantially complied with one planning requirement related to its strategic plan. The Attorney General included required information in its strategic plan regarding (1) its plan to increase its use of HUBs, (2) its policy relating to increasing HUB utilization, and (3) the specific programs it will conduct to meet its goals. However, the Attorney General did not include information about the specific goals that it should meet to carry out its HUB policies as required by Texas Government Code, Section 2161.123. Defining specific goals for its HUB policies could assist the Attorney General in identifying contracting opportunities for HUBs.

Recommendations

To comply with the planning requirements in the Texas Government Code, Chapter 2161, the Attorney General should:

- Establish goals for contracting with HUBs in each procurement category that are based on (1) clearly documented, scheduled fiscal year expenditures and (2) the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards that it expects to make for that fiscal year and revise this estimate as new information requires.
- Establish specific goals for carrying out its HUB policies and include these goals in its strategic plan.

Management's Response

Establish goals for contracting with HUBs in each procurement category that are based on (1) clearly documented, scheduled fiscal year expenditures and (2) the availability of HUB vendors in each procurement category.

The OAG disagrees with the SAO's assessment that the OAG did not develop a process to establish annual HUB utilization goals.

Texas Government Code, Section 2161.123 requires agencies to establish annual HUB utilization goals based on (A) scheduled fiscal year

expenditures; and (B) the availability of historically underutilized businesses in each category as determined by rules adopted under Section 2161.002.

Section 2161.002 of the Texas Government Code authorizes the commission (in this case the Comptroller of Public Accounts) to adopt rules to administer the HUB Program. Subsection (c) specifically states that the commission shall adopt rules that are based on the results of the "State of Texas Disparity Study, A Report to the Texas Legislature as mandated by H.B. 2626, 73rd Legislature, December 1994". Furthermore, it states that the commission shall revise the rules in response to the findings of any updates of the study that are prepared on behalf of the state.

The rule adopted by the commission in response to Section 2161.002 - TAC, Title 34, Part I, Chapter 20, Rule 20.13 - directs agencies to utilize the statewide goals established by the commission pursuant to the 1994 Disparity Study.

Therefore, in compliance with the Section 2161.124 and TAC, Title 34, Part I, Chapter 20, Rule 20.13, the OAG adopted the statewide goals established by the commission pursuant to the 1994 Disparity Study.

No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards that it expects to make for that fiscal year and revise this estimate as new information requires.

The OAG will develop a process for estimating the total value of contract awards that are expected to be made for the fiscal year and will revise the estimate as new information requires.

Establish specific goals for carrying out its HUB policies and include these goals in its strategic plan.

The OAG will establish specific goals for carrying out agency HUB policies and will include these goals in the agency's strategic plan.

Outreach Requirements

For fiscal year 2009, the Attorney General substantially complied, overall, with the HUB program outreach requirements tested. Of the seven outreach requirements tested:

- The Attorney General fully complied with 4 (57 percent) of the 7 outreach requirements tested (see text box).
- The Attorney General substantially complied with one requirement related to its mentor-protégé program. The Attorney General had a mentor-protégé program during fiscal year 2009 as required. However, the Attorney General lacked documentation showing that it notified the Office of the Comptroller of Public Accounts (Comptroller) of new agreements within 21 days of the agreements' execution dates as required by Title 34, Texas Administrative Code, Section 20.28.
- The Attorney General did not comply with two outreach requirements. Specifically:
 - ♦ The HUB coordinator's position was not equal to the procurement director's position. The HUB coordinator reported to the Attorney General's procurement director. Texas Government Code, Section 2161.062, requires a state entity's HUB coordinator's position to be at least equal to its procurement director's position.
 - ♦ The HUB coordinator did not report all HUB program matters directly to the agency's executive director. Instead, the Attorney General's HUB coordinator reported HUB program matters to the director of budget and purchasing, who reported to the director of administration. Title 34, Texas Administrative Code, Section 20.26, requires a state agency's HUB coordinator to report, communicate, and provide HUB program information directly to the agency's executive director.

Outreach Requirements

The Attorney General fully complied with the following HUB program outreach requirements:

- Ensure that the HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach.
- Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.
- Participate in a HUB forum.
- Hold in-house marketing presentations sponsored by HUB vendors.

It is important that the HUB coordinator has the independence necessary to properly advise and assist the Attorney General in meeting HUB program requirements.

Recommendations

To fully comply with the outreach requirements in Texas Government Code, Section 2161.062, and Title 34, Texas Administrative Code, Section 20.26, the Attorney General should:

- Modify its HUB coordinator's position so that it is equal to the procurement director's position.
- Ensure that the HUB coordinator communicates information about the HUB program directly to the executive director.

Management's Response

The OAG will modify the reporting structure to ensure the HUB coordinator position is equal to the procurement director's position.

The OAG will ensure that the HUB coordinator communicates information about the HUB program directly to the executive director as necessary.

Chapter 4-C

Subcontracting Requirements

For fiscal year 2009, the Attorney General fully complied, overall, with the HUB program subcontracting requirements tested. The Attorney General fully complied with 4 (80 percent) of the 5 subcontracting requirements tested (see text box). In addition, the Attorney General substantially complied with

Subcontracting Requirements

The Attorney General fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

the requirement to ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans. The Attorney General verified that prime contractors were complying with HUB program requirements in the development of HUB subcontracting plans. However, the Attorney General did not consistently maintain documentation to support that prime contractors complied with HUB program rules for contacting HUBs. The Attorney General had documentation showing that contractors for 4 (67 percent) of the 6 contracts reviewed contacted HUB vendors according to HUB program rules; however, it lacked documentation showing that prime contractors for 2 of the contracts reviewed had complied with requirements related to contacting HUBs and minority and women trade organizations and development centers regarding potential subcontracting opportunities as required by Title 34, Texas Administrative Code, Section 20.14.

Recommendation

To fully comply with the subcontracting requirements in Title 34, Texas Administrative Code, Section 20.14, the Attorney General should ensure that it obtains and retains supporting documentation for all its contracts showing that contractors notified minority and women trade organizations and development centers of potential subcontracting opportunities as required.

Management's Response

Of the two contracts mentioned by the SAO as lacking documentation, one was an "Open Market" procurement for file system conversion services with TAB Systems. The complete procurement process, including HUB Subcontracting plan review, was conducted by the Comptroller of Public Accounts.

The second mentioned by the SAO was a Texas Multiple Award Schedule (TXMAS) contract established by the federal General Services Administration for moving services with Central Transportation. Prior to Central Transportation becoming a TXMAS contractor, the OAG had contracted with Central Transportation since 2001 through a competitive process which included the submission and review of a HUB Subcontracting Plan. When the purchase order was issued under the TXMAS contract, the HUB coordinator confirmed with Central Transportation that they intended to continue their HUB subcontracting relationships. They continued to report to the agency their HUB utilization throughout the course of the contract. In the future, the OAG will require HUB subcontracting plans even for purchases obtained through TXMAS contracts.

Chapter 4-D

Reporting Requirement

Reporting Requirements

The Attorney General fully complied with the following HUB program reporting requirements:

- Comply with monthly internal HUB usage report requirements.
- Comply with progress assessment reports requirements.

For fiscal year 2009, the Attorney General substantially complied, overall, with the HUB program reporting requirements tested. The Attorney General fully complied with 2 (67 percent) of the 3 reporting requirements tested (see text box). However, the Attorney General minimally complied with one reporting requirement because it did not consistently report accurate and complete information in its semi-annual and annual HUB reports as required by Texas Government Code, Section 2161.122.

Although the Attorney General reported accurate and complete information relating to HUB vendor expenditures and subcontractor payment amounts, the following reported supplemental information did not reconcile to supporting documentation:

- The number of bids and proposals received that was reported in the Attorney General’s semi-annual and annual HUB reports.
- The number of competitive and non-competitive contract awards reported in the Attorney General’s semi-annual HUB report.

If the Attorney General does not report accurate and complete information, it faces an increased risk that decision makers will not have reliable information to successfully manage and evaluate the Attorney General’s HUB program.

Recommendation

To fully comply with the reporting requirements in Texas Government Code 2161.122, the Attorney General should ensure that it verifies the accuracy and completeness of the documentation it uses to support the information it reports in its semi-annual and annual HUB reports.

Management’s Response

The number of bids and proposals received reported in the supplemental report does not reconcile to supporting documentation.

The HUB Coordinator has met with staff to review the reporting requirement and will ensure accurate reporting that is reconciled to supporting documentation.

The number of competitive bids and non-competitive awards reported in the supplemental report did not reconcile to supporting documentation.

The OAG will explore possible system modifications to ensure the accuracy of reporting the number of competitive bids and non-competitive awards and the reconciliation to supporting documentation.

Chapter 4-E

Goal Attainment

For fiscal year 2009, the Attorney General substantially attained its annual HUB utilization goals (see text box for more information about goal attainment). However, the Attorney General did not develop a process to establish its own HUB utilization goals (see Chapter 4-A). Instead, the Attorney General adopted the statewide HUB utilizations goals defined by the Comptroller. The Attorney General did not adopt the statewide HUB utilization goals for heavy construction contracts

<p>Goal Attainment</p> <p>House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor’s Office to consider as part of the audit of a state entity’s HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity’s annual HUB utilization goals.</p>

and building construction contracts because historically it did not have procurements in those two categories. For its four annual HUB utilization goals, the Attorney General:

- Fully attained its goals for (1) professional services contracts and (2) commodities contracts.
- Substantially attained its goal for all other services contracts.
- Did not attain its goal for special trade construction contracts.

Table 8 shows the Attorney General’s attainment of its fiscal year 2009 HUB utilization goals.

Table 8

The Attorney General’s Attainment of Its HUB Utilization Goals Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Building Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Special Trade Construction Contracts	57.20%	12.70%	22.20%
Professional Services Contracts	20.00%	100.00%	500.00%
All Other Services Contracts	33.00%	22.90%	69.39%
Commodities Contracts	12.60%	37.70%	299.20%
^a The Attorney General did not establish annual HUB utilization goals for heavy construction contracts or for building construction contracts.			

By adopting statewide goals and not establishing HUB utilization goals that are specific to its operations, the Attorney General may have set goals that did not align with its operational needs. This may have contributed to it not attaining certain goals.

Recommendation

The Attorney General should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

Texas Government Code, Section 2161.123 requires agencies to establish goals for contracting with HUB's in each procurement category based on:

- *scheduled fiscal year expenditures; and*
- *the availability of HUB's in each category as determined by rules adopted under Section 2161.002.*

Texas Government Code, Section 2161.002 states that in adopting rules, the commission (CPA) shall adopt rules that are based on the result of the "State of Texas Disparity Study, A Report to the Texas Legislature, December 1994". It further states that the commission shall revise the rules in response to the findings of any updates of the study that are prepared on behalf of the state.

The rule that the commission adopted in compliance with Section 2161.002 (TAC, Title 34, Part I, Chapter 20, Rule 20.13), directs agencies to utilize the statewide goals established by the commission pursuant to the 1994 Disparity Study.

Therefore, in compliance with both the TAC rule and Section 2161.123, the OAG adopted the statewide HUB goals.

Chapter 4-F

State Use Program Requirements

Although the Attorney General purchased goods and services through the State Use Program during fiscal year 2009, it did not comply with two of the four State Use Program requirements tested. The Attorney General fully complied with the requirements that it (1) designate an employee to ensure program compliance and (2) establish a process to report identified exceptions (see text box for the definition of an exception). However, it did not comply with two other requirements tested. Specifically:

- The Attorney General lacked documentation showing that its employees checked the availability of TIBH Industries vendor products prior to making procurement decisions. The Attorney General has a checklist in place for employees to document that they checked the availability of products and services offered by TIBH Industries vendors prior to making a purchase. However, the Attorney General did not consistently maintain copies of the

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

completed checklists or other documentation showing that employees checked the availability of TIBH Industries vendors. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.

