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REVIEW OF CONTRACT MANAGEMENT (PHASE III)

Project # 20180202
July 2018

Texas Facilities Commission

Physical address: 1711 San Jacinto Blvd, Austin, Texas 78701

★ Planning and administering facilities in service to the State of Texas ★

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Executive Summary

Overview

Overall, Texas Facilities Commission (TFC) processes provide reasonable assurance that Planning and Real Estate Management (PREM) contract management goals are accomplished in compliance with relevant regulations, policies, and procedures. Senate Bill (SB) 20, 84th Legislative Session, signed into law by Governor Abbott on June 4th, 2015, made significant changes to how state agencies are required to manage contracts, especially in the areas of ethics, accountability, transparency, contract administration, monitoring and oversight. As reported in the Review of Contract Management (Phase One), report # 20160101, issued in February 2016, the agency has implemented procedures for complying with the additional requirements from the 84th Legislative Session. The procedures include online reporting (to the Legislative Budget Board (LBB)), the TFC Contract Manual, and templates for most contract types (that are consistent with the State of Texas Contract Management Guide's standard terms and conditions). However, improvements are needed in operational effectiveness, including in PREM's contract development and contract performance monitoring. For example, the review found a security contract whose "service requirements" and "contractor responsibilities" language lacks the clarity necessary to hold the contractor accountable. The contractor in question has been having issues fulfilling tenant requirements.

The agency needs a well-thought-out strategy for contracting for property management services for its buildings outside Travis County, to ensure the agency obtains the best value from its contracts. The agency's original contract with the property management company (# 12-030, dated 8/31/2011) for \$2.1 million was for a two year period, renewable for two additional two-year periods. The agency renewed the contract every two years all the way to December 31, 2017 for a total of \$7,541,964.92. Each renewal cost more than the one before it. Without a formal strategy and/or justification, it is not clear why the agency chose to renew the contract at least three different times without (competitive) solicitation, especially given the size of the contract.

The agency executed approximately 39 PREM contracts valued at a total of approximately \$27 million in fiscal year 2017.

Background

TFC's contract management process is shared between several agency divisions, with program areas, Procurement, Legal Services, and Fiscal being the key players. The program areas, as subject matter experts, oversee the contract from cradle to grave (i.e. planning (including determination of scope of work), risk assessment, solicitation, monitoring etc.) The Procurement Division provides advice concerning procurement methods, planning, solicitation, bid evaluation, and contract award. The Fiscal Administration Division ensures that funds are available. The HUB Division ensures that the contractor has complied with HUB requirements. The Insurance Analyst ensures that the contractor complies with insurance and bond requirements. The Legal

Services Division provides legal advice concerning contracting authority, contract type, and contract formation.

Review of Contract Management (Phase III) focused on Property Management Division's contracts. Property Management Services aims to provide facility management services for the Commission's inventory of state-owned office space, parking garages, and parking lots throughout Texas. It serves as liaison between tenant agencies on facility projects and all Commission programs. It performs approximately 50% of maintenance work orders in Commission-managed facilities, and administers contracts with commercial property management firms to staff and manage state-owned facilities on the Commission's inventory in El Paso, Fort Worth, Houston, San Antonio, and Waco.

Summary of Management's Response

Management would like to emphasize their appreciation for the findings of the Office of Internal Audit and notes that the findings are relevant and provide clear suggestions to improve processes. Management will continue working to improve compliance in this important area.

Management also notes, that with new emphasis on reducing the need for contractors by proper staffing, the division will still rely on contracts to accomplish some tasks and so will place special emphasis on incorporating suggestions by OIA into our daily operations. Such emphasis is evidenced by some positive movement on recommendations before the final report has been issued and further emphasis will continue.

Although such emphasis will continue, dates of completion reflect August of 2019, because the vast majority of our contracts are two-year contracts and so new contracts will not take effect until September 1, 2019. Although management expects all recommendations to be complied with as soon as is practical, the earliest date that such improvements can be tested will be September 1, 2019.

Closing

We would like to thank staff in Procurement, Legal Services, Accounts Payable, and the contract management staff within the PREM division for the cooperation and assistance provided to audit staff during this review. For questions or additional information concerning this audit report, please contact Amanda Jenami at 512-463-1438.

Detailed Issues with Management Responses

1. Operational Effectiveness

1.1 Operational Effectiveness – Contract Development

Contract Language

For the most part, the agency utilizes well-crafted templates for its requirements contracts. However, the review found a security contract whose “service requirements” and “contractor responsibilities” language lacks the clarity necessary to hold the contractor accountable. Firstly, the contract gives the contractor “an initial thirty (30) day ramp up period to be fully staffed,” which suggests that the agency contracted with a vendor who did not have the capacity (appropriate staff) to provide the service, as described in the Request for Proposals (RFP), with the hope that the vendor would be able to staff up within 30 days from the beginning of the contract, even though there were 6 other qualified respondents. As a result, the contract language had to be negotiated and revised to allow for that. Unfortunately, the resultant revised language makes it difficult for TFC to enforce the contract. For example, such language as “contractor agrees to use its ‘best effort’ in transitioning unarmed officers to Level III commissioned officer” creates challenges with contractor performance monitoring, especially since the contract neither defines the phrase ‘best effort’ nor places a deadline on the contractor’s “transitioning of unarmed officers to Level III commissioned officer.” Discussions with staff indicate that it is not unusual for the agency to provide a contractor time to ramp up its staffing, for this type of contract. If that is the case, the agency should plan to have the contract signed at least two to three months before its effective date to ensure the “ramping up” does not adversely affect service delivery.

