



An Audit Report on

Selected Contracts at the Health and Human Services Commission

November 2018

Report No. 19-010



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Overall Conclusion

The Health and Human Services Commission's (Commission) award decisions for selected emergency purchases and single response awards did not comply with all applicable state and agency requirements that ensure the objectivity of its award decisions. However, the Commission's award decisions for the selected competitive procurements tested were reasonably supported by its staff's recommendations.

For the nine procurements tested, with an approximate value of \$116.0 million, auditors determined the following:

- **Emergency purchases.** For the 3 emergency purchases tested, with a combined contract value of approximately \$31.5 million, the Commission did not fully comply with statutory requirements. One emergency purchase did not qualify as an emergency purchase because it was not the result of unforeseeable circumstances. For the other two emergency purchases, the Commission did not document the reasons for selecting the awarded vendor.
- **Single response awards.** For the 3 single response awards tested, with a combined contract value of approximately \$16.5 million, the Commission did not consistently (1) document that the single response award met solicitation requirements, and (2) ensure that it notified vendors as required of the opportunity to bid.
- **Competitive procurements.** For the 3 procurements tested, with a combined estimated contract value of \$68.1 million, the Commission's award decisions were reasonable based on the recommendations provided by its purchasing, program, and legal staff. In addition, the Commission obtained the required exemptions to allow awarded vendors to host the information technology systems instead of the State's Data Center Services program.

Background

This audit is the second and final phase of a continued audit of the Health and Human Services Commission's (Commission) contract management processes. The first phase of the audit examined the scoring and evaluation of 28 selected procurements. See *An Audit Report on Scoring and Evaluation of Selected Procurements at the Health and Human Services Commission* (State Auditor's Office Report No. 18-038, July 2018).

Based on that prior audit work, for the second phase, auditors examined the award decisions and certain procurement activities for selected emergency purchases, single response awards, and competitive procurements. The findings for the second phase are discussed in this report.

Auditors selected a sample of procurements and contracts that the Commission processed between January 1, 2015, and May 31, 2018. Auditors used a risk-based approach to select the sample. The contracts and pending procurement selected were assessed as high risk according to one of the following factors:

- Recent results from prior audits identified the contract as high risk,
- Awarded as an emergency purchase, or
- The contract was a single response award.

This audit was conducted in accordance with Texas Government Code, Sections 321.0131, 321.0132, and 2262.052.

For more information regarding this report, please contact John Young, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

In addition, the Commission had weaknesses in certain contracting processes, including its monitoring of contracts, resolving vendor protests, complying with reporting requirements, complying with conflict of interest disclosure requirements, and establishing reasonable cost estimates for its procurements.

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

Table 1

| Summary of Subchapters and Related Issue Ratings | | |
|--|--|---------------------------|
| Subchapter | Title | Issue Rating ^a |
| 1-A | The Commission Did Not Comply with Requirements for Emergency Purchases | Priority |
| 1-B | The Commission Did Not Ensure That Its Single Response Awards Complied with All Applicable Procurement Requirements | Medium |
| 2-A | The Commission's Award Decisions for the Competitive Procurements Tested Were Reasonable | Low |
| 2-B | The Commission Obtained Required Exemptions from the State's Data Center Services Program for the Two Applicable Competitive Procurements Tested | Low |
| 2-C | The Commission Monitored and Processed Payments for the Competitively Procured Contracts Tested; However, It Did Not Comply with Certain Contract Monitoring Requirements | Medium |
| 3-A | The Commission Did Not Ensure That Its Legal Department Assisted with Resolving Vendor Protests as Required | High |
| 3-B | The Commission Did Not Consistently Comply with All Reporting Requirements for Contracts | Medium |
| 3-C | The Commission Did Not Ensure That Its Employees Complied with Disclosure Requirements for Its Procurements, and It Did Not Consistently Develop Reasonable Cost Estimates | High |
| <p>^a A subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.</p> <p>A subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.</p> | | |

Auditors communicated other, less significant issues separately in writing to the Commission's management.

Summary of Management's Response

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. The Commission generally agreed to implement the recommendations in this report. The Commission's specific management responses are presented after each set of recommendations in the report chapters.

Audit Objective and Scope

The objective of this audit was to determine whether the Commission has administered certain contract management functions for selected Commission contracts in accordance with applicable requirements.

The scope of this audit covered eight contracts the Commission awarded from January 1, 2015, through May 31, 2018, and one procurement that was pending an award decision as of May 31, 2018. (See Appendix 3 for additional information about the contracts audited for this report.)

The scope was a continued examination of the Commission's award decisions and other procurement activities that were determined to be high risk for selected emergency purchases, single response awards, and competitive procurements based on prior State Auditor's Office audit work that examined the Commission's scoring and evaluation of selected procurements.

Contents

Detailed Results

| | |
|--|----|
| Chapter 1 | |
| The Commission Did Not Comply with Requirements for Emergency Purchases and Single Response Awards | 1 |
| Chapter 2 | |
| The Commission’s Award Decisions for Selected Competitive Procurements Were Reasonable, and It Obtained Required Exemptions for Information Resource Systems; However, It Did Not Consistently Comply with Contract Monitoring Requirements | 8 |
| Chapter 3 | |
| Weaknesses Were Identified in the Commission’s Controls Over Certain Contract Management Activities | 14 |

Appendices

| | |
|---|-----------|
| Appendix 1 | |
| Objective, Scope, and Methodology | 24 |
| Appendix 2 | |
| Issue Rating Classifications and Descriptions | 29 |
| Appendix 3 | |
| Summary of the Nine Procurements Audited | 30 |
| Appendix 4 | |
| Statutory Disclosure Requirements for Potential Conflicts of Interests | 32 |
| Appendix 5 | |
| Related State Auditor’s Office Work | 35 |

Detailed Results

Chapter 1

The Commission Did Not Comply with Requirements for Emergency Purchases and Single Response Awards

The Commission should strengthen its procurement process for emergency purchases and single response awards. The Commission did not ensure that its emergency purchases and single response awards complied with certain requirements to help ensure that its awards were reasonable and necessary.

Chapter 1-A

The Commission Did Not Comply with Requirements for Emergency Purchases

Chapter 1-A
Rating:
Priority ¹

The Commission's procurement process did not comply with certain requirements that help to ensure the reasonableness and necessity for the three emergency purchases tested (see text box for more information about emergency purchases). The Commission (1) did not ensure that one of the procurements qualified as an emergency purchase because it was not the result of unforeseeable circumstances, and (2) it did not document the reasons for selecting a vendor for the other two emergency purchases.