- The Attorney General did not consistently maintain documentation that supported the classification of reported exceptions. Title 40, Texas Administrative Code, Section 189.2, requires state entities to classify and report identified exceptions. However, the Attorney General lacked documentation to support the classification of 11 (85 percent) of 13 exceptions it reported for fiscal year 2009.

If the Attorney General does not have a reliable process to classify all exceptions, it faces increased risk that decision makers will not have accurate and complete information necessary to successfully manage and evaluate the Attorney General's State Use Program.

In addition, although the Attorney General designated an employee as the State Use Program coordinator, it did not develop a job description that defined that employee's job duties and responsibilities. Without an official job description, the State Use Program coordinator may not have the responsibilities necessary to ensure compliance with State Use Program requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, the Attorney General should:

- Develop, document, and implement a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.
- Ensure that its exception reporting process includes a methodology for properly classifying exceptions according to State Use program requirements.
- Develop a job description for the State Use Program coordinator that defines the position's job duties and responsibilities necessary to ensure compliance with State Use Program requirements.

Management's Response

Since the inception of the State Use Program reporting requirements, the OAG has always filed the required monthly reports and noted any exceptions, as required. The OAG has consistently maintained copies throughout the years of filed reports and the data queries on which they were based.

To document compliance with the requirements, the OAG has amended its Purchasing Check List and procedures to document verification, and will require each purchaser to perform a screen print from the TIBH catalogue to verify the non-availability of a product or service.

In the event there is an exception, a standard form will be placed in the file documenting the classification of the exception. A copy of the form will be provided to the State Use Coordinator at the time of award.

The OAG will revise the job description for the assigned staff member to include the duties/responsibilities for the role of State Use Coordinator.

Stephen F. Austin State University (University) substantially complied, overall, with the Historically Underutilized Business (HUB) requirements tested for fiscal year 2009. Specifically, the University fully or substantially complied with 21 (78 percent) of the 27 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The University reported that it purchased approximately \$11.6 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). Of the five areas tested, the University:

- Fully complied, overall, with the requirements tested in the areas of subcontracting and reporting.
- Substantially complied, overall, with the requirements tested in the area of outreach.
- Minimally complied, overall, with the requirements tested in the areas of planning and goal attainment.

In addition, the University purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The University reported \$40,035 in purchases made through the State Use Program for fiscal year 2009. However, the University did not comply with 3 (75 percent) of the 4 State Use Program requirements tested.

Chapter 5-A

Planning Requirements

For fiscal year 2009, the University minimally complied, overall, with the HUB program planning requirements tested. While the University fully complied with 3 (60 percent) of 5 requirements tested (see text box), it did not comply with 2 requirements. Specifically:

- The University did not develop a process to establish annual HUB utilization goals. Texas Government Code, Section 2161.123, requires state entities to establish annual HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors. However, the University lacks a process for setting institution-specific HUB utilization goals. As a result, the University cannot determine whether it is providing HUBs with reasonable contracting opportunities.

Planning Requirements

The University fully complied with the following HUB program planning requirements:

- Comply with legislative appropriations request requirements.
- Adopt HUB rules.
- Comply with strategic plan requirements.

- The University did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, the University may lack critical information for establishing HUB utilization goals that align with its business needs.

Recommendations

To comply with the planning requirements in Texas Government Code, Sections 2161.123 and 2161.183, the University should:

- Establish goals for contracting with HUBs in each procurement category that are based on clearly documented, scheduled fiscal year expenditures and the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards it expects to make for that fiscal year and revise this estimate as new information requires.

Management's Response

- *Establish goals for contracting with HUBs in each procurement category that are based on clearly documented, scheduled fiscal year expenditures and the availability of HUB vendors in each procurement category.*

Response: SFASU will establish goals for contracting with HUBs in each procurement category based on scheduled fiscal year expenditures and availability of HUB vendors in each procurement category.

Implementation Date: December 31, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

- *No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards it expects to make for that fiscal year and revise this estimate as new information requires.*

Response: SFASU has created an estimate of the total value of fiscal year 2011 contract awards and will continue to monitor the estimate as new information becomes available.

Implementation Date: August 31, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

Outreach Requirements

Outreach Requirements

The University fully complied with the following HUB program outreach requirements:

- Comply with mentor-protégé program requirements.
- Ensure that the HUB coordinator position is equal to the procurement director position.
- Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.
- Include facilitating compliance, reporting, contract administration, marketing, and outreach in the HUB coordinator's responsibilities.
- Participate in a HUB forum.
- Hold-in house marketing presentations by HUBs.

For fiscal year 2009, the University substantially complied, overall, with the HUB program outreach requirements tested. Specifically, the University fully complied with 6 (86 percent) of the 7 outreach requirements tested (see text box).

However, the University did not comply with the requirement to ensure that the HUB coordinator communicates HUB program matters directly to the University's president as required by Title 34, Texas Administrative Code, Section 20.26. Instead, the HUB coordinator reported HUB program information to the University's vice president of finance and administration, who was responsible for reporting the information to the University president. It is important for the HUB coordinator to communicate information directly to the University president so that the HUB coordinator can advise the University's president about meeting HUB requirements.

Recommendation

To fully comply with the outreach requirements in Title 34, Texas Administrative Code, Section 20.26, the University should develop and document procedures that require the HUB coordinator to communicate information about the HUB program directly to the University president at least annually either in the form of a meeting or a direct report.

Management's Response

Response: SFASU will develop and document procedures for the HUB Coordinator to communicate information directly to the President.

Implementation Date: February 28, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

Subcontracting Requirements

For fiscal year 2009, the University fully complied, overall, with the HUB program subcontracting requirements tested. Specifically, the University fully complied with 3 (60 percent) of the 5 subcontracting requirements tested (see text box).

In addition, the University substantially complied with two requirements. Specifically:

- The University verified that prime contractors were complying with HUB program requirements in the development of HUB subcontracting plans.

However, the University did not consistently ensure that it awarded contracts to vendors that provided evidence they complied with HUB program rules for contacting HUBs. The University had documentation showing that contractors for 5 (63 percent) of the 8 contracts reviewed contacted HUB vendors according to HUB program rules. But the University lacked documentation showing that (1) prime contractors for three contracts reviewed had contacted HUBs and minority and women trade organizations and development centers regarding potential subcontracting opportunities and (2) one of the three prime contractors provided HUBs at least five working days to respond as required by Title 34, Texas Administrative Code, Section 20.14.

- Although the University ensured that it received HUB subcontracting plans, it did not document all of its reviews and evaluations of the plans. Although the University maintained documentation showing that it received HUB subcontracting plans for the eight contracts that auditors reviewed, it lacked documentation showing that it reviewed and evaluated the contractors' HUB subcontracting plans prior to awarding the contracts as required by Title 34, Texas Administrative Code, Section 20.14 (34 TAC 20.14). The University's internal procedures require it to document its review of a prime contractor's HUB subcontracting plan only if the plan does not demonstrate compliance with HUB subcontracting plan requirements. In addition, all HUB subcontracting plans that auditors tested were substantially compliant with subcontracting requirements. However, documenting all reviews of the HUB subcontracting plans would provide the University greater assurance that the plans were reviewed for compliance with HUB program requirements.

Subcontracting Requirements

The University fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.

Recommendations

To fully comply with the subcontracting requirements in 34 TAC 20.14, the University should:

- Ensure that it obtains and maintains supporting documentation on all of its contracts to show that:
 - ♦ Contractors notified minority and women trade organizations and development centers of potential subcontracting opportunities as required.
 - ♦ Contractors gave respondents at least five working days to respond.
- Develop and implement a process to document all reviews and evaluations of bidding prime contractors' HUB subcontracting plans prior to the award of a contract.

Management's Response

Response: SFASU will develop and policies and procedures to formally document HUB subcontracting plan review, evaluation, and monitoring.

Implementation Date: August 31, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

Chapter 5-D

Reporting Requirements

For fiscal year 2009, the University fully complied, overall, with the HUB program reporting requirements tested. Specifically, the University fully complied with 3 (75 percent) of the 4 reporting requirements tested (see text box).

Reporting Requirements

The University fully complied with the following HUB program reporting requirements:

- Comply with monthly internal HUB usage reports requirements.
- Comply with progress assessment reports requirements.
- Comply with group purchasing reports requirements.

In addition, the University substantially complied with the requirement to report accurate HUB expenditure and other supplemental information. The University reported accurate and complete information on HUB vendor expenditures, subcontractor payment amounts, and contracts bids and proposals received in its semi-annual and annual HUB reports for fiscal year 2009. However, the University lacked documentation supporting the accuracy and completeness of the reported number of non-competitive contracts awarded to 1 (11 percent) of 9 demographic categories in its semi-annual HUB reports. It should be noted that the University reported accurate and complete contract award information in its

annual HUB report. Title 34, Texas Administrative Code, Section 20.16 (34 TAC 20.16), requires state entities to report accurate HUB expenditure and other supplemental information.

Recommendation

To fully comply with the reporting requirements in 34 TAC 20.16, the University should maintain adequate supporting documentation for the information it reports, including information on competitive and non-competitive contract awards, in its semi-annual HUB reports.

Management's Response

Response: SFASU will develop procedures for adequately documenting reported information.

Implementation Date: March 15, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

Chapter 5-E

Goal Attainment

For fiscal year 2009, the University minimally attained its annual HUB utilization goals overall (see text box for more information about goal attainment). The University did not develop a process to establish its own HUB utilization goals (see Chapter 5-A). Instead, the University adopted the statewide HUB utilizations goals defined by the Office of the Comptroller of Public Accounts. For its six annual HUB utilization goals, the University:

<p style="text-align: center;">Goal Attainment</p> <p>House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.</p>

- Did not attain its goals for (1) heavy construction contracts, (2) special trade construction contracts, and (3) all other services contracts.
- Fully attained its goals for (1) building constructions contracts, (2) professional services contracts, and (3) commodities contracts.

Table 9 on the next page shows the University's attainment of its fiscal year 2009 HUB utilization goals.

Table 9

The University's Attainment of Its HUB Utilization Goals			
Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction	11.90%	2.910%	24.45%
Building Construction	26.10%	29.10%	111.49%
Special Trade Construction	57.20%	4.02%	7.03%
Professional Services Contracts	20.00%	29.70%	148.50%
All Other Services Contracts	33.00%	1.69%	5.12%
Commodities Contracts	12.60%	30.00%	238.10%

By adopting statewide goals and not establishing HUB utilization goals that were specific to its operations, the University may have set goals that did not align with its operational needs. This may have contributed to the University not attaining certain goals.

Recommendation

The University should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

Response: SFASU adopted the statewide goals instead of university specific HUB utilization goals. The university will review and consider relevant factors in establishing future HUB utilization goals.

Implementation Date: August 31, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

State Use Program Requirements

Although the University purchased goods and services through the State Use Program during fiscal year 2009, it did not comply with three of the four State Use Program requirements tested. The University fully complied with the requirement that it designate an employee to ensure program compliance. However, it did not comply with three other requirements tested. Specifically:

- The University lacked documentation showing that it checked the availability of TIBH Industries vendor products or services before making a procurement decision. Although the University has policies and procedures that require staff to check the availability of products and services that TIBH Industries vendors offer before making purchasing decisions, the University did not have documentation showing that its staff complied with that requirement. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.
- The University lacked adequate supporting documentation for its reported exceptions for fiscal year 2009. Although the University reported exceptions during fiscal year 2009, it did not have supporting documentation showing that the reported exceptions were accurate and complete (see text box for the definition of an exception). Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.
- The University lacked adequate documentation supporting its classification of reported exceptions. The University did not have a process in place or documentation to demonstrate how it classified the identified exceptions. As a result, auditors were not able to determine whether the University classified the reported exceptions in accordance with Title 40, Texas Administrative Code, Section 189.2 (40 TAC 189.2).