Any departure from the agency’s well-crafted template language only serves to increase the risk that the contract is not only ineffective but also does not provide “best value” to TFC and the state. The award was approved at the June 21, 2017, Commission meeting (under consent agenda). However, the contract negotiations continued after the award and all the way into August 2017. Although the contract was included with the agency’s RFP, the contractor wanted to negotiate a number of the contract terms, and did not sign the contract until August 31, 2017, a day before the start of the contract period. The agency should not allow vendors to negotiate contracts after award, as doing so gives them an unfair advantage in the negotiations. Not only does it not ensure the state gets best value, it is also not as transparent. One way to ensure that the vendor has read the contract that is included in the RFP packet, and is, for the most part, agreeable, is for the agency to add a clause that states that they (the vendor) have read the contract and understand that negotiation is not tenable on some points to the current Execution of Proposal/ Submittal form. In the case of the larger contracts, agency management could require vendors to submit bid bonds.

Recommendations

Improve contract operational effectiveness by ensuring the contract is clear and enforceable by implementing the following:

- (i) As part of the solicitation process, engage a subject matter expert (within the agency) to review RFP's description of the scope of work to ensure the terminology is "standard" for the industry and not considered confusing.
- (ii) As much as possible, insisting on using the contract that is included with the RFP, without exception.
- (iii) As much as possible, refraining from contracting with a vendor that does not have the capacity (at the time of the award) to perform the work.
- (iv) Should it become absolutely necessary for the contractor to increase capacity, requiring the contractor to sign the contract early to allow enough time to do it before service delivery commences.
- (v) Allowing enough time to negotiate the contract, if necessary.
- (vi) Involving a subject matter expert in all contract negotiations.

Management Action Planned:

Management concurs with the recommendations and plans to do the following:

- (i) *The Contract Specialist within each area will work closely with Procurement, the program end-user, and the subject matter expert (SME) to ensure that the scope of work is clearly defined.*
- (ii) *Procurement already emphasizes the need to utilize the contract that is included with the RFP, and will continue to work with Legal Services and agency programs. Program areas will develop policies and procedures for documenting negotiations.*
- (iii) *While management understands the risk and will, as much as possible, refrain from contracting with vendors that do not have the capacity (at the time of the award) to perform the work, contractors for security and custodial services generally do not hire staff until after the contract is awarded. However, the evaluation of the submittals could include considering the vendor's experience and history (including with other clients) in staffing up relatively quickly in time to fulfill a contract.*

- (iv) *Management plans to start the planning and procurement of the next cycle of contracts six to nine months out to allow the contractor enough time to staff up for the contract, before the contract start date.*
- (v) *Starting the contract planning and procurement process early will allow time to negotiate the contract, if that should become necessary.*
- (vi) *For the most part, the evaluation team is comprised of individuals that are skilled in the service the agency is contracting for. For example the HVAC Supervisor is part of the evaluation team for evaluating HVAC contractors, the Fire Controls Supervisor is part of the evaluation team for Fire Control vendors. In the future, program management will be sure to ask a security professional (from the agency's Security and Safety Division) to participate in developing the Request for Qualifications (RFQ) and in evaluating submittals.*

Responsible Parties:

- (i) *Director of Property Management Services,*
- (ii) *Procurement Director,*
- (iii) *Director of Property Management Services,*
- (iv) *Director of Property Management Services,*
- (v) *Director of Property Management Services,*
- (vi) *Director of Property Management Services,*

Estimated Completion Date:

- (i) *August 31, 2019.*
- (ii) *August 31, 2018*
- (iii) *August 31, 2019*
- (iv) *August 31, 2019*
- (v) *August 31, 2019*
- (vi) *August 31, 2019*

1.2 Operational Effectiveness – Contract Development

Informal Negotiations

TFC’s approval of the contractor to provide a lower level of service at the Park 35 State Office Complex than that requested by the tenant was verbal, and did not include an effective deadline. Thus, the contract may not be useful in holding the contractor accountable. In addition, discussions indicate that TFC recently (on March 12, 2018) revoked its approval of the lower level of service. The revocation, which was not in writing, did not provide the contractor with a deadline for correcting the issue, elevating the risk that the agency could have problems enforcing it.

Discussions indicate that the tenant at another building (William P. Hobby State Building) requested reduced level of service (due to budget cuts) after the interagency contract was already in place. However, TFC has not formally revised the contract (via a change order) to reflect this. As it turns out, the individual who requested the reduced level of service has since left the tenant organization and it appears (from written evidence of tenant complaints) that current tenant staff is not aware of the agreed-upon reduced level of service. There is a risk that this could erode tenant satisfaction with TFC.

While the agency has developed good quality templates that include all the required clauses, including a table of contents in the front would assist in making the contracts easier to navigate.

Recommendations

- (i) Improve operational effectiveness in contract development by ensuring all negotiations and revisions to the contract take place before the contract is awarded and are in writing.
- (ii) Ensure any changes to the original scope of work agreed in the interagency agreement between TFC and the tenant agency are documented, formalized, and shared with the agency’s Legal Affairs Division.
- (iii) Consider revising the agency’s contract templates to include a table of contents.

Management Action Planned:

- (i) *Management agrees that, ideally, any negotiations should take place (as part of the solicitation process) before award. However, in situations where the program has to negotiate after award such as a change in scope requested by a tenant agency, staff will formally document all negotiations for the file, a copy of which will be shared with Legal Services.*
- (ii) *Any changes to an interagency agreement between TFC and the tenant agency will be documented and shared with Legal Services.*

- (iii) *Legal Services will work to revise the contract templates to include a table of contents.*

Responsible Parties:

- (i) *Director of Property Management Services*
- (ii) *Director of Property Management Services*
- (iii) *Legal Services*

Estimated Completion Date:

- (i) *September 1, 2018.*
- (ii) *September 1, 2018.*
- (iii) *December 31, 2018*

1.3 Operational Effectiveness – Performance Monitoring

Security Services Contract

The agency has not managed its security contract with a security company (# 18-040, dated 8/28/2017) effectively. The review found evidence of contractor performance issues (at both the William P. Hobby State Building and Park 35 State Building Complex) since the beginning of the \$1,934,933.12 contract. The negotiations surrounding the level of service (i.e. Level II versus Level III coverage) all the way to a day before the contract’s effective date should have served as a strong likelihood that the contractor was going to have issues staffing up for the contract. The contract has been the subject of a number of complaints, especially on the services the contractor is providing at the Park 35 State Building Complex, most of which are regarding the contractor not providing the level of service the tenant requested.