Auditors tested the following three emergency purchases:

- One emergency purchase for Medicaid-related services involving time studies, financial and statistical reporting, and administrative claims services with a contract value of approximately \$1.7 million.
- Two emergency purchases for nonemergency medical transportation services that had a contract value of approximately \$29.8 million.

Emergency Purchases

An emergency occurs as the result of unforeseeable circumstances and may require immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property, or to avoid undue additional costs to the State.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file in accordance with this section.

Source: *State of Texas Procurement Manual*, January 2017.

¹ The risk related to the issues discussed in Chapter 1-A is rated as Priority because the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

See Appendix 3 for additional information about those three emergency purchases.

The emergency purchase for Medicaid-related services for time studies, financial and statistical reporting, and administrative claims services did not qualify as an emergency.

The emergency purchase for Medicaid-related services for time studies, financial and statistical reporting, and administrative claims services was not the result of unforeseeable circumstances as required. Specifically, the Commission made the emergency purchase because it did not plan to procure a new contract before the original contract expired. The Commission's records show that its staff was aware in March 2017 that a new contract should be procured, but the Commission could not provide an explanation for why it did not procure a new contract before the original contract expired. To continue receiving services, the Commission made the emergency purchase approximately one week after the original contract for the services had expired on September 30, 2017². The Commission could have avoided this emergency purchase had it initiated a new procurement of the contract in a timely manner.

The Commission lacked documentation for the award decisions for two emergency purchases.

The Commission did not document its reasons for selecting the vendor that was awarded the two emergency purchases for nonemergency medical transportation services. While the Commission developed standardized forms to document its award decisions for emergency purchases, the Commission did not complete those forms for those two purchases. The Commission described the nature and need for the emergency purchases as required, but it did not document the reasons for selecting the awarded vendor.

The *State of Texas Procurement Manual*³ required a written determination of the basis for an emergency and for the selection of a particular vendor to be included in a state agency's procurement file. Not documenting the reasons why a vendor was awarded an emergency purchase increases the risk that the Commission's award decision may not have been objectively determined.

² The original contract, with a total contract value of approximately \$7.1 million, was executed on November 16, 2010, with an initial termination date of September 30, 2014. However, the Commission exercised the three renewal options allowed by the contract resulting in the contract having a final termination date of September 30, 2017.

³ This manual was in effect during the planning, procurement, and formation of the procurements audited for this report. In June 2018, this guide was updated and released as the *State of Texas Procurement and Contract Management Guide*, current version 1.1.

Recommendations

The Commission should:

- Ensure that all emergency purchases meet the requirements for an emergency.
- Ensure that it documents in the procurement file the reason a particular vendor is awarded an emergency purchase.

Management's Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendations.

The Compliance and Quality Control Division (CQC) reviewed and revised the Emergency Purchase Form, PCS.01 on June 14, 2018 and the Emergency Purchase Policy, PCS Policy 400, on July 10, 2018 to conform with current State of Texas Procurement and Contract Management Guide, statutory, and administrative requirements. CQC staff also reviewed all emergency purchase justifications in conjunction with the Deputy Executive Commissioner of Procurement and Contracting Services (PCS) for a period of three (3) months to monitor submissions by staff, and to educate staff on inaccuracies as well as proper emergency determination and documentation. CQC staff will be reviewing a representative sample of emergency purchases in the future to ensure staff compliance. In addition, CQC and PCS management are currently working on coordinating comprehensive training for PCS staff on emergency purchases.

Implementation Date:

Completed

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

The Commission Did Not Ensure That Its Single Response Awards Complied with All Applicable Procurement Requirements

Chapter 1-B
Rating:

Medium ⁴

The Commission did not comply with certain requirements for single response awards. For the three procurements tested that received only one response, the Commission did not consistently (1) document that the single response award met solicitation requirements or (2) ensure that it notified vendors on the Centralized Master Bidders List of the opportunity to submit proposals. In addition, in some cases, the Commission accepted vendor proposals after the established due date.

The three single response awards that auditors tested were for:

- Asset tracking and management services, with a not-to-exceed contract value of \$5.0 million.
- Information technology research and expert services, with a total contract value of approximately \$6.5 million.
- Consumer managed personal attendant services, with a total contract value of approximately \$5.0 million.

See Appendix 3 for additional information about those awards.

The Commission did not ensure that it evaluated vendor proposals and documented that they met minimum solicitation requirements.

For 2 (67 percent) of the 3 single response awards tested, the Commission documented that the vendor proposals met the minimum solicitation requirements. However, for the other single response award tested, for asset tracking and management services, the Commission did not have documentation to show that it had evaluated whether the vendor proposal met the minimum solicitation requirements. The Commission asserted that it used an informal process to verify that the vendor's response met the minimum requirements; however, it did not document that process or that verification. Not properly evaluating vendor proposals could result in the Commission awarding a contract to a vendor that does not meet the minimum requirements stated in the solicitation.

⁴ The risk related to the issues discussed in Chapter 1-B is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

The Commission did not consistently ensure that procurements were solicited in accordance with statutory requirements and that it notified all vendors on the Centralized Master Bidders List as required.

For 1 (33 percent) of the 3 single response awards tested, the Commission did not ensure that its solicitations complied with all vendor notification requirements. Specifically, for the award for information technology research and expert services, the Commission did not have documentation that showed it notified vendors on the Centralized Master Bidders List about the procurement opportunity as required. The Commission had an email that it asserted was sent to all of the vendors on the Centralized Master Bidders List; however, the documentation provided for that email did not identify the recipients.

Not appropriately notifying all vendors as required could result in the Commission receiving limited or no vendor proposals.

The Commission accepted vendor proposals after the established due date.

For 2 (67 percent) of the 3 single response awards tested, the vendor proposals were received by the due dates established in the solicitations. However, for one award tested, for consumer managed personal attendant services, the Commission accepted two vendor proposals one day after the submission due date. The *State of Texas Procurement Manual*⁵ requires responses received after the due date established by the solicitation document to be returned unopened with a cover letter indicating the reason. Instead, the Commission rejected one of those two proposals after the initial evaluation determined that it did not meet the minimum requirements. It awarded five contracts to the other vendor⁶. Accepting late vendor responses may provide an unfair advantage to certain vendors and may decrease the objectivity of the procurement process.

⁵ This manual was in effect during the planning, procurement, and formation of the procurements audited for this report. In June 2018, this guide was updated and released as the *State of Texas Procurement and Contract Management Guide*, current version 1.1.