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

If the University does not have a reliable process to identify and classify exceptions, it faces increased risk that decision makers will not have accurate and complete information necessary to successfully manage and evaluate the University's State Use Program.

In addition, although the University designated an employee to ensure compliance with State Use Program requirements, it did not develop a job description that defined that employee's job duties and responsibilities. As a result, it is not clear whether the State Use Program coordinator has the

responsibilities necessary to ensure compliance with State Use Program Requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Section 122, and 40 TAC 189.2, the University should:

- Ensure that its staff check the availability of products or services that TIBH Industries vendors offer prior to making purchasing decisions, and that staff document these checks.
- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the University could consider a process based on a monthly review of a sample of purchases.
- Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.
- Develop a job description for the State Use Program coordinator that defines the position's job duties and responsibilities necessary to ensure compliance with State Use Program requirements.

Management's Response

Response: SFASU has operated under the assumption that the State Use Program requirements apply to purchases with state funds. The university will further investigate this assumption and implement the necessary policy and procedure changes.

Implementation Date: August 31, 2011

Person Responsible for Implementation: The Director of Property & Procurement and HUB Coordinator

The Texas Lottery Commission (Agency) substantially complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the Agency fully or substantially complied with 19 (79 percent) of the 24 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

Subcontracting Requirements

The Agency fully complied with the following HUB program subcontracting requirements:

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

The Agency reported that it purchased approximately \$35.6 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). Of the five areas tested:

- Fully complied with all five requirements tested in the area of subcontracting (see text box).
- Substantially complied, overall, with the requirements tested in the areas of outreach, reporting, and goal attainment.
- Minimally complied, overall, with the requirements tested in the area of planning.

In addition, the Agency purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The Agency reported approximately \$52,000 in purchases made through the State Use Program. However, the Agency did not comply with 3 (75 percent) of 4 State Use Program requirements tested.

Chapter 6-A

Planning Requirements

For fiscal year 2009, the Agency minimally complied, overall, with the HUB program planning requirements tested. While the Agency fully complied with 3 (60 percent) of 5 planning requirements tested (see text box), it did not comply with two requirements. Specifically:

Planning Requirements

The Agency fully complied with the following HUB program planning requirements:

- Comply with legislative appropriations request requirements.
- Adopt HUB program rules.
- Comply with strategic plan requirements.

- The Agency did not develop a process to establish annual HUB utilization goals. Texas Government Code, Section 2161.123, requires state entities to establish annual HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors. The Agency provided documentation showing that, based on guidance from the Office of the Comptroller of Public Accounts (Comptroller), the Agency mistakenly understood that it was required only to adopt statewide HUB utilization goals.² As a result, the Agency lacks a

² Auditors identified inconsistencies between the statutory requirements for establishing HUB utilization goals and the HUB program rules established by the Comptroller (see Chapter 9-B for more information).

process for setting agency-specific HUB utilization goals. Without specific goals, the Agency cannot determine whether it is providing HUBs with reasonable contracting opportunities.

- The Agency did not estimate its expected contract awards for fiscal year 2009. Texas Government Code, Section 2161.183, requires state entities to estimate the total value of contract awards for goods, services, and building construction projects by the 60th day of each fiscal year. Without an estimation of expected contract awards, the Agency may lack critical information for establishing HUB utilization goals that align with its business needs.

Recommendations

To comply with the planning requirements in Texas Government Code, Chapter 2161, the Agency should:

- Establish goals for contracting with HUBs in each procurement category that are based on (1) clearly documented, scheduled fiscal year expenditures and (2) the availability of HUB vendors in each procurement category.
- No later than the 60th day of each fiscal year, create an estimate of the total value of contract awards that it expects to make for that fiscal year and revise this estimate as new information requires.

Management's Response

Management agrees with the recommendations. The Purchasing and Contracts Section of the Administration Division will develop a process and procedure for establishing annual goals for contracting with HUBS. The written procedure will be implemented by May 31, 2011. HUB utilization goals will be developed upon approval of the operating budget by the Commission but no later than August 31st each year. This will include an estimate of the total value of contract awards to be made for the fiscal year.

Outreach Requirements

For fiscal year 2009, the Agency substantially complied, overall, with the HUB program outreach requirements tested. Specifically, the Agency fully complied with 6 (86 percent) of the 7 outreach requirements tested (see text box). However, the Agency did not comply with the requirement to ensure that the HUB coordinator position is equal to the procurement director position. Instead, the Agency's HUB coordinator reported to the procurement director. As a result, the Agency's HUB coordinator may not have the authority necessary to advise and assist the Agency in meeting HUB program requirements. Texas Government Code, Section 2161.062, requires that the HUB coordinator's position be at least equal to the procurement director's position.

Outreach Requirements

The Agency fully complied with the following HUB program outreach requirements:

- Comply with mentor-protégé program requirements.
- Ensure that the HUB coordinator communicates HUB program information directly to the Agency's executive director.
- Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.
- Ensure that the HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach.
- Participate in a HUB forum.
- Hold in-house marketing presentations sponsored by HUB vendors.

Recommendation

To fully comply with the outreach requirements in Texas Government Code, Section 2161.062, the Agency should modify its HUB coordinator's position so that it is equal to that of the procurement director's position.

Management's Response

Management agrees with the recommendation. The organizational structure for the HUB Coordinator will include a line to the Support Services Manager to allow the HUB Coordinator to provide program updates, advice and assistance to ensure the agency is meeting its HUB requirements. The agency's organizational chart and the HUB Coordinator's job description will be updated by March 1, 2011.

Reporting Requirements

For fiscal year 2009, the Agency substantially complied, overall, with the HUB program reporting requirements tested. Specifically, the Agency fully complied with 2 (67 percent) of the 3 reporting requirements tested (see text box). However, the Agency did not comply with the requirement to prepare monthly internal HUB usage reports as required by Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Section 20.16. The monthly internal HUB usage reports are useful tools that decision makers can use to monitor and evaluate the Agency's progress in providing contracting opportunities to HUBs.

Reporting Requirements

The Agency fully complied with the following HUB program reporting requirements:

- Report accurate HUB expenditure and other supplemental information.
- Comply with progress assessment reports requirements.

Recommendation

To fully comply with the reporting requirements in Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Section 20.16, the Agency should prepare monthly HUB usage reports.

Management's Response

Management agrees with the recommendation. The Purchasing and Contracts Section of the Administration Division will develop monthly HUB usage reports that will allow the Executive Management Team to monitor and evaluate the agency's progress in providing contracting opportunities to HUBs. The monthly reports will be implemented by April 1, 2011.

Goal Attainment

For fiscal year 2009, the Agency substantially attained its annual HUB utilization goals overall (see text box for more information about goal attainment). However, the Agency did not develop a process to establish its own HUB utilization goals (see Chapter 6-A). Instead, the Agency adopted the statewide HUB utilization goals defined by the Comptroller. The Agency elected not to adopt the statewide HUB utilization goals for heavy construction contracts and building construction contracts because the Agency did not have any strategies or programs relating to construction.

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

For its four annual HUB utilization goals, the Agency:

- Fully attained its goals for (1) professional services contracts and (2) commodities contracts.
- Substantially attained its goal for all other services contracts.
- Minimally attained its goal for special trade construction contracts.

Table 10 shows the Agency’s attainment of its fiscal year 2009 HUB utilization goals.

Table 10

The Agency’s Attainment of Its HUB Utilization Goals Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Building Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Special Trade Construction Contracts	57.20%	23.10%	40.38%
Professional Services Contracts	20.00%	91.80%	459.00%
All Other Services Contracts	33.00%	21.90%	66.36%
Commodities Contracts	12.60%	50.60%	401.59%
^a The Agency did not establish annual HUB utilization goals for heavy construction contracts or for building construction contracts.			

By adopting statewide goals and not establishing HUB utilization goals that are specific to its operations, the Agency may have set goals that did not align with its operational needs. This may have contributed to it not attaining certain goals.

Recommendation

The Agency should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

Management agrees with the recommendations. As part of the process and procedure that will be developed to establish annual goals for contracting with HUBS (see Management Response to Planning Requirements), the agency will include a requirement to identify and consider factors (if any) that affected its ability to meet its set goals for the previous fiscal year.

Chapter 6-E

State Use Program Requirements

Although the Agency purchased goods through the State Use Program during fiscal year 2009, it did not comply, overall, with the State Use Program requirements tested. The Agency fully complied with the requirement that it designate an employee to ensure program compliance. However, it did not comply with three other requirements tested. Specifically:

- The Agency did not ensure that staff checked the availability of TIBH Industries vendor products and services prior to making procurement decisions. The Agency lacked policies and procedures for checking the availability of products and services offered by TIBH Industries vendors prior to making a purchasing decision. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.
- The Agency did not identify and report exceptions. The Agency did not submit State Use Program reports or exception reports during fiscal year 2009. In addition, it did not have a process for identifying and reporting exceptions (see text box for the definition of an exception). Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.
- The Agency lacked policies and procedures to ensure that identified exceptions were classified correctly. The Agency did not have a process to ensure that identified exceptions were classified in accordance with Title 40, Texas Administrative Code, Section 189.2.

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

If the Agency does not have a reliable process to identify and classify exceptions, it faces increased risk that decision makers will not have accurate and complete information necessary to successfully manage and evaluate the Agency's State Use Program.

In addition, although the Agency designated an employee as the State Use Program coordinator, it did not develop a job description that defined that employee's job duties and responsibilities. Without an official job description, the State Use Program coordinator may not have the responsibilities necessary to ensure compliance with State Use Program requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, the Agency should:

- Develop, document, and implement a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.
- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the Agency could consider a process based on a monthly review of a sample of purchases.
- Ensure that its exception reporting process includes a methodology for properly classifying exceptions according to State Use Program requirements.
- Develop a job description for its State Use coordinator that defines the position's job duties and responsibilities necessary to ensure compliance with State Use Program requirements.

Management's Response

Management agrees with the recommendations.

The Purchasing and Contracts Section of the Administration Division will update its Purchasing Procedures to include a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions. The purchasing procedures will be updated by April 1, 2011.

The Purchasing and Contracts Section of the Administration Division will develop a process and procedure to identify and report exceptions. The procedure will include a methodology for properly classifying exceptions according to the State Use Program requirements. The written procedure will be implemented by April 1, 2011.

The agency will update the job descriptions for the Purchasing and Contracts Manager and State Use Coordinator to define duties and responsibilities related to State Use Program requirements. The job descriptions will be updated by March 1, 2011.

Department of Assistive and Rehabilitative Services

Planning, Outreach, Subcontracting, and Reporting Requirements

The Department fully complied with the following HUB program planning, outreach, subcontracting, and reporting requirements:

Planning

- Establish annual procurement utilization goals.
- Estimate expected contract awards.
- Comply with legislative appropriations request requirements.
- Adopt HUB rules.
- Comply with strategic plan requirements.

Outreach

- Comply with mentor-protégé program requirements.
- Ensure that the HUB coordinator position is equal to the procurement director position.
- Ensure that the HUB coordinator communicates HUB program matters directly to the Department's commissioner.
- Ensure that the HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach.
- Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.
- Participate in a HUB forum.
- Hold in-house marketing presentations sponsored by HUB vendors.

Subcontracting

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

Reporting

- Report accurate HUB expenditure and other supplemental information.
- Comply with monthly internal HUB usage reports requirements.

The Department of Assistive and Rehabilitative Services (Department) substantially complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the Department fully or substantially complied with 20 (87 percent) of the 23 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The Department reported that it purchased approximately \$5.9 million in goods and services from HUBs in fiscal year 2009 (see Appendix 2 for more information). Of the five areas tested, the Department:

- Fully complied with all requirements tested in the areas of planning, outreach, subcontracting, and reporting (see text box).
- Did not comply, overall, with the requirements tested in the area of goal attainment.