Although contractor performance has been an issue from the beginning of the contract (September 1, 2017), the agency had not required the contractor to develop and submit a formal corrective plan of action (ten months into the contract). In addition, a review of the correspondence with the tenant found that the tenant was also emailing the agency’s Security and Safety division with contractor performance complaints, while copying the contract manager (within Property Management Services). Having one agency contact could assist with ensuring the tenants’ concerns are addressed more timely.

The review also noted other performance monitoring issues regarding the security contract including:

- (i) Two hundred eighty-three (283) days into the contract, the contractor has not provided TFC with Cardiopulmonary Resuscitation (CPR) certificates for the guards manning the security posts. The contract requires the contractor to provide CPR certificates to TFC within 60 days of the start of the contract, i.e. September 1, 2017. The submission is 223 days overdue.
- (ii) Two hundred eighty-three (283) days into the contract, the contractor has not provided TFC with written verification that security guards working under the contract have received customer service training, as required by the contract.
- (iii) Although the enhanced contract monitoring report requires the TFC contract manager to perform weekly unscheduled visits, the contract manager could not provide documentary evidence of these.
- (iv) The individual that serves as the contract manager for this contract is not a security professional by trade, and thus not a subject matter expert. Ideally, the contract should be managed by a TFC employee whose background is in security, as this is a specialized area, for more effective monitoring.
- (v) The contract manager agreed with the audit team that the size of the contract warrants more attention than he is currently able to provide it (due to workload).

The review also found that, apart from the property management contract, contract management staff is not utilizing a formal site visit checklist. Most site visits are informal and not documented, and thus there is no evidence that the visits effectively address what management considers as key performance criteria for the contract. For 50% (7 out of 14) of the contracts tested for site visits, staff had not utilized a formal monitoring checklist. This may be due to a lack of written contract monitoring procedures at the program level. In addition, the review found that different contract managers define “site visit” differently. Ideally, these procedures would clarify definitions and provide examples using typical PREM contract management situations and include standardized forms such as visit checklists.

Having a debriefing at the end of each contract period might assist with memorializing the lessons learned from each contract. Including the tenant in those discussions could provide useful customer feedback.

Recommendations

Improve operational effectiveness by:

- (i) Ensuring the vendor has the capacity to meet contract obligations before recommending them for award.

- (ii) Requiring the contractor to provide CPR certificates for the guards, as required by the contract.
- (iii) Requiring the contractor to provide written verification of customer service training for the guards.
- (iv) Requiring the contract manager to perform weekly unscheduled visits, as required by PREM's enhanced contract monitoring schedule.
- (v) Requiring visits to be formally documented, and, in general, paying closer attention to contractor performance.
- (vi) Requiring staff to utilize a formal site visit checklist for all contracts.
- (vii) Requiring a contractor corrective action plan as soon as the contractor starts having performance issues.
- (viii) Being more responsive to tenants by acting on their complaints more timely.
- (ix) Assigning a single point of contact (at the agency) to address tenant complaints.
- (x) Considering reassigning the contract management responsibilities to the agency's Security and Safety Division.
- (xi) Developing formal contract monitoring procedures at the program level.
- (xii) Performing debriefing sessions to capture lessons learned at the end of each contract.

Management Action Planned:

Management concurs with the recommendations and plan to take the following actions:

- (i) *Since some security contractors do not hire anyone until the contract is awarded, PREM will plan to award the contract 60-90 days before the contract in place expires, giving the incoming contractor time to staff up. If this is not possible, PREM staff will ensure the vendor has the capacity to meet contract obligations before recommending them for award by requiring them (the vendor) to demonstrate (during evaluation) that they will be able to staff up relatively quickly.*
- (ii) *Contract management staff (within PREM) will require the contractor to provide CPR certificates for the guards as a performance evaluation and as required by the contract.*
- (iii) *Contract management staff (within PREM) will request the contractor to provide written verification that the guards took customer service training as a performance evaluation and as required by the contract.*

- (iv) *Instead of “the contract manager shall perform weekly unscheduled visits,” future contracts will be revised to read “agency staff may periodically perform unscheduled visits.” These visits will be performed by the Security and Safety Division.*
- (v) *Visits will be documented in property manager reports or logs. The report will include a checklist which adequately covers contractor deliverables.*
- (vi) *Contract management does not currently have the resources to perform formal site visits, and currently relies on informal undocumented visits by the resident property manager. However, going forward, the formal site visits by the Security and Safety Division, once implemented, will be formally documented with the use of a checklist.*
- (vii) *The Security and Safety Division staff will be responsible for identifying issues that need to be addressed. The contract manager would then request the contractor to develop a corrective action plan. Security and Safety staff will confirm implementation of the corrective action plan.*
- (viii) *Contract management staff has already started responding to the tenants on a daily basis.*
- (ix) *The property manager will continue to be the single point of contact for the tenants. However, the property manager is responsible for copying the contract manager and Security and Safety staff on communication, where necessary.*
- (x) *The Safety and Security Division staff will serve as Subject Matter Experts (SME) for the contract, to develop the post orders, perform quality assurance, and assist with any corrective action plans. Site visits check lists for Property Management and Safety and Security will be coordinated.*
- (xi) *Program management will develop procedures, including site visit checklists and property manager logs.*
- (xii) *Debriefing meetings will be held at the end of each contract to capture any lessons learned. The attendees will depend on the type of contract. For example, debriefing on the security contract would include staff from Property Management, Procurement and Security and Safety.*

Responsible Parties:

Director of Property Management Services

Estimated Completion Date:

- (i) *August 31, 2019.*
- (ii) *August 31, 2018.*

- (iii) August 31, 2018.
- (iv) August 31, 2019.
- (v) August 31, 2018.
- (vi) August 31, 2019.
- (vii) August 31, 2018.
- (viii) July 31, 2018.
- (ix) July 31, 2018.
- (x) August 31, 2018.
- (xi) December 31, 2018.
- (xii) August 31, 2019.