⁶ This procurement was for consumer management personal attendant services for multiple regions; therefore, more than one contract may be awarded to a vendor submitting a proposal.

Recommendations

The Commission should:

- Ensure that vendor proposals and documents meet minimum solicitation requirements.
- Ensure that procurements are solicited in accordance with statutory requirements and that it notifies all vendors on the Centralized Master Bidders List as required.
- Not accept vendor proposals after the due date established in the solicitation, or amend the solicitation if the due date should be changed.

Management's Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendations.

PCS Management agrees with the recommendations and will make any revisions necessary to operating procedures to ensure compliance. In addition, CQC and PCS staff are working on an update and merger of the HHSC Procurement Manual and HHS Contract Management Handbook to ensure compliance with state law and the State of Texas Procurement and Contract Management Guide, including the necessity to evaluate proposals when only one is received to determine whether the vendor has met the minimum requirements of a solicitation and is qualified to provide the required services.

In addition, the PCS 160 – HHS Solicitation Checklist – RFPs, RFAs, RFQs and RFOs was updated, in coordination with attorneys from HHS System Contracting and staff from the Department of Information Resources (DIR) and the Office of the Comptroller of Public Accounts (CPA), to include all requirements, including statutory requirements, to be completed for large procurements. Compliance and Quality Control (CQC) has also created a Legal Entity Required Screening Guide that includes instructions and web addresses to use to complete the required vendor checks, outlined on the PCS 160 – HHS Solicitation Checklist – RFPs, RFAs, RFQs and RFOs, and has provided both documents to the procurement staff and uploaded both documents to the PCS SharePoint Forms Folder.

In July of 2018, CQC staff reviewed and updated PCS OP-210 – Response Handling for Formal and Informal Solicitations to make the necessary adjustments to ensure the process is sound, fair and defensible. All operating procedures involving the bid room process will require the updated process be

followed and will outline how bids are to be opened and how to document such openings.

Finally, HHSC has engaged a consultant who has completed an assessment of the current procurement and contracting practices and will produce a Procurement and Contracting Improvement Plan (PCIP) based on its findings. Through projects designed to implement the PCIP, operating procedures, processes and manuals will be revised accordingly.

Implementation Date:

Completed. Will be further documented once the new HHSC Procurement and Contracting Manual are complete.

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

The Commission's Award Decisions for Selected Competitive Procurements Were Reasonable, and It Obtained Required Exemptions for Information Resource Systems; However, It Did Not Consistently Comply with Contract Monitoring Requirements

The Commission's award decisions for the three competitive procurements tested were reasonable. Those three procurements were for:

- Business process redesign services with a total contract value of approximately \$17.5 million.
- The State Unit on Aging Information Management System (Aging Information Management System) with a total contract value of \$1.8 million.
- The Provider Management and Enrollment System with an estimated contract value of \$48.8 million⁷.

See Appendix 3 for additional information on those procurements.

The Commission also obtained required exemptions to allow the awarded vendor for two of the applicable procurements tested to host information technology systems.

In addition, the Commission monitored vendor compliance and processed payments for the contracts tested. However, for its contract for business process redesign services, (1) it did not develop an enhanced monitoring plan as required, and (2) it did not consistently verify the adequacy of contract deliverables before payment.

⁷ For the procurement for the Provider Management and Enrollment System, the Commission did not have an executed contract to monitor as of May 31, 2018.

The Commission's Award Decisions for the Competitive Procurements Tested Were Reasonable

Chapter 2-A
Rating:
Low⁸

For the three competitive procurements tested, the Commission based its award decisions on the recommendations made by its staff. In making those recommendations, staff from the Commission's purchasing, procurement, and legal departments developed and submitted to the executive commissioner a memorandum for each procurement that described the evaluation process followed including a summary of the scoring and evaluation results. Auditors determined that the memorandums provided a reasonable justification for the recommendation made to the executive commissioner.

While the Commission's award decisions were reasonable based on the recommendations that it received, auditors identified in a prior audit significant weaknesses with the Commission's evaluation scoring process for 2 (67 percent) of the 3 competitive procurements tested. Those two procurements were for (1) business process redesign services and (2) the Provider Management and Enrollment System. For additional information about the evaluation scoring process for those two procurements, see *An Audit Report on Scoring and Evaluation of Selected Procurements at the Health and Human Services Commission* (State Auditor's Office Report No. 18-038, July 2018).

Management's Response

HHSC Procurement and Contracting Services (PCS) took steps to ensure the scored evaluation phase is more effective, accurate, and consistent. HHSC established a Compliance and Quality Control (CQC) team as referenced in the Phase I Audit dated July 13, 2018. CQC adopted evaluation operating procedures in June 2018. The procedures require the analysis, reconciliation, and validation of all score sheets; aggregation of final scores sheets into the final evaluation tool; and documentation of all CQC actions in the appropriate procurement file. The operating procedures address oversight of scoring activities within CQC by requiring an internal review of all work products including score sheets, outlier analysis, and final evaluation tools.

In addition, HHSC has engaged a consultant who has completed an assessment of the current procurement and contracting practices and will produce a Procurement and Contracting Improvement Plan (PCIP) based on

⁸ The risk related to the issues discussed in Chapter 2-A is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

its findings. Through projects designed to implement the PCIP, operating procedures, processes and manuals will be revised accordingly.

Implementation Date:

Completed.

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

Chapter 2-B

The Commission Obtained Required Exemptions from the State's Data Center Services Program for the Two Applicable Competitive Procurements Tested

Chapter 2-B
Rating:
Low ⁹

For the two applicable competitive procurements tested, the Commission obtained required exemptions to allow the awarded vendors to host the information technology systems provided instead of using the State's Data Center Services Program. Specifically, the Commission obtained exemptions for (1) its contract for the Aging Information Management System and (2) its procurement for the Provider Management and Enrollment System.

Texas Government Code, Section 2054.391, requires a state agency to use the State's Data Center Services Program unless the Governor and the Department of Information Resources approve a vendor to host an information technology system.

⁹ The risk related to the issues discussed in Chapter 2-B is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

The Commission Monitored and Processed Payments for the Competitively Procured Contracts Tested; However, It Did Not Comply with Certain Contract Monitoring Requirements

Chapter 2-C
Rating:
Medium ¹⁰

The Commission monitored and processed payments as required for the applicable competitively procured contracts tested.¹¹

For the contract for the Aging Information Management System, the Commission performed oversight activities to monitor and assess the awarded vendor's progress for implementing the system. Those oversight activities included holding project team meetings, monitoring deliverables, performing data validation testing, performing user acceptance testing, and holding executive meetings with Commission leadership. In addition, the Commission's vendor payments, which totaled \$110,622, were supported and approved as required.