In addition, the Department purchased goods and services through the Purchasing from People with Disabilities Program (State Use Program). The Department reported approximately \$2.4 million in purchases made through the State Use Program during fiscal year 2009. However, the Department did not comply with 3 (75 percent) of the 4 State Use Program requirements tested.

Goal Attainment

For fiscal year 2009, the Department did not attain its annual HUB utilization goals (see text box for more information about goal attainment). Although the Department developed a methodology to establish its own HUB utilization goals, it elected to adopt the statewide HUB utilizations goals defined by the Office of the Comptroller of Public Accounts (Comptroller). However, the Department decided not to adopt the statewide HUB utilization goals for heavy construction and building construction contracts. For its four annual HUB utilization goals, the Department:

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

- Did not attain its goals for (1) special trade construction contracts and (2) professional services contracts.
- Minimally attained its goal for other services contracts.
- Fully attained its goal for commodities contracts.

Table 11 shows the Department's attainment of its fiscal year 2009 HUB utilization goals.

Table 11

Department's Attainment of Its HUB Utilization Goals			
Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Building Construction Contracts ^a	Not Applicable	Not Applicable	Not Applicable
Special Trade Construction Contracts	57.20%	8.80%	15.30%
Professional Services Contracts	20.00%	0.00%	0.00%
All Other Services Contracts	33.00%	18.70%	56.70%
Commodities Contracts	12.60%	48.30%	383.33%
^a The Department did not establish an annual HUB utilization goal for heavy construction contracts or for building construction contracts.			

By adopting statewide goals and not establishing HUB utilization goals that are specific to its operations, the Department may have set goals that did not align with its operational needs. This may have contributed to it not attaining certain goals.

Recommendation

The Department should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

DARS agrees with the audit recommendation. After passage of HB 3560, DARS reviewed the Texas Government Code, Chapter 2161, HUB rules, and guidance provided by the Comptroller of Public Accounts (CPA). DARS determined that it was not feasible to set individual agency goals without the foundation of a disparity study. Therefore, DARS continued to use the statewide HUB goals established in the 1994 Disparity Study pending the release of findings from the 2009 Disparity Study and further guidance from CPA regarding the HUB rules as adopted under Texas Government Code §2161.002.

The 2009 Disparity Study was released in March of 2010. In response to its release, on September 20, 2010 CPA provided an edited version of TAC HUB rules for agency HUB Coordinator review and feedback. A consolidated response from agency HUB Coordinators was provided back to CPA on September 30, 2010.

DARS will continue to monitor the proposed rule revisions and work collectively with the other HHS agencies and CPA to develop agency specific annual HUB utilization goals once the policy changes are implemented.

Responsible Party: The DARS HUB Coordinator

Estimated Completion Date: September 1, 2011

Chapter 7-B

State Use Program Requirements

Although the Department purchased goods and services through the State Use Program during fiscal year 2009, it did not comply, overall, with the State Use Program requirements tested. While the Department fully complied with the requirement that it designate an employee to ensure program compliance, it did not comply with three other requirements tested. Specifically:

- The Department's staff did not consistently document that they checked the availability of TIBH Industries vendor products prior to making procurement decisions. Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available. The Department primarily uses the Health and Human Services Commission's Enterprise Contract and Procurement Services (ECPS) division to procure products and services. The ECPS has documented policies and procedures, as well as a checklist in place to ensure that the availability of products and services from TIBH Industries vendors are considered before a procurement decision is made. However, 22 (96 percent) of 23 non-TIBH Industries vendor purchase transactions that auditors reviewed totaling approximately \$5,060 did not have documentation showing that ECPS purchasers had checked the availability of TIBH Industries vendor products or services.

In addition, the Department also purchased client service-related products and services that were not purchased through the ECPS that were subject to State Use Program requirements. The Department lacked documented policies and procedures that staff should follow to check the availability of TIBH Industries products and services. While the Department developed a procurement file checklist intended to ensure that purchasers document that they checked the availability of TIBH Industries products, the supporting documentation for 5 (71 percent) of 7 client service-related purchases from non-TIBH Industries vendors reviewed, totaling approximately \$2,725, did not include the procurement file checklist.

- The Department did not identify and report all exceptions. The ECPS' State Use coordinator submitted exception reports (see text box for the definition of an exception) based on purchases made through ECPS. However, the Department purchased client service-related products and services that were subject to State Use Program requirements that it did not purchase through ECPS, and the Department did not submit exception reports for those client service-related purchases. Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.

<p style="text-align: center;">Definition of an Exception</p> <p>An <i>exception</i> is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:</p> <ul style="list-style-type: none"> Quantity. Quality. Delivery. Life cycle costs. Testing and inspection. <p>Source: Title 40, Texas Administrative Code, Section 189.2.</p>
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- The Department lacked a process to ensure that identified exceptions were classified correctly. The Department did not have a process to ensure that identified exceptions were classified correctly when reported as required by Title 40, Texas Administrative Code, Section 189.2.

If the Department does not comply with State Use Program requirements, it faces increased risk that decision makers will not have accurate and complete information necessary to successfully manage and evaluate the Department's State Use Program.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, the Department should:

- Ensure that staff complete and maintain the required forms that show staff checked the availability of TIBH Industries vendor products prior to making purchases of client service-related products and services subject to State Use Program requirements.
- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the Department could consider a process based on a monthly review of a sample of purchases.
- Ensure that its exception reporting process includes a methodology for properly classifying exceptions according to State Use Program requirements.

To fully comply with Texas Human Resources Code, Section 122.008, the Health and Human Services Commission should ensure that ECPS purchasers complete and maintain the required forms that show staff checked the availability of TIBH Industries vendor products prior to making purchases of client service-related products and services subject to State Use Program requirements.

Management's Response from the Department

- *Ensure that its staff complete and maintain the required forms that show staff checked the availability of TIBH Industries vendor products prior to making purchases of client service-related products and services subject to State Use Program requirements.*

DARS Response:

DARS agrees with the recommendation. We will ensure procurement staff consistently use the purchase file checklist to document availability of TIBH Industries vendor products prior to making purchases. Training on use of the procurement file checklist will be provided to all Consumer Procurement Office staff.

Responsible Party: The Director of Consumer Procurement and Client Services Contracting

Estimated Completion Date: March 31, 2011

- *Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the Department could consider a process based on a monthly review of a sample of purchases.*

DARS Response:

DARS agrees with the recommendation and will ensure that we develop a procedure for Consumer Procurement staff to follow in order to identify, classify and report exceptions. Additionally, DARS will coordinate all exceptions with the HHSC State Use coordinator.

Responsible Party: The Director of Consumer Procurement and Client Services Contracting

Estimated Completion Date: March 31, 2011

- *Ensure that is exception reporting process includes a methodology for properly classifying exceptions according to State Use Program requirements.*

DARS defers to HHSC ECPS for management's response to this recommendation.

Management's Response from the Health and Human Services Commission

SAO Recommendation:

The Department (DARS) should:

- *Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exceptions on a monthly basis, the Department could consider a process based on a monthly review of a sample of purchases.*
- *Ensure that its exception reporting process includes a methodology for properly classifying exceptions according to State Use Program requirements.*

Management Response:

ECPS will provide assistance to DARS Consumer Procurement and Client Services Contracting, which will implement a process to identify and

communicate TIBH exceptions, including proper classification of those exceptions, to the ECPS State Use Coordinator. The ECPS State Use Coordinator will ensure exception information is appropriately submitted in monthly reports to the Comptroller of Public Accounts.

Estimated Completion Date:

September 2011

Title of Responsible Person:

Director, Enterprise Contract and Procurement Services

SAO Recommendation:

To fully comply with Texas Human Resources Code, Section 122.008, the Health and Human Services Commission should ensure that ECPS purchasers complete and maintain the required forms that show staff checked the availability of TIBH Industries vendor products prior to making purchases of client service-related products and services subject to State Use Program requirements.

Management Response:

ECPS has a process in place that includes a checklist on which purchasers are to indicate that they checked the availability of TIBH Industries vendor products prior to making purchases of administrative and client service-related products and services subject to State Use Program requirements. Purchasers regularly determine TIBH availability, but do not always document on the checklist that the determination was completed.

For example, of the 22 purchases cited in the report that ECPS processed, 2 purchases were term contract items and 1 was a Council of Competitive Government Contract for service, neither of which were subject to State Use Program requirements, and 19 were products and services that are not provided by TIBH Industries. In each of these instances, the purchaser checked to determine TIBH availability, but did not indicate completion of the determination on the checklist.

To improve documentation, ECPS management plans to (a) communicate to all ECPS purchasers the importance of appropriately documenting actions completed to determine the availability of TIBH goods and services and (b) ensure staff are aware of how to document the completion of this process on the checklist.

Estimated Completion Date:

July 2011

Title of Responsible Person:

Director, Enterprise Contract and Procurement Services

Chapter 7-C

The Department Did Not Have Processes Necessary to Verify the Order and Receipt of Office Supplies Purchased on its Payment Card Account

The Department lacks necessary controls to ensure that payment card purchases are (1) ordered by appropriate staff and (2) received by someone other than the person who placed the order. Specifically:

- The Department lacked documentation necessary to ensure that appropriate staff ordered and received the purchases of office supplies made through an ECPS payment card account administered by a HUB vendor (see text box). The Department relied on information that the HUB vendor provided to determine what office supplies the Department's staff ordered and received. The Department did not have independent documentation it could use to verify that its staff ordered and received the office supplies purchased on the ECPS payment card account.
- The Department did not adequately segregate the duties for ordering and receiving office supplies on its payment card account. The Department requires the employee who placed an order to receive and verify the receipt of that order. A more effective control would be to require someone other than the employee who placed the order to verify the receipt of the order.

Payment Card Account Purchases

ECPS negotiated an agreement to receive a rebate on office supply purchases through a payment account system managed by a HUB vendor. All health and human services agencies are required to purchase office supplies through that agreement.

The Department's reliance on its HUB vendor to notify it of the items its employees have ordered and the inadequate segregation of duties over the receipt of orders increase the risk that the Department may inappropriately pay for office supplies that it did not order or receive.

In a post-payment audit at the Department of Family and Protective Services³, the Comptroller identified similar concerns about the lack of documentation for verifying orders and the receipt of office supplies purchased through the ECPS payment card account.

³ See *Post Payment Audit of the Texas Department of Family and Protective Services*, Comptroller of Public Accounts' Audit Report No. 530-09-01, May 12, 2010.

Recommendations

The Department should

- Develop and implement a process that allows it to independently document and verify the order and receipt of office supplies purchased through the ECPS payment account.
- Ensure that someone other than the person who placed an order verifies the receipt of the order.

Management's Response from the Department

- *Develop and implement a process that allows it to independently document and verify the order and receipt of office supplies purchased through the ECPS payment account.*

DARS defers to HHSC ECPS for management's response to this recommendation.

- *Ensure that someone other than the person who place an order verifies the receipt of the order.*

DARS defers to HHSC ECPS for management's response to this recommendation.

Management's Response from the Health and Human Services Commission

SAO Recommendation:

The Department (DARS) should:

- *Develop and implement a process that allows it to independently document and verify the order and receipt of office supplies purchased through the ECPS payment account.*
- *Ensure that someone other than the person who placed an order verifies the receipt of the order.*

Management Response:

In accordance with ECPS policy, before an order initiated by an authorized DARS employee can be processed through the Health and Human Services Office Supply Ordering System (OSOS), the order must first be approved by an authorized DARS approver. The approver ensures that the requested supplies are needed and that funding is available before approving the

transaction in OSOS. An individual who is authorized to approve orders in OSOS is prevented by OSOS from initiating an order.