1.4 Operational Effectiveness – Contract Amendments

The agency needs a well-thought-out strategy when contracting for property management services for its buildings outside Travis County, to ensure the agency obtains the best value from its contracts. The agency’s original contract with the property management company (# 12-030, signed in September 2011) for \$2.1 million was for a two-year period, renewable for two additional two-year periods. The agency renewed the contract every two years all the way to December 31, 2017, for a total of \$7,541,964.92. As the table on the right shows, each renewal cost more than the one before it – increases of 14% and 8%, respectively. A review of commission meeting minutes did not find evidence of any discussion in reference to any of these three renewals. Without a formal strategy and/or justification, it is not clear why the agency chose to renew the contract at least three different times without (competitive) solicitation, especially given the size of the contract. Increased competition tends to provide better value for the agency.



Some discussions with staff indicate the renewals may have been partly due to insufficient planning i.e. program staff may not have had sufficient time to go through a solicitation and, thus, opted for a renewal instead. This gives the contractor an unfair advantage in the contract renewal negotiations, and may not provide the agency with the best value and, thus, adversely affects cost

effectiveness of the service. As part of managing the contract, each contract manager should have an approved justifiable plan for how they plan to deliver the service at the end of the contract at least eight months ahead of time (since a solicitation takes an average of six months).

In addition to the cost of the contract renewals described above, the agency increased the contract amount via sixteen additional amendments totaling \$2,913,549.60 (for a grand total of \$10,455,514.52). Contract management staff informed the audit team that most of these amendments are for “additional services,” most of which are in the form of request for remodeling projects by the tenants and, thus, reimbursable by the tenant. However, the audit has only been able to agree 56% (\$1,640,653.40) of amendments to relevant interagency agreements and the respective invoices.

The contract manager informed the audit that the contractor generally hires a subcontractor to perform the work. However, it is not clear how the agency ensures the contractor delivers “best value” on these arrangements. Of these “reimbursable additional services,” the audit was not able to verify amendments for “additional charges to fulfill the contract, etc.” to the tune of approximately \$1,012,749.56. The amendment language is not always clear and, in the absence of a tracking system, makes agreeing individual amendments to a justifiable reason and funding source time consuming and imprecise.

Discussions with staff suggest that this state-wide contract, which provides services to state buildings in Houston, San Antonio, Waco, Fort Worth, and El Paso, may be too large to be managed by one individual. While the formality of the contract monitoring and vendor reporting procedures has improved from when the contract was audited by the Texas State Auditor’s Office (SAO) (in 2014), opportunities for improvement exist in developing a more effective tracking system for all the contract changes. Contract management staff should be able to quantitatively justify having more than a couple of two-year renewals on any contract, and tie each individual amendment/addition to a specific authorized and itemized work order. PREM could develop an electronic tracking tool (such as a spreadsheet) to assist the contract manager with tracking individual amendments/additions to the contract. PREM’s contract specialist could play a more active role in assisting contract managers, especially on the larger and more problematic ones.

The review also found a few other contracts that have been amended several times, including the ones for pest control (with 5 amendments), elevator maintenance (with 6 amendments) and grounds maintenance (with 3 amendments), albeit they do not rise to the same level of scrutiny as the property management one because of the much smaller dollar values. For improved transparency, such amendments for non-reimbursable expenditures should, as much as possible, be presented to the commission for approval as a stand-alone agenda item (as opposed to as part of the consent agenda).

Recommendations

Improve operational effectiveness by:

- (i) Developing a formal strategy for how the agency is going to provide property management services for its buildings outside the Travis County.

- (ii) Requiring program staff, as part of the contract planning process, to provide a cost justification for renewing a contract more than once. The justification should also consider vendor performance (including feedback from the tenants).
- (iii) Requiring contract managers to submit a plan of action (to their division head) 8 months ahead of contract expiration date. This should allow sufficient time to act in a way that provides the agency with “best value.”
- (iv) Developing and maintaining a tracking tool to assist with accounting for individual amendments and additions to contracts.
- (v) Requiring the PREM contract specialist to assist contract managers with both contract planning and tracking.
- (vi) Tracking the reimbursable costs from the work order (as submitted by the tenant) all the way to the reimbursement by the tenant. In addition, requiring the contractor to provide a Schedule of Values and subcontractor invoices.
- (vii) Revising contract procedures to require Commission approval of all renewals after the first one. As much as possible, the request for Commission approval should be presented as a stand-alone agenda item.

Management Action Planned:

Management concurs and notes that some of these findings are addressed in further detail with other findings below.