However, for its contract for business process redesign services, the Commission (1) did not develop an enhanced monitoring plan as required and (2) did not consistently ensure the adequacy of contract deliverables prior to payment.

The Commission did not develop an enhanced monitoring plan when required.

The Commission did not develop an enhanced monitoring plan for its contract for business process redesign services after the value for the contract increased to more than \$10.0 million. The Commission's *Contract Management Handbook* requires the development of an enhanced monitoring plan for contracts with a value of \$10.0 million or more (see text box for additional information about the Commission's requirements for an enhanced contract monitoring plan). Although the contract had an initial value of \$9.4 million when it was executed on February 8, 2016, the contract value increased to \$14.4 million when it was amended on January 30, 2017. A second contract amendment on February 15, 2018, increased the contract value to \$17.5 million.

Enhanced Monitoring Plan

The Commission's *Contract Management Handbook* requires state agencies to implement enhanced monitoring for contracts with a value of \$10 million or more, regardless of whether a contract's initial value was less than \$10 million. Enhanced monitoring is an increased level of monitoring, beyond the regular monitoring typically used. Enhanced contract monitoring activities may include:

- Submission of contractor reports of status or progress.
- Additional desk or on-site reviews of the contract with documented follow-up requirements for any significant findings
- Ongoing technical assistance as needed.

Source: The Commission's *Contract Management Handbook*, April 2018.

¹⁰ The risk related to the issues discussed in Chapter 2-C is rated as Medium because the issues identified risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

¹¹ For the Commission's competitive procurement of the Provider Management and Enrollment System, the Commission had not executed a contract with the awarded vendor as of May 31, 2018. Therefore, auditors did not test contract monitoring activities for that procurement.

The Commission did not consistently review and approve all contract deliverables prior to processing payments.

The Commission performed oversight of its contract for business process redesign services to verify compliance with contract requirements, including submission of required contract deliverables; however, the Commission did not consistently review and approve contract deliverables prior to payment. The Commission payments on that contract totaled approximately \$15.0 million for 71 contract deliverables that it received from February 2016 through May 2018. For the 71 contract deliverables tested, the Commission:

- Did not have documentation to show that the Commission's management approved the deliverable for payment for 61 (86 percent) contract deliverables.
- Did not have documentation to show that the Commission's staff verified that the deliverables were acceptable prior to obtaining management's approval for payment for 48 (68 percent) contract deliverables.

Recommendations

The Commission should:

- Develop an enhanced monitoring plan when required.
- Ensure that contract deliverables are always reviewed and approved prior to processing a payment to a vendor.

Management's Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendations.

PCS Management agrees with the recommendations and will make any revisions necessary to operating procedures to ensure compliance. In addition, CQC and PCS staff are currently working on an update and merger of the HHSC Procurement Manual and HHS Contract Management Handbook to ensure compliance with state law and the State of Texas Procurement and Contract Management Guide, including this issue of contract management and monitoring.

In addition, Government Code Chapter 2261, which applies to state contracting standards and oversight, requires each state agency to adopt rules to address contract monitoring responsibilities and enhanced contract monitoring. HHSC is currently working on this rule and accompanying policies.

While the oversight and authorizations for contract payments are provided by the appropriate contract manager submitting the invoice for payment, there is an audit responsibility within Accounts Payable when making contract payments. Accounts Payable has issued revised procedures and provided training to AP staff to ensure appropriate approvals per contract requirements are submitted prior to making payments. The AP audit and voucher approval process has an increased focus on verification of services performed or goods received. Additionally, staff works more closely with contract managers to ensure proper documentation is maintained for each payment.

Finally, HHSC has engaged a consultant who has completed an assessment of the current procurement and contracting practices and will produce a Procurement and Contracting Improvement Plan (PCIP) based on its findings. Through projects designed to implement the PCIP, contract monitoring policies will be adopted.

Implementation Date:

April 2019

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

Weaknesses Were Identified in the Commission's Controls Over Certain Contract Management Activities

The Commission should address weaknesses in its management over certain contract management processes involving vendor protests, complying with legislative reporting requirements, employees' disclosures of potential conflicts of interest, and developing cost estimates for its procurements.

Chapter 3-A

The Commission Did Not Ensure That Its Legal Department Assisted with Resolving Vendor Protests as Required

Chapter 3-A
Rating:
High ¹²

The Commission did not ensure that its legal department reviewed protests and drafted recommendation responses as required by its policies and procedures. The Commission reported to auditors that it received and resolved 11 vendor protests from January 2015 through April 2018. The Commission's policies and procedures require staff from its purchasing and legal departments to resolve vendor protests. Specifically:

- The purchasing department is responsible for the receipt, final response, and maintenance of records for a vendor protest, including the Commission's response.
- The legal department is responsible for reviewing a vendor protest and drafting a recommended response to the vendor protest.

However, the Commission's legal department stated that it was not involved in the process for the 11 vendor protests received and that the Commission's purchasing department was solely responsible for the review and resolution of those vendor protests. Ensuring that the legal department reviews and assists in resolving vendor protests could provide the Commission added assurances that the resolution of a vendor's challenge to an award decision is adequate and appropriate.

¹² The risk related to the issues discussed in Chapter 3-A is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

Recommendation

The Commission should ensure that its legal department assists with resolving a vendor protest as required.

Management's Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendation.

Government Code Chapter 2155 requires each state agency to adopt rules concerning vendor protests. Specifically, §2155.076 requires each state agency to adopt by rule protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the rules of the Comptroller of Public Accounts (CPA). HHSC has current bid protest rules. However, the rules do not provide for an appeal process. The proposed changes will clarify the current process and provide for an appeal process to the Executive Commissioner. The changes will ensure HHSC's rules reflect the current agency procedures and are consistent with the rules of the CPA, as required by statute. Once new HHSC rules are adopted, any necessary changes to current operating procedures will be implemented which would include any participation by legal staff.

Implementation Date:

February 2019

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

The Commission Did Not Consistently Comply with All Reporting Requirements for Contracts

Chapter 3-B
Rating:
Medium ¹³

The Commission did not consistently comply with certain reporting requirements for the applicable contracts tested. Specifically, the Commission:

- Did not consistently report its contracts and amendments to the Legislative Budget Board as required.
- Did not consistently obtain required disclosures of interested parties from awarded vendors prior to executing contracts.