In addition, an ECPS process is in place for all HHS agencies, including DARS, to validate that items are received before payments are processed. Once an order is approved by DARS management, the order is released to PDME for fulfillment and delivery. The end user receives the order, noting the number of boxes received on the shipping receipt, and confirms that the entire order is correct and fully delivered by checking the items off the shipping receipt attached to the delivered box or boxes. In some instances, a designated receiver accepts the order and notifies the requester of the delivery, then sends a copy of the shipping receipt to the requester. PDME retains an electronic copy of the receiving employee's signature for fiscal verification of delivery. After the verification process is complete and documented, PDME will bill DARS through the credit card vendor for the items delivered and received.

The Comptroller of Public Accounts recently awarded an office supply contract to two vendors. ECPS is currently working with the Comptroller of Public Accounts and the vendors to transition to a new online office supply ordering system in an effort to integrate automated controls to further improve ordering and receiving processes.

Estimated Completion Date:

June 2011

Title of Responsible Person:

Director, Enterprise Contract and Procurement Services

Planning, Subcontracting, and Reporting Requirements

The Health Science Center fully complied with the following HUB program planning, subcontracting, and reporting requirements:

Planning

- Establish annual procurement utilization goals.
- Estimate expected contract awards.
- Comply with legislative appropriations request requirements.
- Adopt HUB rules.
- Comply with strategic plan requirements.

Subcontracting

- Ensure that solicitation documents include a statement of subcontracting opportunities.
- Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.
- Ensure that potential contractors or subcontractors are certified HUB vendors.
- Ensure that contractors show evidence of a good-faith effort in the development of HUB subcontracting plans.
- Review and evaluate contractors' HUB subcontracting plans prior to making contract awards.

Reporting

- Report accurate HUB expenditure and other supplemental information.
- Comply with monthly internal HUB usage reports requirements.
- Comply with progress assessment reports requirements.

The University of Texas Health Science Center at Houston (Health Science Center) fully complied, overall, with the Historically Underutilized Business (HUB) program requirements tested for fiscal year 2009. Specifically, the Health Science Center fully or substantially complied with 24 (96 percent) of the 25 applicable HUB program requirements tested (see Table 2 in the Overall Conclusion section of this report for more information).

The Health Science Center reported that it purchased approximately \$23.3 million in goods and services from HUBs (see Appendix 2 for more information). Of the five areas tested:

- Fully complied, overall, with the requirements tested in four of five HUB program areas: planning, outreach, subcontracting, and reporting (see text box).
- Substantially complied with the requirements tested in the area of goal attainment.
- Implemented recommendations to correct prior audit findings in the areas of subcontracting and reporting.

The Health Science Center did not purchase goods and services through the Purchasing from People with Disabilities Program (State Use Program) during fiscal year 2009. In addition, the Health Science Center did not comply with 3 (75 percent) of the 4 State Use Program requirements tested.

Outreach Requirements

For fiscal year 2009, the Health Science Center fully complied, overall, with the HUB outreach requirements tested. Specifically, the Health Science Center fully complied with 6 (86 percent) of 7 outreach requirements tested (see text box). In addition, the Health Science Center substantially complied with the requirement to participate in a HUB forum. While the Health Science Center developed a HUB forum program, it did not ensure that the appropriate employees attended relevant HUB presentations sponsored by the Office of the Comptroller of Public Accounts. Texas Government Code, Section 2161.066, and Title 34, Texas Administrative Code, Section 20.27 (b), require state entities to send senior managers and procurement staff to relevant HUB-related presentations sponsored by the Comptroller.

Outreach Requirements

The Health Science Center fully complied with the following HUB outreach requirements:

- Comply with mentor-protégé program requirements.
- Ensure that the HUB coordinator position is equal to that of the procurement director position.
- Ensure that the HUB coordinator communicates HUB program matters directly to the University president.
- Ensure that the HUB coordinator's responsibilities include facilitating compliance, reporting, contract administration, marketing, and outreach.
- Ensure that the HUB coordinator is involved in the development of procurement specifications, HUB subcontracting plans, and the evaluation of contracts.
- Hold in-house marketing presentations sponsored by HUB vendors.

Recommendation

The Health Science Center should ensure that the appropriate employees at least annually attend relevant HUB-related presentations, including those sponsored by the Comptroller, as required by Title 34, Texas Administrative Code, Section 20.27, and Texas Government Code, Section 2161.066.

Management's Response

While the Health Science Center did comply with six out of seven outreach requirements, we did not send any employees to a relevant HUB-related presentation sponsored by the Comptroller, due to the events being held outside of Houston. Barring any travel restrictions, we will ensure that the appropriate employees annually attend a relevant HUB-related presentation sponsored by the Comptroller.

Implementation Date: August 2011

Responsible Person: Manager, Historically Underutilized Business and Small Business Programs.

Goal Attainment

For fiscal year 2009, the Health Science Center substantially attained its annual HUB utilization goals overall (see text box for more information about goal attainment). The Health Science Center established institution-specific HUB utilization goals based on a methodology required by Texas Government Code, Section 2161.123. For its five annual HUB utilization goals, the Health Science Center:

Goal Attainment

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to consider as part of the audit of a state entity's HUB program compliance the success or failure of a state entity to contract with HUB vendors in accordance with a state entity's annual HUB utilization goals.

- Fully attained its goals for (1) special trade construction contracts, (2) professional services contracts, and (3) commodities contracts.
- Substantially attained its goal for all other services contracts.
- Minimally attained its goal for building construction contracts.

Table 12 shows the Health Science Center's attainment of its fiscal year 2009 HUB utilization goals.

Table 12

Health Science Center's Attainment of Its HUB Utilization Goals Fiscal Year 2009			
Procurement Category	Fiscal Year 2009 HUB Utilization Goal	Fiscal Year 2009 Reported Actual HUB Utilization	Percent of Goal Attained
Heavy Construction Contracts ^a	0.00%	0.00%	0.00%
Building Construction Contracts	25.40%	8.20%	32.28%
Special Trade Construction Contracts	36.60%	46.10%	125.96%
Professional Services Contracts	29.90%	60.40%	202.01%
All Other Services Contracts	25.20%	16.40%	65.08%
Commodities Contracts	10.10%	9.90%	98.02%
^a The Health Science Center did not establish an annual HUB utilization goal for heavy construction contracts.			

By establishing HUB utilization goals specific to its operations, the Health Science Center set more reasonable, attainable goals that it would have if it had adopted only the statewide goals established by the Comptroller.

Recommendation

The Health Science Center should identify and consider the factors that affected its ability to meet certain goals when it establishes future HUB utilization goals.

Management's Response

Each year, the HUB Manager and Procurement Director meet to set the upcoming year's HUB utilization goals. This review considers history of utilization, new contracts put in place, and the availability of HUB vendors. Specifically in the area of building construction, the Health Science Center continues to solicit bids from certified HUB vendors and encourage/promote HUB subcontracting opportunities with prime contractors.

Implementation Date: August 2011

Responsible Person: Manager, Historically Underutilized Business and Small Business Programs.

Chapter 8-C

State Use Program

For fiscal year 2009, the Health Science Center did not purchase goods or services through the State Use Program. In addition, the Health Science Center did not comply, overall, with the State Use Program requirements tested. Although the Health Science Center fully complied with the requirement that it designate an employee to ensure program compliance, it did not comply with three other requirements tested. Specifically:

- The Health Science Center lacked policies and procedures to ensure that staff check the availability of TIBH Industries vendor products or services before making a procurement decision. The Health Science Center did not purchase products or services from TIBH Industries vendors during fiscal year 2009. The Health Science Center reported that it had contracts in place with vendors for goods and services that may be available from TIBH Industries vendors; however, the Health Science Center purchased goods and services only through its existing contracts, and it did not check whether any goods or services were available through TIBH Industries vendors. In addition, the Health Science Center lacked policies and procedures for ensuring that its staff check the availability of products and services offered by TIBH Industries vendors prior to making a purchasing decision.

Texas Human Resources Code, Section 122.008, requires state entities to purchase TIBH Industries vendor products or services when available.

- The Health Science Center lacked policies and procedures to ensure that the State Use Program coordinator reports identified exceptions. The Health Science Center did not report any exceptions during fiscal year 2009, and it did not have a process to identify and report exceptions (see text box for the definition of an exception). Texas Human Resources Code, Section 122.0095, requires each state entity to provide a monthly report of either (1) all exceptions or (2) exceptions identified during a review of a sample of purchases.
- The Health Science Center lacked policies and procedures to ensure that identified exceptions were classified correctly. The Health Science Center did not have a process to ensure that identified exceptions were classified correctly when reported as required by Title 40, Texas Administrative Code, Section 189.2.

Definition of an Exception

An *exception* is defined as any product or service approved for the State Use Program that was purchased from a non-TIBH Industries vendor. This may be because the TIBH Industries vendor's product or service does not meet the applicable requirements as to:

- Quantity.
- Quality.
- Delivery.
- Life cycle costs.
- Testing and inspection.

Source: Title 40, Texas Administrative Code, Section 189.2.

The lack of documented and defined processes to identify and report exceptions increases the risk that the Health Science Center will not report accurate and complete information about its exceptions. Without a reliable process to identify and classify exceptions, decision makers will not have accurate and complete information necessary to successfully manage and evaluate the Health Science Center's State Use Program.

In addition, while the Health Science Center designated an employee as the State Use Program coordinator, it did not develop a job description that defined that employee's job duties and responsibilities. Without an official job description, the State Use Program coordinator may not have the responsibilities necessary to ensure compliance with State Use Program requirements.

Recommendations

To fully comply with the State Use Program requirements in Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Section 189.2, the Health Science Center should:

- Develop, document, and implement a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions.

- Develop, document, and implement a process to identify and report exceptions. In lieu of identifying all exception on a monthly basis, the Health Science Center could consider a process based on a monthly review of a sample of purchases.
- Include a methodology for properly classifying exceptions according to State Use Program requirements in its exception reporting process.
- Develop a job description for the State Use Program coordinator that defines the position's job duties and responsibilities necessary to ensure compliance with State Use Program requirements.

Management's Response

*The Health Science Center will develop, document, and implement a process for checking the availability of products or services offered by TIBH Industries vendors prior to making procurement decisions. As of September 1, 2010, the Health Science Center has implemented a process to properly classify exceptions according to State Use Program requirements. This process consists of identifying the classification of the exception from the data extracted from our PeopleSoft Financial Management System, which is utilized by our State Use Coordinator in reporting exceptions. The job description for the individual identified as the State Use Coordinator has been updated to specifically reference the job duties and responsibilities as outlined by the State Comptroller,
<http://www.window.state.tx.us/procurement/pub/state-use-report/>*

Implementation Date: May 2011

Responsible Person: Director, Purchasing

Opportunities Exist for the Comptroller to Strengthen Certain Areas of the HUB Program and State Use Program

The Office of the Comptroller of Public Accounts (Comptroller) has opportunities to (1) clarify HUB program rules concerning the development of HUB utilization goals by state entities and (2) improve its current State Treasury data compilation process to ensure that State Treasury data reported is properly compiled.

In addition, the Comptroller's TCPPD Web portal, which is the Web-based reporting application that state entities use to report monthly State Use Program information, lacks necessary data entry and output controls. As a result, the Comptroller cannot ensure that (1) data is properly submitted, (2) the amounts calculated and reported through the TCPPD Web portal application are accurate and complete, and (3) users' access to the TCPPD Web portal is reasonable and necessary.

Chapter 9-A

The HUB Program Rules Do Not Clearly Require State Entities to Develop a Process for Establishing HUB Utilization Goals

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Section 2161.123, to require the State Auditor's Office to determine whether state entities established HUB utilization goals based on (1) scheduled fiscal year expenditures and (2) the availability of HUB vendors (see Appendix 6 for statutory language). However, current HUB rules do not clearly direct state entities to develop a process for establishing HUB utilization goals. While Title 34, Texas Administrative Code, Section 20.15, directs state entities to Texas Government Code, Section 2161.123, with regard to preparing a written plan for utilizing HUBs, the Texas Administrative Code does not specify that state entities must develop a process for creating their own HUB goals. The Comptroller provided additional guidance on the new statutory requirements in letters it sent to state entities during fiscal year 2008. The letters informed state entities about the amendments to Texas Government Code, Section 2161.123, related to the establishment of HUB utilization goals; however, these letters also advised state entities to closely match their contracting goals to the statewide goals defined by Title 34, Texas Administrative Code, Section 20.13. The letters also advised that the entities should document their processes and rationale for establishing goals that differ from the statewide goals.