- (i) *Management will develop a formal written strategy for providing Property Management Services for its buildings outside of Travis County.*
- (ii) *Program Staff will be directed to submit a cost justification for renewing contracts more than once. The justification will include risks, needs assessment, and best value statement.*
- (iii) *Depending on how far in advance the contract negotiations start, program staff will provide a plan of action to the division head at least 6 months in advance. Because all contracts expire on the same date, the contract process is staggered with the most difficult or detailed being negotiated far in advance while other simpler contracts are negotiated later.*
- (iv) *A tracking tool will be useful in ensuring compliance with contract requirements as noted in further findings of the audit. Management will seek a more effective tool in conjunction with the agency’s procurement staff to monitor changes in the contract.*
- (v) *Management will ensure that the PREM Contract Administration Manager (presently vacant) is tasked with assisting in the planning and tracking of contracts.*

- (vi) *An improved tracking system of reimbursable costs will be developed.*
- (vii) *Management will establish contract policies for property management contracts, including clear procedures on reporting (to Commission) on contracts executed under delegated authority.*

Responsible Parties:

Director of Property Management Services

Estimated Completion Date:

- (i) *August 31, 2019*
- (ii) *August 31, 2019*
- (iii) *March 29, 2019*
- (iv) *August 31, 2019*
- (v) *August 31, 2019*
- (vi) *August 31, 2019*
- (vii) *August 31, 2019*

2. Regulatory Compliance

2.1 Regulatory Compliance – Procedures for Identifying Contracts Requiring Enhanced Monitoring

While the agency has established a rule to outline procedures for identifying contracts that require enhanced monitoring, in accordance Texas Gov't Code, §2261.256(a)(2). However, it has not posted the rule on the agency website, as required by Texas Gov't Code §2261.256(c), which states that “Each state agency shall post on the agency's Internet website the procedures described by Subsections (a)(2) and (3) and submit to the comptroller a link to the web page that includes the procedures. The comptroller shall post on the comptroller's Internet website the web page link submitted by each state agency.”

Recommendation

Improve regulatory compliance by posting the agency's procedures for identifying contracts that require enhanced monitoring on the agency website.

Management Action Planned:

Management concurs and plans to post the agency rule regarding enhanced monitoring and filing the link with the Texas Comptroller of Public Accounts (CPA) by August 31, 2018.

Responsible Parties:

Legal Services

Estimated Completion Date:

October 31, 2018.

2.2 Regulatory Compliance – Award Letters

Current agency procedures do not ensure an award letter is sent to the vendor, as required by the State of Texas Contract Management Guide. The review could not verify that award letters were sent for 50% (7 out of 14) of the contracts tested. While Procurement made assertions that the awards notifications had been performed via email, and that suggested that the ones not in the file may have been deleted as part of the agency's 30-day e-mail retention policy. It is important to note the state records retention schedule requires agencies to retain vendor correspondence for 4 years after the end of the contract.

Recommendation

Improve compliance with the Texas Contract Management Guide by and Texas Records Retention Schedule by requiring Procurement staff to preserve contract award letters, and any other vendor correspondence for up to 4 years after the end of the contract.

Management Action Planned:

Procurement agrees with the finding; not all award letters for the audited contracts could be located in the commensurate solicitation files. However, all awarded vendors were notified via email, which is the standard practice TFC Procurement utilizes to notify successful and unsuccessful vendors of awards. A lean Procurement staff with no administrative assistant

dictates streamlining processes, and copying the award letter template into an email is the most expeditious method of notification.

The thirty (30) day email retention policy is prohibitive towards retaining documentation for formal solicitations, which are often months in duration. TFC Procurement requested an exemption to this policy for this very reason, however no such exemption has been granted.

TFC Procurement will attempt to immediately print and/or archive award notification emails in the future, however an exemption to the thirty (30) day email policy for Procurement would contribute to the retention and efficacy of solicitation supporting documentation.

Responsible Parties:

Procurement Director

Estimated Completion Date:

August 31, 2018.

2.3 Regulatory Compliance – Needs Assessment

For 36% (5 out of 14) of the contracts reviewed, the contract planning process did not include a needs assessment, as required by the Texas Contract Management Guide. This is especially important as the agency has not developed a formal cost/benefit justification for its significant use of contracts as its main operational strategy for accomplishing the agency’s building maintenance mission.

Recommendation

Improve regulatory compliance by requiring program management to review the needs assessment as part of its approval of the contract planning process.

Management Action Planned:

Management concurs that 64% of contracts included a proper needs assessment and will work to increase that compliance rate by requiring program management to review the needs assessment as part of the approval of the contract planning process. Staff will be required to attach the needs assessment to the purchase requisition.

Responsible Parties:

Director of Property Management Services

Estimated Completion Date:

September 1, 2019.

2.4 Regulatory Compliance – Risk Assessment

For 36% (5 out of 14) of the contracts reviewed, the contract planning process did not include a risk assessment, as required by the Texas Contract Management Guide. A preliminary risk assessment should be conducted to make an initial determination about the level, type, and amount of management, oversight, and resources required to plan and implement the contract from beginning to end. Further, in the cases where risk assessments are performed, there is no evidence that they are reviewed by management.

Discussion with staff indicated that the risk assessment template was developed by the Procurement Director to meet the needs of the Procurement function. The idea was for the program areas to enhance the form to include program/contract information that would assist in determining the level of monitoring appropriate for the contract. However, PREM did not enhance the risk assessment form with the result that it is not effective for its intended purpose of “determining the level, type, and amount of management, oversight, and resources required to plan and implement the contract from beginning to end.”

Texas Government Code Sec. 2261.256 requires agency contract procurement procedures “to provide for: (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts; (2) identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and (3) establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.”

Recommendations

- (i) Improve contract management effectiveness by enhancing the risk assessment form for the purposes of improving the quality of the risk assessment, including providing the relevant employees with training.
- (ii) Improve regulatory compliance by requiring program management to review the risk assessment as part of its approval of the contract planning process and the purchase requisition.

Management Action Planned:

Management concurs with both parts. Presently the Division has a vacancy for Contract Administration Manager, and when that position is filled, management will provide them both the training and support necessary to conduct proper Risk Assessments, using the existing document developed by the Procurement Director. Additionally, management will work to develop a culture of mutual support by having the contract manager of each specific contract also conduct an independent risk assessment and any discrepancies will be discussed between the Contract Administration Manager and the Contract Manager to determine if any factor was overlooked.