The Commission did not consistently report and certify all contracts, including amendments, to the Legislative Budget Board as required.

The Commission did not consistently report and submit certifications to the Legislative Budget Board as required. For the eight applicable procurements tested, the Commission:

- Did not report the contract to the Legislative Budget Board for 1 (12.5 percent) of the 8 applicable procurements tested. For the five contracts associated with one applicable procurement tested, the Commission reported the contracts late.
- Did not submit required certifications for 3 (50.0 percent) of 6 applicable procurements tested. In addition, for the business process redesign services procurement, the Commission submitted the required certification 15 months late. (See Table 2 on the next page for more information.)

Table 2 on the next page shows the Commission's compliance with Legislative Budget Board reporting and certification requirements for the 8 applicable procurements tested.

¹³ The risk related to the issues discussed in Chapter 3-B is rated as Medium because the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

Table 2

| The Commission's Compliance with Reporting and Certification Requirements for the Legislative Budget Board | | | |
|---|--------------------------|--|-----------------------------|
| Procurement | Contract Value | Reported the Contract to the Legislative Budget Board? | Submitted Certification? |
| Competitive Procurements | | | |
| Business Process Redesign Services | \$17,450,777 | Yes | Yes ^a |
| State Unit on Aging Information Management System | \$1,800,000 | Yes ^b | Not Applicable ^b |
| Emergency Purchases | | | |
| Non-Emergency Medical Transportation Managed Transportation Organization Services | \$24,525,000 | Yes | Yes |
| Non-Emergency Medical Transportation Managed Transportation Organization Services | \$5,265,000 | Yes | Yes |
| Time Study Services, Financial and Statistical Reporting Services, and Medicaid Administrative Claim Services | \$1,692,125 | No | No |
| Single Response Awards | | | |
| Consumer Managed Personal Attendant Services | \$4,987,755 | Yes ^c | No |
| Information Technology Research and Expert Services | \$6,466,169 | Yes | No |
| Asset Tracking and Management Services | \$5,000,000 ^d | Yes ^b | Not Applicable ^b |
| <p>^a This contract did not require a certification when it was executed on February 8, 2016, because the contract value of approximately \$9.4 million was below the \$10.0 million threshold that requires certification. However, a contract amendment in January 2017 increased the contract value to approximately \$14.4 million, and a second contract amendment in February 2018 increased the contract value to \$17.5 million. The Commission submitted the required certification for the contract in April 2018.</p> <p>^b This contract involved "a major information system" and it was reported to the Legislative Budget Board under Texas Government Code, Section 2054.008, instead of the General Appropriations Act. Purchases that meet the requirements of that statute are exempt from the contract reporting and certification requirements specified by the General Appropriations Act.</p> <p>^c Five contracts were awarded for this procurement. Those contracts were reported to the Legislative Budget Board but not within 30 days as required by the General Appropriations Act (85th Legislature).</p> <p>^d The contract value reported is the contract's not-to-exceed amount.</p> | | | |

The General Appropriations Acts (84th and 85th Legislatures) require a state agency to (1) report its contracts to the Legislative Budget Board and (2) certify that the process used to award contracts, contract extensions, or purchases complied with or was consistent with the following:

- The *State of Texas Contract Management Guide*.¹⁴
- The *State of Texas Procurement Manual*.¹⁴
- All applicable statutes, rules, policies, and procedures related to the procurement and contracting of goods and services, including compliance with conflict of interest disclosure requirements.

In addition, the General Appropriations Acts (84th and 85th Legislatures) also prohibit state agencies from making payments on a contract that either (1) exceeds \$10 million or (2) exceeds \$1 million if the contract is an emergency purchase or awarded without following a competitive procurement process until the notice of certification is provided to the Legislative Budget Board.

The Commission did not obtain required disclosures of interested parties before executing a contract.

The Commission did not consistently obtain required disclosures of interested parties prior to executing a contract with awarded vendors as required. For 3 (50 percent) of the 6 applicable procurements tested, the Commission did not obtain required disclosures before awarding the contracts. Those three procurements were:

- The emergency purchase for time study services, financial and statistical reporting services, and Medicaid administrative claim services.
- Two single response awards for (1) consumer managed personal attendant services and (2) asset tracking and management services.

The Commission did obtain the disclosure for the award of asset tracking and management services in March 2018; that contract was executed in October 2017.

Texas Government Code, Section 2252.908 (d) and (e), requires a state agency to obtain a disclosure of interested parties from the awarded vendor when it signs the contract. That disclosure must be submitted on a form prescribed by the Texas Ethics Commission.

¹⁴ This publication was in effect during the planning, procurement, and formation of the procurements and contracts audited for this report. In June 2018, it was updated and released as the *State of Texas Procurement and Contract Management Guide*, current version 1.1.

Recommendations

The Commission should:

- Report all executed contracts, required certifications, and amendments to the Legislative Budget Board as required.
- Obtain a copy of the disclosure of interested parties from a vendor before it executes a contract with the vendor as required.

Management's Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendations.

PCS management is working with staff to ensure all required Legislative Budget Board (LBB) reporting is completed accurately and on time. PCS has documented procedures and implemented regular production of SCOR reports for identifying executed contracts, required certifications, and new contracts that must be reported to the LBB contract portal. In addition, new quality assurance checks have been implemented to support greater accuracy of reported information.

As reported in Phase I of the audit dated July 13, 2018, the PCS 160 – HHS Solicitation Checklist – RFPs, RFAs, RFQs, and RFOs was updated, in coordination with attorneys from HHS System Contracting and staff from the Department of Information Resources and the Office of the Comptroller of Public Accounts, to include all requirements to be completed for large procurements. At the end of the procurement, the purchaser, as well as the purchaser's manager, are required to sign and certify that all actions have been completed and included in the procurement file. This includes obtaining the disclosure of interested parties from a vendor, when required, before a contract is executed. The Compliance and Quality Control (CQC) Team will be sample reviewing at different stages of the procurement process to ensure staff comply with policies and procedures, including properly documenting the procurement file. The sample review process is included in CQC operating procedures effective June 2018.

In addition, HHSC has engaged a consultant who has completed an assessment of the current procurement and contracting practices and will produce a Procurement and Contracting Improvement Plan (PCIP) based on the assessment findings. Third party reviews and reporting will be reviewed and addressed through implementation of the PCIP.