As a result, some state entities may have interpreted the letters as recommending that they adopt the statewide HUB utilization goals and not develop a methodology that includes the elements required by statute for establishing their goals. Six (75 percent) of the 8 state entities did not perform the required procedures and only adopted the statewide goals. Complying

with the Texas Government Code increases state entities' ability to set more realistic goals and may help them better determine whether they are providing HUBs with reasonable contracting opportunities.

Recommendation

The Comptroller should revise the HUB rules to include a requirement that state entities develop a process for establishing HUB utilization goals that includes the requirements of Texas Government Code, Section 2161.123.

Management's Response

The Comptroller's office is currently adopting rules that will clarify the need for agencies to develop a process for setting agency HUB goals.

Responsible Person: Deputy General Counsel

Implementation Date: May 1, 2011

Chapter 9-B

The Comptroller Lacks a Second Level Review Process to Ensure That State Treasury Data Reported in the Semi-annual and Annual HUB Reports Is Properly Compiled

The Comptroller's process for compiling State Treasury data for semi-annual and annual HUB reports lacks a secondary review process to help ensure that the reports include State Treasury expenditures related to the HUB program

(see text box for more information about the Comptroller's management of the HUB and State Use programs). An analyst in the Comptroller's Fiscal Services Division is solely responsible extracting and reconciling HUB program State Treasury data, which is extracted from the Comptroller's automated accounting system. The analyst performs a series of adjustments to the State Treasury data to ensure that the data includes only expenditures that are related to the HUB Program. The Comptroller's procedures do not include a second level of review and verification of the State Treasury data compiled by the analyst to ensure that the analyst performed all adjustments necessary to compile State Treasury data prior to the data being compiled into the semi-annual and annual HUB reports.

Comptroller's Role in Managing the HUB Program and State Use Program

House Bill 3560 (80th Legislature, Regular Session) was enacted on September 1, 2007, and it transferred the statewide procurement functions from the former Building and Procurement Commission to the Comptroller. The transfer included powers and duties for managing the statewide HUB program and the State Use Program.

Auditors did not identify any inaccuracies or incompleteness in the State Treasury data provided; however, the lack of a second level review increases the risk that the Comptroller may not perform all necessary adjustments, which may result in the Comptroller reporting inaccurate and incomplete state treasury information in the semi-annual and annual HUB reports.

Recommendation

The Comptroller should develop, document, and implement quality assurance procedures, such as a documented secondary review and verification of data, to provide greater assurances that all adjustments necessary to compile State Treasury data for semi-annual and annual HUB reports have been performed.

Management's Response

Management acknowledges the importance of producing accurate and complete State Treasury information for the semi-annual and annual HUB reports. However, the finding appears to assign responsibility to the Comptroller's office for verifying the accuracy and completeness of the data included in the reports. State agencies are fully and solely responsible for the data entered into the statewide accounting systems and subsequently incorporated into the HUB reports.

TPASS subject matter experts regarding the Statewide HUB program receive data semi-annually and distribute it to each participating agency for verification. TPASS has recently distributed information to the participating agencies reiterating their responsibility to verify the data for accuracy and completeness prior to issuing the Statewide HUB Report.

Verification routines are an integral part of the Comptroller's report generation process. Analysts work with requestors to ensure that the report criteria are accurate. However, only the originating agencies can verify whether the data accurately reflect the expenditures that occurred.

The Comptroller's office will develop and implement additional quality assurance procedures to further ensure accurate compilation of State Treasury data included in the HUB report.

Responsible Person: *Division Manager, Statewide Fiscal Services*

Implementation Date: *Feb. 28, 2011*

The Comptroller’s Web-based Reporting Application for the State Use Program Lacks Controls Necessary to Ensure That Reported Information Is Accurate and Complete

The TCPPD Web Portal

The TCPPD Web portal is one of six Web-based applications maintained by the Comptroller. The TCPPD Web portal is used by entities to report to the Comptroller and the Texas Council on Purchasing from People with Disabilities (1) purchases made through the State Use Program and (2) exceptions that occur when goods and services available through the State Use Program were purchased from other vendors.

The Comptroller lacks adequate controls over its TCPPD Web portal, its Web-based reporting application, to ensure that (1) the information reported is accurate and complete and (2) users have reasonable and necessary access.

The TCPPD Web portal application lacks adequate controls to ensure that State Use Program data is reported accurately.

Auditors identified discrepancies between two reports generated by the TCPPD Web portal application, the *Exception Report* and the *Agency Reporting History Report*. Both reports provide State Use Program expenditures for specified reporting periods; therefore, the information in each report should be similar. However, when auditors compared the State Use Program expenditure amounts in those two reports for fiscal year 2009 for three state entities that reported exceptions during the year, the amounts in the two reports did not reconcile.

Table 13 shows the differences that auditors identified.

Table 13

Discrepancies Identified in Two Reports Generated by the TCPPD Web Portal Application For Fiscal Year 2009 State Use Program Expenditures			
Agency	Exception Report	Agency Reporting History Report	Difference
Office of the Attorney General	\$1,182,814	\$1,910,241	\$727,427
Stephen F. Austin State University	\$15,065	\$46,421	\$31,356
Parks and Wildlife Department	\$899,359	\$1,114,505	\$215,147

Source: TCPPD Web Portal.

If the TCPPD Web portal application does not generate accurate reports, the Comptroller may not provide decision makers with reliable expenditure information about the State Use Program.

The TCPPD Web portal application does not prevent users from entering data for prior reporting periods.

The TCPPD Web portal application allows state entities to enter exception information for months other than the current reporting month. Although the Comptroller reported to auditors that the TCPPD Web portal application was

Super User

As defined by the Comptroller, a super user of the TCPPD Web portal application is an individual at a state entity responsible for the following tasks:

- Ensuring that users do not share or distribute assigned passwords.
- Ensuring that users do not misuse the TCPPD Web portal and/or any applications available through the TCPPD Web portal.
- Notifying the Comptroller immediately whenever a misuse of TCPPD Web portal privileges is identified.
- Maintaining TCPPD Web portal IDs (adding, editing, and deleting) for the state entity's users.
- Adding new portal IDs when the state entity hires new employees or when a user's job duties change.
- Editing portal IDs when an employee requires revised access to the TCCPD Web portal.
- Deleting portal IDs when a user's job duties change or when a user is no longer an employee.
- Managing access to the various Comptroller applications that can be accessed through the TCPPD Web portal.

designed not to allow state entities to enter exception information from prior reporting periods without Comptroller approval, auditors determined that state entities were able to enter State Use Program information for prior reporting periods without Comptroller approval.

Because it relies on this data to generate reports about exceptions on purchases not made through the State Use Program for the Texas Council on Purchasing from People with Disabilities, it is important that the Comptroller be aware of any changes made to the data for prior reporting periods so that (1) it can explain any discrepancies and (2) it will use the updated data for future reports and not rely on the previously incomplete data.

The Comptroller does not have sufficient controls over user access to its TCPPD Web portal application.

The Comptroller allows each state entity to assign user access to the TCCPD Web portal application by creating a "super user" for each state entity who is responsible for assigning user access to the state entity's employees (see text box for more information about the responsibilities of a super user).

Although each super user is responsible for determining the appropriateness of the related state entity's user access, the Comptroller reported that it established an annual process to determine whether current users are active employees. This process relies on sending e-mails and using error messages received from deactivated e-mail accounts to identify users who are no longer employees. However, the process relies on e-mailed information from a database that does not identify all the users who have access to the TCPPD Web portal.

Auditors also identified other weaknesses in user access to the TCPPD Web portal application. Specifically:

- Two of eight state entities reviewed developed generic user names, which reduces the entity's ability to maintain an audit trail showing which staff added, revised, or deleted information.
- The TCPPD Web portal application inappropriately captured and maintained users' passwords and did not enforce its password history rules.

The lack of controls necessary to ensure that users have reasonable and necessary access to the TCPPD Web portal weakens the Comptroller's ability to ensure that the data available through the portal is secure.

The TCPPD Web portal does not notify state entities of pending reports.

Pending Reports

When submitting a monthly exception report, a user must ensure that the "approved" box on the submission screen is checked prior to submitting the report. If a user fails to check the approved box, the exception report submission is assigned a pending status. When data is in the pending status, it is not submitted to the Comptroller. As a result, the Comptroller will not include the data from the pending report in its monthly compilation of statewide exceptions.

The TCPPD Web portal does not provide users any notification of exception reports in pending status (see text box for the definition of a pending report). The Comptroller stated that it had developed a process to notify users of pending reports; however, the process is a manual process that is dependent on the Comptroller sending e-mail notifications to users about pending reports. The Comptroller was unable to provide documentation to show that it used the process to notify state entities of pending reports during fiscal year 2009. While it is reasonable to expect entities to ensure that they properly submit exception reports, it may help increase compliance if the TCPPD Web portal also notifies or provides an error message when exception data has not been properly submitted. If state entities do not report exception data as required, there is an increased risk that the Comptroller will provide incomplete exception information to decision makers.

Recommendations

The Comptroller should:

- Generate a monthly error report from the TCPPD Web portal application that would allow the Comptroller to:
 - ♦ Identify any differences in the State Use Program expenditure amounts in the different reports generated by the TCPPD Web portal application.
 - ♦ Identify information that state entities enter for prior reporting periods.
- Ensure that its process to identify individuals whose employment has been terminated but still have access to the TCPPD Web portal application includes obtaining, maintaining, and using current e-mail information on all users.
- Establish a process to ensure that users with access to the TCPPD Web portal have acceptable user names.
- Ensure that password history rules in the TCPPD Web portal are working properly.
- Ensure that user passwords are not accessible or viewable by Comptroller management and staff.

- Ensure that the TCPPD Web portal notifies users when exception reports have not been properly submitted.

Management's Response

- ***Identify any differences in the State Use Program expenditure amounts in the different reports generated by the TCPPD Web portal application.***

The Comptroller's office agrees with the finding and was able to replicate the reported discrepancies. Preliminary analysis indicates suspect logic included in the Exception Report. Pursuant to the recommendation, a monthly error report comparing State Use Program expenditure amounts will be created.

Responsible Person: Software Development Division Manager

Implementation Date: Aug. 31, 2011

- ***Identify information that state entities enter for prior reporting periods.***

The Comptroller's office agrees with the finding and was able to replicate the reported behavior. To address this situation, system edits will be added to the TCPPD Web portal to prevent state entity users (exception report coordinators) from entering prior reporting period data. However, TPASS statewide use coordinator(s) will retain the ability to enter data for prior periods on an as needed basis.

Responsible Person: Software Development Division Manager

Implementation Date: Aug. 31, 2011

- ***Ensure that its process to identify terminated employees who still have access to the TCPPD Web portal application includes obtaining, maintaining, and using current e-mail information on all users.***

The Comptroller's office will establish a standard process in accordance with the recommendation. The new process will be implemented and available for review.

Responsible Person: Software Development Division Manager

Implementation Date: May 30, 2011

- ***Establish a process to ensure that users with access to the TCPPD Web portal have acceptable user names.***

The Comptroller's office will notify all portal security coordinators on a quarterly basis to require all users to adhere to Comptroller policy regarding a uniform user name format. Furthermore, IT will identify all user names that

do not meet this criterion as TPASS staff cannot manually search the portal for these types of discrepancies.