Management will require contracts to include the risk assessment as part of the approval process.

Responsible Parties:

Director of Property Management Services

Estimated Completion Date:

- (i) August 31, 2019.*
- (ii) August 31, 2019.*

2.5 Regulatory Compliance – Legislative Budget Board Reporting

Texas Government Code Sec. 2254.006 requires agencies to notify the Legislative Budget Board (LBB) of contracts within 10 days of contract award. While all contracts tested had been reported to the LBB and the Procurement Director informed the audit that the agency notifies the LBB soon after contract execution, the audit could not confirm that the notifications were performed within the required 10 days because the agency does not track when the notifications are made.

Recommendation

Improve regulatory compliance by formally tracking when individual contracts are reported to LBB.

Management Action Planned:

No action is planned on this recommendation.

TFC Procurement routinely uploads contract and contract amendment information to the LBB Contracts Database within the required ten (10) day reporting period. TFC Procurement does not categorize this as a risk issue, as 100% of the audited contracts were found to be uploaded and current in the LBB Contracts Database.

Responsible Parties:

Procurement Director

Estimated Completion Date:

August 31, 2018

2.6 Contract Compliance – Insurance and Bond Requirements

For 7% (1 out of 14) of the contracts reviewed, the contractor did not have a valid certificate of insurance, as required by the contract. The certificate of insurance on file had expired by 193 days. This is partly due to the split in the responsibility for monitoring contractor compliance with insurance requirements (between Legal Services and PREM). The review also found that a contractor had not submitted performance bonds, as required by the contract on 4 different delivery releases. PREM's contract specialist should actively assist contract managers with ensuring contractors continue to meet insurance and bonds requirements.

Recommendation

Improve contract compliance by formally clarifying (within PREM's written procedures) the responsibilities of PREM's contract specialist and contract manager, regarding monitoring contractor compliance with insurance requirements. This should be part of PREM's written contract management procedures. Contract managers should consider setting calendar reminders to check contractor compliance with insurance requirements.

Management Action Planned:

Management concurs with this finding that 93% of contracts are presently in compliance and will work to improve compliance with the use of calendar reminders and other tools.

Responsible Parties:

Director of Property Management Services,

Estimated Completion Date:

August 31, 2019.

3. Operational Efficiency

3.1 Operational Efficiency – Contract Management System

The agency lacks a contract management system which allows for the approval, uploading, tracking, monitoring and automated reporting of contracts. PREM contract managers are currently having to supplement the agency’s Automated Procurement System (APS), Legal Services’ Contract Database, and the work order system (MicroMain) with other tools including excel spreadsheets, as these databases are not integrated and were not designed primarily for contract monitoring.

Management is aware of this issue, and is in the process of implementing a tool that facilitates electronic routing, exchanges and approval of contracts and signed documents. While this addresses the inefficiencies of the prior manual contract routing process, it does not assist with contract tracking for monitoring purposes.

Recommendation

Continue to review options on cost effective tools for use in contract monitoring within PREM.

Management Action Planned:

Management concurs and will initiate a more consistent approach across disciplines.

Responsible Parties:

Director of Property Management Services

Estimated Completion Date:

August 31, 2019.

Objectives and Conclusions

The overall objective of this audit was to determine the extent to which TFC contract management processes ensure that agency goals are accomplished efficiently and effectively, and in compliance with relevant regulations, policies, and procedures. Further, determine the extent to which contract management activities are performed in line with the State of Texas Contract Management Guide. Furthermore, determine the extent to which contract management processes include adequate vendor performance monitoring procedures to ensure deliverables are met in a timely manner.

Review of Contract Management (Phase III) focused on Planning and Real Estate Management (PREM) contracts, except for those of the Leasing Division. The audit focused primarily on contract management activities from September 2016 through January 2018. Fieldwork was conducted in May 2018 through June 2018. The detailed audit objectives and conclusions are described next.

Objective 1 – Regulatory Compliance – Accountability

1.1 Determine the extent to which contract management processes ensure compliance with the relevant state “revolving door” policies.

Contract management processes provide reasonable assurance of compliance with the relevant state “revolving door” policies. The agency has policies to prohibit employees from accepting employment from a vendor whose contracts they were involved with during their employment with the agency (for two years), as required by Texas Government Code §572.069. However, the review found a couple of individuals managing contracts with firms they worked for before joining the agency. While there is no evidence of any impropriety, the agency should remove the potential or appearance of a conflict of interest by reassigning the management of these two contracts.

1.2 Determine the extent to which contract management processes include a written acknowledgement (from the Procurement Director) that the agency complied with the state’s contract management guide in each purchase. (SB 20, Sect.10)

Contract management processes ensure that the Procurement Director provides written acknowledgement that the agency complied with the state’s contract management guide for each purchase. This acknowledgement is part of the Procurement Director’s sign-off of the Contract Request Form.

1.3 Determine the extent to which contract management processes ensure contracts for goods or services exceeding \$1,000,000 are signed by the Commission Chair. (SB 20, Sect 18)

The agency's contract management processes require commission approvals of professional contacts over \$500,000. The review verified commission approval was obtained on those contracts reviewed (4) of over \$1 million. In addition, the audit confirmed that the rest of the contracts reviewed had been approved by the Commission.

1.4 Determine the extent to which contract management processes ensure that contracts exceeding \$5,000,000 have a verification from the procurement director that:

(i) The procurement method and selection process complied with state law and agency policy; and,

(ii) Identified potential issues that may arise in the solicitation, purchase, or contractor selection process. (SB 20)

Contract management processes ensure that contracts exceeding \$5,000,000 include the procurement director's verification that the procurement process used was in compliance with state law and agency policy. TFC Contract Manual requires the Director of Procurement to verify in writing (by his signature on the TFC Contract Request Form (CRF)) that the solicitation and purchasing methods and contractor selection process complied with state law and agency policy for contracts that exceed \$5 million.