Implementation Date:

February 2019

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

Chapter 3-C

The Commission Did Not Ensure That Its Employees Complied with Disclosure Requirements for Its Procurements, and It Did Not Consistently Develop Reasonable Cost Estimates

Chapter 3-C
Rating:
High ¹⁵

The Commission had weaknesses in its processes for (1) ensuring compliance with statutory disclosure requirements related to potential conflicts of interest and (2) developing reasonable cost estimates for one of the competitive procurements tested.

The Commission did not ensure that all applicable employees complete required disclosure forms.

The Commission did not consistently ensure that the employees involved with the six applicable procurements tested completed required disclosure forms¹⁶ (see text box for additional information on the required disclosure forms). The Commission did not (1) track the employees who were involved in the procurements and (2) consistently have documentation to show that those employees complied with applicable disclosure requirements¹⁷.

Disclosure Requirements

The Commission uses the following forms to help ensure that applicable employees comply with statutory disclosure requirements for potential conflicts of interests:

- Nepotism Form- This form is used to disclose certain relationships and financial interests by employees of a state agency who make decisions on behalf of the state agency or recommendations regarding:
 - ♦ Contract terms or conditions on a major contract.
 - ♦ Who is to be awarded a major contract.
 - ♦ The preparation of a solicitation or evaluation of a bid proposal.
- Nondisclosure and Conflicts of Interest Certification- Applicable employees involved in a procurement complete this form in which they agree to protect the confidentiality of procurement-related information and disclose any actual or potential conflicts of interest.

See Appendix 4 for a list of the applicable statutory disclosure requirements related to potential conflicts of interest.
Source: The Commission.

¹⁵ The risk related to the issues discussed in Chapter 3-C is rated as High because the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

¹⁶ Auditors did not test disclosure requirements for the three emergency purchases tested. Audit work for those three procurements targeted the Commission’s activities related to the award decisions.

¹⁷ Because the Commission did not have a process to track the employees required to sign disclosure forms, auditors reviewed the Commission’s records for the six applicable procurements tested to identify the employees who should have completed the required disclosure forms.

Table 3 shows the percentage of the Commission’s employees who completed the required disclosure forms for the six applicable procurements tested.

Table 3

| Compliance with Disclosure Requirements | | | |
|---|---|--|--|
| Procurement Name | Number of Commission Employees Who Should Have Completed Required Forms | Percentage of Nepotism Forms Completed | Percentage of Nondisclosure and Conflicts of Interest Certifications Completed |
| Competitive Procurements | | | |
| Business Process Redesign Services | 19 | 73.7% | 57.9% |
| State Unit on Aging Information Management System | 20 | 0.0% | 80.0% |
| Provider Management and Enrollment System | Varies | 37.2% ^a | 55.3% ^b |
| Single Response Awards | | | |
| Consumer Managed Personal Attendant Services | 19 | 31.6% | 100.0% |
| Information Technology Research and Expert Services | 18 | 55.6% | 66.7% |
| Asset Tracking and Management Services | 9 | 0.0% | 100.0% |
| ^a This is based on a total of 43 employees who auditors determined were involved in the procurement process. ^b This is based on a total of 38 employees who auditors determined were involved in the solicitation development process for this contract. | | | |

Source: The Commission.

By not ensuring that all applicable employees complete required disclosure forms, the Commission increases the risk that its award decisions could be influenced by external financial or personal interests.

The Commission did not establish a reasonable cost estimate for one of the competitive procurements tested.

The Commission did not establish a reasonable cost estimate for 1 (17 percent) of the 6 applicable procurements tested. Specifically, the Commission significantly underestimated the contract value for the competitive procurement for business process redesign services, which resulted in it not obtaining a Contract Advisory Team review of the solicitation.

The Commission developed two cost estimates during planning for the business process redesign services procurement. The Commission could not provide documentation to support how it determined the first cost estimate, including whether it based that estimate on reasonable information. The Commission provided documentation to show how it developed the second cost estimate. Both cost estimates were significantly lower than the current contract value. Table 4 shows the Commission’s two cost estimates and the original and current value for the contract as of May 31, 2018.

Table 4

| Contract Estimates and Contract Values for Business Process Redesign Project As of May 31, 2018 | | | | |
|--|---------------------|----------------------|-------------------------|------------------------|
| Procurement | First Cost Estimate | Second Cost Estimate | Original Contract Value | Current Contract Value |
| Business Process Redesign Services | \$3,700,000 | \$9,998,146 | \$9,398,000 | \$17,450,777 |

Source: The Commission.

If the Commission does not develop reasonable cost estimates, it may fail to obtain the required Contract Advisory Team review, which helps to ensure that a solicitation is correctly developed.

Recommendations

The Commission should develop, document, and implement processes to:

- Identify all employees involved in all stages of the procurement process.
- Verify that all employees involved in the procurement process submit the required disclosure forms.
- Establish reasonable cost estimates for its procurements and retain documentation showing how those estimates were calculated.

Management’s Response

The Health and Human Services Commission (HHSC) agrees with the finding and offers the following response to the recommendations.

As reported in Phase I of the audit dated July 13, 2018, the PCS 160 – HHS Solicitation Checklist – RFPs, RFAs, RFQs, and RFOs was updated, in coordination with attorneys from HHS System Contracting and staff from the Department of Information Resources and the Office of the Comptroller of

Public Accounts, to include all requirements to be completed for large procurements. At the end of the procurement, the purchaser, as well as the purchaser's manager, is required to sign and certify that all actions have been completed and included in the procurement file. This includes obtaining the required disclosure forms from every employee involved in the procurement process. In addition, the Compliance and Quality Control (CQC) Team will be sample reviewing at different stages of the procurement process to ensure staff comply with policies and procedures, including properly documenting the procurement file. The sample review process is included in CQC operating procedures effective June 2018.

HHS staff is currently working on CAPPs Financial Phase 2, which will include improvements to procurement documentation and approvals. This includes a functionality requiring program areas to provide cost estimates and justification for those estimates when requesting documents for a procurement.

HHSC has engaged a consultant who has completed an assessment of the current procurement and contracting practices and will produce a Procurement and Contracting Improvement Plan (PCIP) based on its findings. Through projects designed to implement the PCIP, operating procedures, processes and manuals will be revised accordingly.

Implementation Date:

Disclosure Form Recommendation – Completed.

Cost Estimate - CAPPs Phase 2 enhancements estimated for implementation by September 2019.

Responsible Individual (Individuals):

Deputy Executive Commissioner of Procurement and Contracting Services

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Health and Human Services Commission (Commission) has administered certain contract management functions for selected Commission contracts in accordance with applicable requirements.