Responsible Person: *Software Development Division Manager*

Implementation Date: *June 30, 2011*

- **Ensure that password history rules in the TCPPD Web portal are working properly.**

The Comptroller's office will review existing TCPPD Web portal password logic. Logic will be updated as needed to ensure the system enforces password rules in accordance with Comptroller's office policy.

Responsible Person: *Software Development Division Manager*

Implementation Date: *June 30, 2011*

- **Ensure that user passwords are not accessible or viewable by Comptroller management and staff.**

An Application Change Request was implemented in production to address the problem where user passwords for the portal are accessible to TPASS System Administrators. The Comptroller's office's Information Security Officer verified the changes were successfully applied.

Responsible Person: *Software Development Division Manager*

Implementation Date: *Feb. 02, 2011*

- **Ensure that the TCPPD Web portal notifies users when exception reports have not been properly submitted.**

The Comptroller's office agrees with the finding. The TCPPD Web Portal will be modified to notify the user of actions that would result in a pending report. However, as the creation of a pending report can be a valid and intentional action, the system will allow the TCPPD user to continue with the creation of the pending report(s) if the user so chooses. Furthermore, in order to fully address the reported finding, the Comptroller's office will document and adhere to a process by which entities will be periodically notified of pending reports on a monthly basis.

Responsible Person: *Software Development Division Manager*

Implementation Date: *Aug. 31, 2011*

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine whether selected state agencies or higher education institutions:

- Comply with statutory requirements and rules established by the Office of the Comptroller of Public Accounts (Comptroller) to implement Historically Underutilized Business (HUB) requirements.
- Make a good-faith effort to comply with statutory requirements and HUB rules.
- Report complete and accurate data to the Comptroller.

In addition, this audit determined whether selected state agencies or higher education institutions comply with requirements related to the Purchasing from People with Disabilities Program (State Use Program).

Scope

The scope of this audit included a review of five agencies' and three higher education institutions' HUB and State Use program activities for fiscal year 2009. Auditors judgmentally selected the eight state entities according to a risk assessment and audited for compliance with HUB requirements in five areas: planning, outreach, subcontracting, reporting, and goal attainment as defined by Texas Government Code, Chapter 2161, and Title 34, Texas Administrative Code, Chapter 20. Auditors also reviewed selected contracts and procurement files for fiscal years 2006 through 2009. The eight state entities were also audited for compliance with State Use Program requirements as defined by Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Chapter 189.

The eight state entities audited were:

- Department of Assistive and Rehabilitative Services.
- Office of the Attorney General.
- Texas Lottery Commission.
- Parks and Wildlife Department.
- Stephen F. Austin State University.

- Texas Youth Commission.
- University of North Texas.
- The University of Texas Health Science Center at Houston.

In addition, auditors reviewed the reporting process controls managed by the Comptroller that supported the HUB and State Use programs during fiscal year 2009.

Methodology

The audit methodology included collecting information and performing tests to determine each of the eight state entities' compliance with applicable HUB and State Use Program requirements.

Information collected and reviewed for each audited state entity included the following:

- Strategic plans, legislative appropriations requests, and progress assessment reports.
- Organizational charts.
- Contracts between state entities and prime contractors.
- Procurement and contracting policies and procedures.
- Functional job descriptions for the HUB coordinator position.
- Contract procurement files, interoffice memoranda, and accounting records.
- HUB subcontracting plans.
- Prior internal and external audit reports.
- Prior State Auditor's Office reports.

Procedures and tests conducted included the following:

- Review of HUB utilization goals.
- Interviews with HUB coordinators, State Use Program coordinators, and procurement management and staff.
- Review of HUB coordinator responsibilities.
- Review of contract procurement records.
- Review of HUB subcontracting plans.

- Review of accounting records.
- Review of various monthly HUB-related progress reports.
- Test of HUB expenditures.
- Test of State Use Program expenditures.

Criteria used included the following:

- Texas Government Code, Chapter 2161.
- Texas Human Resources Code, Chapter 122.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 40, Texas Administrative Code, Chapter 189.

Project Information

Audit fieldwork was conducted from July 2010 through November 2010. 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:

- Willie J. Hicks, MBA (Project Manager)
- Karen Mullen, CGAP (Assistant Project Manager)
- Joe Fralin, MBA
- Anne Hoel, CIA, CGAP
- Barbette Mays, CICA
- Nik Rapelje
- Sherry Sewell, CGAP
- Tamara Shepherd, CGAP
- J. Scott Killingsworth, CIA, CGAP, CGFM (Quality Control Reviewer)
- Verma Elliott, CPA, CGAP, CIA, MBA (Audit Manager)

HUB Program Statistics for Fiscal Year 2009

Table 14 presents the audited state entities' reported amount and percentage of funds spent on goods and services from HUBs during fiscal year 2009.

Table 14

Funds Spent on Goods and Services from HUBs Fiscal Year 2009			
State Entity	Funds Eligible to Be Spent with HUB Vendors	Funds Spent with HUB Vendors	Percentage Spent with HUB Vendors
Texas Youth Commission	\$40,474,823	\$12,422,395	30.6%
Parks and Wildlife Department	\$85,778,022	\$11,122,586	12.9%
University of North Texas	\$88,915,768	\$19,593,330	22.0%
Office of the Attorney General	\$45,012,472	\$11,069,644	24.2%
Stephen F. Austin State University	\$59,948,054	\$11,612,617	19.3%
Texas Lottery Commission	\$154,042,549	\$35,581,005	23.0%
Department of Assistive and Rehabilitative Services	\$24,512,070	\$5,905,961	24.0%
The University of Texas Health Science Center at Houston	\$136,703,060	\$23,286,218	17.0%
Statewide Actual Attainment	\$13,604,191,629	\$1,974,5860,738	14.5%

Source: Office of the Comptroller of Public Accounts' fiscal year 2009 statewide HUB reports.

Requirements of the HUB Program

Table 15 presents the requirements related to the Historically Underutilized Business (HUB) program and the attributes that auditors tested for compliance.

Table 15

HUB Requirements and Attributes Tested	
State HUB Program Requirement	Attributes Tested
Planning	
Establish annual procurement utilization goals. (Texas Government Code, Section 2161.123(d) (5))	<ul style="list-style-type: none"> ▪ Was there documentation to show that the state entity established goals for contracting with HUBs in each procurement category and that the goals were based on (1) scheduled fiscal year expenditures and (2) the availability of HUBs in each category as determined by rules adopted under Texas Government Code, Section 2161.002?
Estimate expected contract awards. (Texas Government Code, Section 2161.183)	<ul style="list-style-type: none"> ▪ Was there documentation to show that not later than the 60th day of its fiscal year, the state entity: <ul style="list-style-type: none"> ♦ Estimated the total value of contract awards subject to Texas Government Code, Section 2161.181, that the state entity expected to make for that fiscal year? ♦ Estimated the total value of contract awards the state entity expected to make for that fiscal year under Texas Government Code, Chapter 2166?
Comply with legislative appropriations request requirements. (Texas Government Code, Section 2161.127, and Title 34, Texas Administrative Code, Section 20.15(c))	<ul style="list-style-type: none"> ▪ Was there evidence that the state entity's legislative appropriations request: <ul style="list-style-type: none"> ♦ Reported the state entity's 2006 and 2007 HUB utilization goals? ♦ Included a statement about whether the state entity met the HUB utilization goals? ♦ If HUB utilization goals were not met, included a statement about the percentage by which the state entity's actual use of HUBs deviated from the entity's HUB utilization goals? ♦ If HUB utilization goals were not met, included an explanation about why HUB utilization goals were not met ♦ Described the state entity's "good-faith efforts" to identify HUBs for contracts and subcontracts, utilize HUBs, and increase HUB participation?
Adopt HUB rules. (Texas Government Code, Section 2161.003, and Title 34, Texas Administrative Code, Section 20.15 (b))	<ul style="list-style-type: none"> ▪ Did the state entity adopt the Office of the Comptroller of Public Account's (Comptroller) rules related to the HUB program as the entity's own rules and as part of its required strategic plan?
Comply with strategic plan requirements. (Texas Government Code, Section 2161.123)	<ul style="list-style-type: none"> ▪ Did the state entity's strategic plan include a plan for increasing the entity's use of HUBs in purchasing and public works contracting? ▪ Did the strategic plan include: <ul style="list-style-type: none"> ♦ A policy or mission statement relating to increasing the state entity's use of HUBs? ♦ Goals to be met by the state entity in carrying out the policy or mission? ♦ Specific programs to be conducted by the state entity to meet the goals stated in the plan, including a specific program to encourage contractors to use HUBs as partners and subcontractors?

HUB Requirements and Attributes Tested

State HUB Program Requirement	Attributes Tested
Outreach	
<p>Comply with mentor-protégé program requirements.</p> <p>(Texas Government Code, Section 2161.065, and Title 34, Texas Administrative Code, Section 20.28)</p>	<ul style="list-style-type: none"> ▪ Was there official documentation of the state entity's mentor-protégé program? If yes, did it contain: <ul style="list-style-type: none"> ♦ Mentor eligibility and selection criteria? ♦ Protégé eligibility and selection criteria? ♦ A description of the mentor-protégé monitoring process? ♦ A notification to the mentors and protégés that participation in the program is voluntary? ♦ Mentor eligibility and selection criteria as outlined in Title 34, Texas Administrative Code, Section 20.28 (e)? ♦ Protégé eligibility and selection criteria as outlined in Title 34, Texas Administrative Code, Section 20.28 (f)? ▪ If a state entity sponsors a mentor-protégé program, was there a signed agreement and was it reported to the Comptroller within 21 calendar days? ▪ If any mentor-protégé agreements were terminated, were the terminated agreements reported to the Comptroller within 21 calendar days?
<p>Ensure that the level of the HUB coordinator position is equal to the level of the procurement director position.</p> <p>(Texas Government Code, Section 2161.062(e), and Title 34, Texas Administrative Code, Section 20.26 (b))</p>	<ul style="list-style-type: none"> ▪ Did the state entity's HUB coordinator and purchasing director report to the same supervisor?
<p>Ensure that the HUB coordinator communicates with the state entity's executive director.</p> <p>(Title 34, Texas Administrative Code, Section 20.26 (b))</p>	<ul style="list-style-type: none"> ▪ Did the HUB coordinator meet with the state entity's executive director/president at least once a year?
<p>Ensure that the HUB coordinator is involved in the development of procurement specifications and HUB subcontracting plans and in the evaluation of contracts.</p> <p>(Title 34, Texas Administrative Code, Section 20.26 (b))</p>	<ul style="list-style-type: none"> ▪ Did the HUB coordinator's job description or responsibilities include the following: <ul style="list-style-type: none"> ♦ Assisting the state entity in developing procurement specifications? ♦ Assisting the state entity in reviewing HUB subcontracting plans? ♦ Assisting in the evaluation of contracts for compliance with HUB program requirements?
<p>Ensure that the HUB coordinator's responsibilities include: facilitating compliance with the agency's good-faith effort criteria, HUB reporting, contract administration, marketing and outreach efforts, coordinating training for the recruitment and retention of HUBs, and matching HUBs to key staff.</p> <p>(Texas Government Code, Section 2161.062(e), and Title 34, Texas Administrative Code, Section 20.26 (b))</p>	<ul style="list-style-type: none"> ▪ Did the HUB coordinator's job description or responsibilities include the following: <ul style="list-style-type: none"> ♦ Facilitating compliance with the state entity's good faith effort criteria to assist HUBs? ♦ Completing and submitting HUB reports? ♦ Contract administration? ♦ Marketing and outreach efforts for HUB participation? ♦ Coordinating training for the recruitment and retention of HUBs? ♦ Matching HUBs with key staff?
<p>Participate in HUB forums, including ensuring that staff attends relevant HUB presentations by the Comptroller, sending senior managers and procurement personnel to relevant presentations, and informing contractors/vendors about relevant presentations for HUBs.</p> <p>(Texas Government Code, Section 2161.066, and Title 34, Texas Administrative Code, Section 20.27)</p>	<ul style="list-style-type: none"> ▪ Was there documentation to show that: <ul style="list-style-type: none"> ♦ The state entity attended relevant HUB presentations by the Comptroller in fiscal year 2009? ♦ The HUB coordinator and senior management attended relevant HUB presentations during fiscal year 2009? ♦ The state entity informed its contractors/vendors about presentations relevant to subcontracting opportunities for HUBs and small businesses?