1.5 Determine the extent to which the Agency's policies and procedures specific to contracts with a value of at least \$10 million are in compliance with all applicable rules and regulations.

The Agency has policies and procedures, specific to contracts with a value of at least \$10 million, in place to ensure compliance with applicable rules and regulations.

1.6 Determine the extent to which the agency has developed contract planning procedures that assess the need for the contract and the risk of fraud, waste or abuse in the contractor selection process, contract provisions, payment and reimbursement types, and identify contracts that require enhanced monitoring, etc. (SB 20)

The agency's contract planning processes' risk analysis procedures that assess the risk of fraud, waste, or abuse in the contractor selection process, contract provisions, payment and reimbursement types, and identify contracts that require enhanced monitoring, etc.

need improvement. While the Director of Procurement has created templates for program areas' needs and risk assessment, they are not always completed. For 36% (5 out of 14) of the contracts tested, neither a needs assessment nor a risk assessment had been performed.

1.7 Determine the extent to which the agency has adopted procedures (by rule) to identify contracts that require enhanced monitoring and reporting to the Commission.

In compliance with Government Code Sec. 2261.254 Contracts with value exceeding \$1 million. TFC management has developed a contract management process that identifies contracts with a value in excess of \$1 million as requiring enhanced monitoring and reporting to the Commission.

Objective 2 – Regulatory Compliance - Ethics

2.1 Determine the extent to which contract management processes ensure employees involved in procurement and contract management disclose any potential conflict of interest. (SB 20, Sect 18)

Overall, contract management processes provide reasonable assurance that the agency is protected from potential conflict of interest. The agency's policies and procedures require all TFC staff involved in procurement and contract management to sign the TFC Non-Disclosure Agreement and a Conflict of Interest Certification each year. In addition, all TFC employees that are involved with an outside entity are required to complete an Outside Employment form. However, the review found a couple of individuals managing contracts with firms they worked for before joining the agency. While there is no evidence of any impropriety, the agency should remove the potential or appearance of a conflict of interest by reassigning the management of these two contracts.

Objective 3 – Regulatory Compliance – Transparency & Oversight

3.1 Determine the extent to which contract management processes ensure the contract management handbook is posted on the website. (SB 20, Sect. 18)

The contract management process does not ensure the contract management handbook is posted on the agency's website. The agency has developed and made available (to staff) a contract management handbook via its intranet. However, this is not available to the public.

3.2 Determine the extent to which contract management processes ensure posting (on the agency Web site) of the contracts for each purchase of goods or services from a private vendor, including non-competitive contracts and the solicitations for each contract. (SB 20, Sect. 18)

The agency has processes in place to ensure that contracts for each purchase of goods or services from a private vendor are posted (on the agency Web site). All (14 out of 14) of the contracts reviewed had been posted on the agency's website.

3.3 Determine the extent to which contract management processes ensure the appropriate notifications are made to the LBB in compliance with the Texas Government Code Sec. 2254.006.

Although all contracts tested (14 out of 14) had been reported to the LBB, the agency does not keep a record of when individual contracts are reported. Therefore, the audit could not verify that the notifications were performed *within 10 days*, as required by Texas Government Code Sec. 2254.006.

3.4 Determine the extent to which contract management processes ensure the agency's procurement of goods and services via a DIR contract complies with SB 20 requirements.

The agency's Contract Management Manual, Chapter XIII, provides guidance for the agency's procurement of goods and services through DIR, for compliance with SB 20 and Texas Government Code requirements.

3.5 Determine the extent to which contract management procedures ensure compliance with the requirements of TAC §20.16.

The agency's contract management procedures have controls in place to ensure compliance with TAC §20.16. Each state agency is required, on a semi-annual basis, to report to Texas Procurement and Support Services (TPASS) all payments made for the purchase of goods, services, and public works awarded and paid from treasury and non-treasury funds. The agency reports to TPASS the total dollar amount of Historically Underutilized Business subcontracting participation in all of the agency's contracts for the purchase of goods, services, and public works payments.

Objective 4 – Regulatory Compliance – Contract Planning/Risk Assessment

4.1 Determine the extent to which contract management processes include adequate contract planning, including risk assessment procedures.

Although the agency has developed contract management processes which include contract planning, including risk assessments procedures, these procedures are not effective in assessing risk. Although the Director of Procurement created a risk assessment template for use by Procurement and the program areas, 36% (5 out of 14) of the contracts tested did not have a risk assessment. The ones that were on file (the 9) did not provide sufficient information for “determining the level, type, and amount of management oversight and resources required to plan and implement the contract from beginning to end.”

Objective 5 – Regulatory Compliance - Contract Procurement

5.1 Determine the extent to which the agency has processes to ensure each solicitation utilizes the (on the Centralized Master Bidders List (CMBL), is appropriately advertised on the Electronic State Business Daily (ESBD and the Texas Register) and appropriately excludes individuals on the Excluded Person List (EPL) in compliance with State of Texas Contract Management Guide.

The agency has processes in place to ensure the CMBL is used, solicitations are appropriately advertised on the ESBD, and individuals on the EPL are not awarded contracts in compliance with State of Texas Contract Management Guide. For all 14 contracts tested, solicitations utilized the CMBL, requests for proposal were advertised on the ESBD, and none of the awarded vendors are on the Excluded Person List.

5.2 Determine the extent to which the solicitation submission and opening were performed in compliance with all applicable rules and regulations. In addition, review the agency's written policies and procedures for compliance with applicable rules and regulations.