Scope

The scope of this audit covered eight contracts the Commission awarded from January 1, 2015, through May 31, 2018, and one procurement that was pending an award decision as of May 31, 2018. (See Appendix 3 for additional information about the contracts audited for this report.)

The scope was a continued examination of the Commission's award decisions and other procurement activities that were determined to be high risk for selected emergency purchases, single response awards, and competitive procurements based on prior State Auditor's Office audit work that examined the Commission's scoring and evaluation of selected procurements.¹⁸

Methodology

The audit methodology consisted of collecting and reviewing documentation related to the planning, procurement, and oversight of selected procurements and contracts; conducting interviews with Commission management and staff; and reviewing Commission policies and procedures. Based on the risks identified for each procurement type, auditors completed testing for certain planning, procurement, and contract management activities. Specifically:

- For competitive procurements, auditors tested certain high-risk processes related to planning, procurement, and contract oversight.
- For emergency procurements and single response awards, auditors tested certain high-risk processes related to planning and procurement.

¹⁸ The results of that prior audit work are described in *An Audit Report on Scoring and Evaluation of Selected Procurements at the Health and Human Services Commission* (State Auditor's Office Report No. 18-038, July 2018).

Data Reliability and Completeness

Auditors used vendor payment data from the Uniform Statewide Accounting System (USAS) to determine the total amount of payments that the Commission paid for the contracts tested. The vendor payment data was reconciled to the Commission's payment documentation for the procurements tested. Auditors determined that the data was sufficiently reliable and complete for purposes of this audit.

Auditors used data from the Commission's System of Contract Operation and Reporting (SCOR) database in the selection of the contracts and procurements tested and relied on prior State Auditor's Office audit work to determine whether that data was sufficiently reliable for the purposes of this audit. In the prior work, auditors noted inaccuracies in the data provided and could not verify whether all of the Commission's contracts were included in the SCOR database. As a result, for this report, auditors determined that the data entered in that database was of undetermined reliability for the purposes of this audit. However, it was the most complete information available, and auditors used it for the purposes of this audit.

Sampling Methodology

Auditors selected a sample of procurements and contracts that the Commission processed between January 1, 2015, and May 31, 2018. Auditors used a risk-based approach to select the sample. The contracts and pending procurement selected were assessed as high risk according to one of the following factors: (1) recent results from prior audits identified the contract as high risk, (2) awarded as an emergency purchase, or (3) the contract was a single response award.

The sample items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Commission planning, procurement, and contract oversight records.
- Contracts and amendments between the Commission and vendors for the procurements audited.
- Commission employee training and certification records, disclosure forms, and nondisclosure forms.
- Commission expenditure data from USAS.

- Commission payment documentation for the competitively procured contracts audited, including contractor invoices, approvals, and other supporting documentation.
- Commission policies and procedures, including procurement manuals and contract management handbooks.

Procedures and tests conducted included the following:

- Interviewed Commission management and staff.
- Tested whether the Commission’s purchasing staff and contract managers complied with training and certification requirements.
- Tested whether the Commission complied with applicable requirements for the planning, procurement, formation, and oversight of the contracts audited.
- Reviewed the selected contracts and supporting documentation to determine whether they were approved by appropriate management and included essential contract terms according to the *State of Texas Contract Management Guide*¹⁹.
- For the competitive procurements tested, reviewed all vendor payments for accuracy and compliance with contract terms and statutory requirements.
- For the competitive procurements tested, reviewed the Commission’s monitoring activities for compliance with applicable requirements.

Criteria used included the following:

- Texas Government Code, Chapters 322, 572, 656, 2054, 2155, 2156, 2157, 2252, 2254, 2261, 2262, and 2270.
- Title 1, Texas Administrative Code, Chapters 212, 217, and 391.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 40, Texas Administrative Code, Chapter 44.

¹⁹ This guide was in effect during the planning, procurement, and formation of the procurements and contracts audited for this report. In June 2018, it was updated and released as the *State of Texas Procurement and Contract Management Guide*, current version 1.1.

- *State of Texas Contract Management Guide* (Version 1.13, September 2014; Version 1.14, September 2015; Version 1.15, March 2016; and Version 1.16, September 2016)²⁰.
- *State of Texas Procurement Manual* (2012 and 2017)²⁰.
- The General Appropriations Acts (84th and 85th Legislatures).
- Contract agreements and amendments between the Commission and selected contractors.
- *Health and Human Services Commission Contract Management Handbook* (October 2015, April 2017, September 2017, and April 2018).
- *Health and Human Services Commission Procurement Manual* (December 2014 and April 2015).
- Commission policies and procedures.

Project Information

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

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

- Willie J. Hicks, MBA, CIA, CGAP (Project Manager)
- Tammie Wells, MBA, CIA, CFE (Assistant Project Manager)
- Mohammad Bawany, MS
- Michael Bennett
- Rachel Berryhill
- Morgan Burandt, CPA
- James Collins

²⁰ This publication was in effect during the planning, procurement, and formation of the procurements and contracts audited for this report. In June 2018, it was updated and released as the *State of Texas Procurement and Contract Management Guide*, current version 1.1.

- Elizabeth Gallegos, MAcc
- Jennifer Grant, MPA
- Jennifer Lehman, MBA, CIA, CFE, CGAP
- Kelley Ngaide, CIA, CFE
- Daniel Spencer, MSA
- Krista L. Steele, MBA, CPA, CFE, CIA, CGAP
- Brenda Zamarripa, CGAP
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)

Issue Rating Classifications and Descriptions

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

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

Table 5 provides a description of the issue ratings presented in this report.

Table 5

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

Summary of the Nine Procurements Audited

Table 6 lists each of the nine procurements that auditors audited for this report. The procurements are listed according to the procurement type (competitive procurement, emergency purchase, or single response award). The Health and Human Services Commission (Commission) either awarded or considered an award for those nine procurements between January 1, 2015, and May 31, 2018.