HUB Requirements and Attributes Tested

State HUB Program Requirement	Attributes Tested
<p>Ensure that state entities meet requirements related to in-house marketing presentations including (1) designing its own HUB forums, (2) sponsoring presentations by HUBs, and (3) inviting HUBs to make marketing presentations about their businesses.</p> <p>(Texas Government Code, Section 2161.066, and Title 34, Texas Administrative Code, Section 20.27)</p>	<p>Was there documentation to show that:</p> <ul style="list-style-type: none"> ▪ The state entity designed its own HUB forum program? ▪ The state entity sponsored presentations by HUBs or elected to implement forums cooperatively with other agencies? ▪ The state entity identified and invited HUBs to make marketing presentations?
Subcontracting	
<p>Include a statement of subcontracting opportunities in all solicitation documents with an expected value of \$100,000 or more.</p> <p>(Title 34, Texas Administrative Code, Section 20.14a(2))</p>	<ul style="list-style-type: none"> ▪ If the state entity determined that subcontracting opportunities were probable, did the entity's invitation for bids, requests for proposals, or other purchase solicitation documents state the probability of subcontracting opportunities and require respondents to submit a HUB subcontracting plan?
<p>Use resources such as the Centralized Master Bidders List and the Internet to determine whether subcontracting opportunities are probable.</p> <p>(Title 34, Texas Administrative Code, Section 20.14a(1)(A)(ii))</p>	<ul style="list-style-type: none"> ▪ Was there documentation to indicate that the state entity researched the Centralized Master Bidders List, <i>HUB Directory</i>, Internet, and other directories that the Comptroller has identified as listing HUBs that may be available to perform contract work?
<p>Ensure that potential contractors or subcontractors are certified HUB vendors.</p> <p>(Title 34, Texas Administrative Code, Section 20.14 (a)(3))</p>	<ul style="list-style-type: none"> ▪ Is there evidence that respondents were certified HUBs?
<p>Have evidence that it made a good-faith effort in the development of HUB subcontracting plans.</p> <p>(Title 34, Texas Administrative Code, Sections 20.14 (b)(1), 20.14 (c)(1), and 20.14 (d)(1))</p>	<ul style="list-style-type: none"> ▪ According to the type of contract reviewed, is there evidence in the HUB subcontracting plan that the prime contractor met the conditions and procedures outlined in Title 34, Texas Administrative Code, Sections 20.14 (b)(1), 20.14 (c)(1), and 20.14 (d)(1)?
<p>Review and evaluate HUB subcontracting plans prior to a contract award.</p> <p>(Title 34, Texas Administrative Code, Section 20.14 d(5))</p>	<ul style="list-style-type: none"> ▪ Is there evidence that the state entity reviewed and evaluated HUB subcontracting plans prior to contract awards?
Reporting	
<p>Report accurate HUB expenditures and other supplemental information.</p> <p>(Texas Government Code, Section 2161.122, and Title 34, Texas Administrative Code, Section 20.16 (d))</p>	<ul style="list-style-type: none"> ▪ Does documentation exist to show that: <ul style="list-style-type: none"> ◆ Semi-annual state expenditure HUB data was reported accurately? ◆ Annual state expenditure HUB data was reported accurately? ◆ HUB expenditures were reported accurately? ◆ Semi-annual data for the number of HUB and non-HUB contracts awarded was reported accurately? ◆ Annual data for the number of HUB and non-HUB contracts awarded was reported accurately?

HUB Requirements and Attributes Tested	
State HUB Program Requirement	Attributes Tested
	<ul style="list-style-type: none"> ◆ Semi-annual data for the number of HUB and non-HUB businesses participating in state bond issuances was reported accurately? ◆ Annual data for the number of HUB and non-HUB businesses participating in state bond issuances was reported accurately? ◆ Semi-annual data for the number of HUB and non-HUB bids and/or proposals received was reported accurately? ◆ Annual data for the number of HUB and non-HUB bids and/or proposals received was reported accurately?
<p>Comply with monthly internal HUB usage reports requirements.</p> <p>(Title 34, Texas Administrative Code, Section 20.16 (c))</p>	<ul style="list-style-type: none"> ▪ Does the state entity compile and maintain monthly HUB usage reports that contain: <ul style="list-style-type: none"> ◆ Information regarding the state entity's usage of HUB vendors? ◆ Purchases from state term contracts paid with Treasury funds? ◆ Purchases from state term contracts paid with non-Treasury funds? ◆ The identity of all HUB vendors/subcontracts? ◆ Information regarding subcontractors and suppliers? ◆ Details about progress payments made to subcontractors, professionals, consultants, and suppliers each month.
<p>Comply with progress assessment reports requirements.</p> <p>(Title 34, Texas Administrative Code, Section 20.16 (c))</p>	<ul style="list-style-type: none"> ▪ Is there documentation to show that contract progress assessment reports were accurate?
<p>Comply with group purchasing reports requirements.</p> <p>(Title 34, Texas Administrative Code, Section 20.16 (e))</p>	<ul style="list-style-type: none"> ▪ For agencies participating in a group purchasing program under Texas Government Code, Section 2155.134, was the statewide group purchasing HUB data accurate, complete, and submitted in a timely manner?
Goal Attainment	
<p>Attain its heavy construction contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its heavy construction contract utilization goal in fiscal year 2009?
<p>Attain its building construction contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its building construction contract utilization goal in fiscal year 2009?
<p>Attain its special trade construction contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its special trade construction contract utilization goal in fiscal year 2009?
<p>Attain its professional services contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its professional services contract utilization goal in fiscal year 2009?
<p>Attain its other services contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its other services contract utilization goal in fiscal year 2009?
<p>Attain its commodities contract utilization goal.</p> <p>(Texas Government Code, Section 2161.123(5)(e))</p>	<ul style="list-style-type: none"> ▪ What was the state entity's goal attainment for its commodities contract utilization goal in fiscal year 2009?

Reported State Use Program Purchases and Purchase Exceptions for Fiscal Year 2009

Table 16 shows the audited state entities' total amount of purchases reported to have been made from a TIBH Industries vendor through the State Use Program and the reported purchase exceptions. A purchase exception is a purchase of products or services from a non-TIBH Industries vendor that were available from a TIBH Industries vendor. Texas Human Resources Code, Section 122.0095, requires state entities to report the number and amount of their purchase exceptions to the Office of the Comptroller of Public Accounts and the Texas Council on Purchasing from People with Disabilities on a monthly basis.

Table 16

Reported Purchases Made from TIBH Industries Vendors and Purchase Exceptions Fiscal Year 2009			
State Entity	Reported Number of Purchase Exceptions	Reported Total Amount of Exceptions	Total Amount of Purchases Made from TIBH Industries Vendors ^a
Texas Youth Commission	0	\$ 0.00	\$ 762,013.07
Parks and Wildlife	4	\$ 4,594.39	\$ 1,030,653.67
University of North Texas	0	\$ 0.00	\$ 83,798.15
Stephen F. Austin State University	4	\$ 10.20	\$ 40,034.91
Office of the Attorney General	13	\$ 11,545.35	\$ 2,026,113.96
Texas Lottery Commission	0	\$ 0.00	\$ 52,204.65
Department of Assistive and Rehabilitative Services	0	\$ 0.00	\$ 2,460,736.95
The University of Texas Health Sciences Center at Houston	0	\$ 0.00	\$ 0.00
^a These are purchases made through the State Use Program.			

Sources: Reported exceptions for fiscal year 2009 were obtained from the TCPPD Web portal and expenditure data was provided by each audited state entity.

State Use Program Requirements

Table 17 presents State Use Program requirements and the attributes that auditors tested for compliance.

Table 17

State Use Program Requirements and Attributes Tested	
State Use Program Requirements	Attributes Reviewed
<p>The state entity must check the availability of products and services from TIBH Industries-related businesses prior to making a purchasing decision.</p> <p>(Texas Human Resources Code, Section 122.008)</p>	<ul style="list-style-type: none"> ▪ Did the state entity have a process in place to determine the availability of products or services from TIBH Industries vendors?
<p>The state entity must designate a State Use Program coordinator to ensure compliance with State Use Program requirements.</p> <p>(Texas Human Resource Code, Section 122.0095 (a)(1))</p>	<ul style="list-style-type: none"> ▪ Did the state entity designate an employee to be responsible for ensuring compliance with State Use Program requirements?
<p>The state entity must report purchase exceptions to the Office of the Comptroller of Public Accounts (Comptroller) and the Texas Council on Purchasing from People with Disabilities.</p> <p>(Texas Human Resource Code, Section 122.0095 (a)(2))</p>	<ul style="list-style-type: none"> ▪ Did the state entity report its purchases of products or services from non-TIBH Industries vendors that were available from a TIBH Industries vendor to the Comptroller and the Texas Council on Purchasing from People with Disabilities?
<p>The state entity must ensure that reported exceptions are properly classified.</p> <p>(Title 40, Texas Administrative Code, Section 189.2(9))</p>	<ul style="list-style-type: none"> ▪ Did the state entity have a process to identify and classify purchase exceptions? ▪ If the state entity had exceptions to purchasing products or services from TIBH Industries vendors, did the exceptions fall under one of the following conditions: <ul style="list-style-type: none"> ♦ Quantity? ♦ Quality? ♦ Delivery? ♦ Life cycle costs? ♦ Testing and inspection requirements?

Recent Changes to Statutory Requirements Related to State Auditor's Office Audits of the HUB Program

House Bill 3560 (80th Legislature, Regular Session) amended Texas Government Code, Sections 2161.123(d) and 2161.123(e), effective September 1, 2007, to require the State Auditor's Office to consider certain factors during an audit of the Historically Underutilized Business (HUB) program.

Below is an excerpt from Texas Government Code, Sections 2161.123 (d) and 2161.123(e) defining the statutory requirements:

(d) The commission and the state auditor shall cooperate to develop procedures providing for random periodic monitoring of state agency compliance with this section. The state auditor shall report to the commission a state agency that is not complying with this section. In determining whether a state agency is making a good faith effort to comply, the state auditor shall consider whether the agency:

(1) has adopted rules under Section 2161.003;

(2) has used the commission's directory under Section 2161.064 and other resources to identify historically underutilized businesses that are able and available to contract with the agency;

(3) made good faith, timely efforts to contact identified historically underutilized businesses regarding contracting opportunities;

(4) conducted its procurement program in accordance with the good faith effort methodology set out in commission rules; and

(5) established goals for contracting with historically underutilized businesses in each procurement category based on:

(A) scheduled fiscal year expenditures; and

(B) the availability of historically underutilized businesses in each category as determined by rules adopted under Section 2161.002.

(e) In conducting an audit of an agency's compliance with this section or an agency's making of a good faith effort to implement the plan adopted under this section, the state auditor shall consider the success or failure of the agency to contract with historically underutilized businesses in accordance with the agency's goals described by Subsection (d)(5).

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Harvey Hilderbran, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Boards, Presidents, and Executive Directors of the Following Agencies and Higher Education Institutions

Department of Assistive and Rehabilitative Services
Health and Human Services Commission
Office of the Attorney General
Office of the Comptroller of Public Accounts
Parks and Wildlife Department
Stephen F. Austin State University
Texas Council on Purchasing from People with Disabilities
Texas Lottery Commission
Texas Youth Commission
The University of North Texas
The University of Texas Health Science Center at Houston



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