Table 6

| The Nine Commission Procurements Audited for This Report | | | | |
|--|---|-----------------------------|-----------------------------|---------------------------|
| Item No. | Procurement Name | Solicitation Date | Contract Execution Date | Total Contract Amount |
| Competitive Procurements | | | | |
| 1 | Business Process Redesign Services | January 23, 2015 | February 8, 2016 | \$17,450,777 |
| 2 | State Unit on Aging Information Management System ^a | July 17, 2017 | January 23, 2018 | \$1,800,000 |
| 3 | Provider Management and Enrollment System | February 17, 2017 | Not Applicable ^b | \$48,801,354 ^c |
| Subtotal | | | | \$68,052,131 |
| Emergency Purchases | | | | |
| 4 | Non-Emergency Medical Transportation Managed Organization Services | Not Applicable ^d | August 31, 2017 | \$24,525,000 |
| 5 | Non-Emergency Medical Transportation Managed Organization Services | Not Applicable ^d | August 31, 2017 | \$5,265,000 |
| 6 | Time Study Services, Financial and Statistical Reporting Services, and Medicaid Administrative Claim Services | Not Applicable ^d | Multiple Dates ^e | \$1,692,125 ^e |
| Subtotal | | | | \$31,482,125 |
| Single Response Awards | | | | |
| 7 | Consumer Managed Personal Attendant Services | May 9, 2017 | Multiple Dates ^f | \$4,987,755 |
| 8 | Information Technology Research and Expert Services | August 5, 2016 | December 1, 2016 | \$6,466,169 |
| 9 | Asset Tracking and Management Services | Multiple Dates ^g | October 31, 2017 | \$5,000,000 |
| Subtotal | | | | \$16,453,924 |

| The Nine Commission Procurements Audited for This Report | | | | |
|--|------------------|-------------------|-------------------------|-----------------------|
| Item No. | Procurement Name | Solicitation Date | Contract Execution Date | Total Contract Amount |
| Total for All Procurements | | | | \$115,988,180 |
| <p>^a The Commission terminated the contract effective October 31, 2018.</p> <p>^b A contract had not been executed for the procurement as of May 31, 2018.</p> <p>^c The total amount shown is the award amount the Commission reported in its award recommendation to the Commission's executive commissioner.</p> <p>^d There were no solicitations for emergency purchases.</p> <p>^e A contract was not executed for this procurement. Two purchase orders were used instead. The first purchase order was approved in October 2017 for a total amount of \$606,333. Subsequent to the scope of the audit, a second purchase order was approved in May 2018 to cover an additional 13 months for a total of \$1,085,792.</p> <p>^f The procurement involved five contract awards based on program regions. The contract execution date for one of the regions was September 27, 2017. For three regions, the contract execution date was October 26, 2017. For one region, the contract execution date was October 30, 2017.</p> <p>^g The procurement was solicited twice. The first posting was on January 18, 2017, but vendors did not respond to that solicitation. The second posting was on March 17, 2017.</p> | | | | |

Sources: The Commission and the Legislative Budget Board.

Statutory Disclosure Requirements for Potential Conflicts of Interests

Table 7 shows excerpts from the citations and provisions for the statutory disclosure requirements that state agencies must follow for procurements.

Table 7

| State Disclosure Requirements for Procurements | |
|---|---|
| Citation | Provision |
| Texas Government Code, Section 572.054 - Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense | <p>(a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:</p> <p>(1) with the intent to influence; and</p> <p>(2) on behalf of any person in connection with any matter on which the person seeks official action.</p> |
| Texas Government Code, Section 2252.901 - Contracts with Former or Retired Agency Employees | <p>(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.</p> <p>(d) In this section:</p> <p>(1) "Employment contract" includes a personal services contract regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The term does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.</p> <p>(2) "Retired agency employee" means a person:</p> <p>(A) whose last state service before retirement was for the state agency with which the retiree contracts to perform services; and</p> <p>(B) who is a retiree of:</p> <p>(i) the employee class of membership of the Employees Retirement System of Texas; or</p> <p>(ii) the Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency.</p> <p>(3) "State agency" includes a "public senior college or university," as that term is defined by Section 61.003, Education Code.</p> |
| Texas Government Code, Section 2252.908 - Disclosure of Interested Parties | <p>(a) In this section:</p> <p>(1) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.</p> <p>(2) "Governmental entity" means a municipality, county, public school district, or special-purpose district or authority.</p> <p>(3) "Interested party" means a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or</p> |

| State Disclosure Requirements for Procurements | |
|--|--|
| Citation | Provision |
| | (g) The Texas Ethics Commission shall adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's Internet website. |
| Texas Government Code, Section 2262.004 - Required Nepotism Disclosure | <p>(a) In this section:</p> <p>(1) "Major stockholder" means a person who directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding \$25,000 in a business entity.</p> <p>(2) "Purchasing personnel" means an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding:</p> <p>(A) contract terms or conditions on a major contract;</p> <p>(B) who is to be awarded a major contract;</p> <p>(C) preparation of a solicitation for a major contract; or</p> <p>(D) evaluation of a bid or proposal.</p> <p>(b) Before a state agency may award a major contract for the purchase of goods or services to a business entity, each of the state agency's purchasing personnel working on the contract must disclose in writing to the administrative head of the state agency any relationship the purchasing personnel is aware about that the employee has with an employee, a partner, a major stockholder, a paid consultant with a contract with the business entity the value of which exceeds \$25,000, or other owner of the business entity that is within a degree described by Section 573.002.</p> <p>(c) The state auditor shall develop a form for use in reporting a relationship under Subsection (b).</p> <p>(d) Notwithstanding Section 2262.001 or 2262.002, this section applies to:</p> <p>(1) an institution of higher education as defined by Section 61.003, Education Code; and</p> <p>(2) contracts of the Texas Department of Transportation that relate to highway construction or highway engineering.</p> |

Related State Auditor's Office Work

| Related State Auditor's Office Work | | |
|--|--|---------------------|
| Number | Product Name | Release Date |
| 18-038 | An Audit Report on Scoring and Evaluation of Selected Procurements at the Health and Human Services Commission | July 2018 |
| 18-025 | An Audit Report on a Selected Contract at the Department of State Health Services | April 2018 |
| 16-031 | An Audit Report on a Selected Contract at the Department of State Health Services | June 2016 |
| 15-030 | An Audit Report on Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services | March 2015 |
| 15-017 | An Audit Report on the Telecommunications Managed Services Contract at the Health and Human Services Commission | December 2014 |
| 14-035 | An Audit Report on Selected Contracts at the Health and Human Services Commission | June 2014 |
| 14-020 | A Report on Analysis of Quality Assurance Team Projects | February 2014 |
| 14-013 | An Audit Report on Information and Communications Technology Cooperative Contracts at the Health and Human Services Commission | December 2013 |

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The Honorable Dennis Bonnen, House Ways and Means Committee

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The Honorable Greg Abbott, Governor

Health and Human Services Commission

Dr. Courtney N. Phillips, Executive Commissioner



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