The agency has processes in place to ensure solicitation submissions and openings are performed in compliance with all applicable rules and regulations. There are written procedures, templates, and checklists which help to support the process. For all (14)

contracts tested, agency staff complied with State of Texas Contract Management Guide requirements for solicitation submission and opening.

5.3 Determine the extent to which an evaluation guide was developed and approved before the receipt of responses to solicitations. In addition, review the agency's written policies and procedures in relation to communication to/from potential respondents.

Evaluation Matrices (guides) are developed and approved prior to the receipt of responses to solicitations. They are created from pre-approved templates which are reviewed regularly by the Director of Procurement.

5.4 Determine the extent to which contract management processes ensure potential bidder communication with the agency is via appropriate channels.

The agency has controls in place to ensure potential bidder communication with agency is via appropriate channels. TFC Contract Manual provides guidance regarding pre-proposal conferences. The RFP template utilized by procurement contains a section "Pre-Proposal Conference" where agency staff add the time, date, and location of the meeting. Auditors reviewed the RFPs associated with the 14 contracts tested as part of this review. All RFPs contained the required "Pre-Proposal Conference" language.

5.5 Determine the extent to which responses to bids are evaluated and ranked in accordance with applicable rules and regulations. In addition, review the agency's bid evaluation and ranking policies and procedures to determine compliance with applicable rules and regulations.

The agency has processes in place to ensure responses to bids are evaluated and ranked in accordance with applicable rules and regulations. Evaluation criteria is included in the Request for Proposal (RFP) posted on the Electronic State Business Daily (ESBD). The same evaluation criteria from the RFP is used in the Evaluation Guide used by the Evaluation Team to rank the vendors. The Evaluation Team is made up of stakeholders and is comprised of at least 3 members.

5.6 Determine the extent to which the agency's policies and procedures specific to a single response to an open bid are in compliance with applicable rules and regulations.

The agency's policies and procedures specific to a single response to an open bid are sufficient and consistent to the State of Texas Procurement Manual. Both policies recommend direct negotiation with a sole respondent in the event of a single response.

5.7 Determine the extent to which the evaluation team received adequate training.

The agency has processes in place to ensure the evaluation team receives adequate training. Procurement provides general procurement training to all agency employees involved in the procurement process. In addition, evaluation team members are required to review and sign a Team Briefing form, outlining evaluation team responsibilities. The audit was able to verify completed and signed Team Briefing forms for all (14) contracts tested.

5.8 Determine the extent to which contract management has processes in place to ensure compliance with bid protest requirements (Texas Gov't Code, Sect 2155.076)

TFC's bid protest procedures, which are posted on the agency website, are adequate and in compliance with Section 2155.076 of the Texas Government Code.

5.9 Determine the extent to which contract management processes ensure that each contract documents the best value standards used, as required by SB 20.

The agency has contract management processes in place to ensure that each contract documents the best value standards used, as required by SB 20. Specific language describing "best value" was included in all (14) RFPs associated with the 14 contracts tested.

5.10 Determine the extent to which contract management processes ensure an award letter is sent to the best value vendor in compliance with applicable rules and regulations.

Agency procedures do not ensure an award letter is sent to the vendor, as required by the State of Texas Contract Management Guide. The review could not find evidence that award letters were sent out for 50% (7 out of 14) of the contracts tested.

5.11 Determine the extent to which contract management has developed and implemented reporting requirements for contracts >\$1,000,000. (SB 20)

The agency has implemented reporting requirements for contracts >\$1,000,000. Contract managers provide monthly enhanced monitoring reports and any corrective action plans on monthly basis. However, the reports could be enhanced to provide more information.

5.12 Determine the extent to which the agency's processes ensure contract management staff is adequately trained.

Overall, agency processes ensure contract management staff is adequately trained. The agency requires contract managers to obtain the state-required Certified Texas Contract Manager (CTCM) designation and contract managers to attend annual training in general procurement, the formal solicitation process, and the contract management refresher. However, the review found that 11% (2 out of 18) of PREM's contract managers do not have the CTCM designation.

Objective 6 – Regulatory Compliance – Contract Formation

6.1 Determine the extent to which contract management has developed adequate policies and procedures (for contract formation).

Overall, contract management staff has developed sufficient procedures (*TFC Contract Manual*, Chapter 1, Contract Request Procedures, and Processes) for effective contract formation. These policies and procedures provide sufficient guidance for compliance with the *State of Texas Contract Management Guide*.

6.2 Determine the extent to which contract management processes include adequate review and approval procedures by the agency's Legal Services staff and management.

Contract management processes include adequate review and approval procedures by the agency's Legal Services staff and management. The review found evidence of the review and approval of the agency's Legal Services for all (14) of the contracts tested.

6.3 Determine the extent to which contract management processes ensure the agency reports all major contracts to LBB.

Contract management processes ensure the agency reports all major contracts to the LBB. A review of the LBB Contracts Database was able to verify that the agency had reported all of the 14 contracts tested.

6.4 What is the risk that a contractor does not comply with all insurance and bond requirements?

An opportunity exists for improving contractor compliance with insurance and bond requirements. For 7% (1 out of 14) of the contracts reviewed, the contractor did not have a valid certificate of insurance, as required by the contract. The certificate of insurance on file had expired by 193 days. The review also found that a contractor had not submitted performance bonds, as required by the contract on 4 different delivery releases.

- 6.5 Determine the extent to which contract management procedures ensure that TFC reviews vendor performance under a contract at termination and reports performance in the Texas Comptroller of Public Accounts (CPA) created tracking system as required by SB 20, Section 13, Texas Government Code §2155.089.**

Contract management procedures ensure that TFC reviews vendor performance at contract end in the CPA's tracking system. For a sample of 12 renewals and replacements contracts, the audit verified that the agency had filed a vendor performance report in the CPA's tracking system by the agency.

- 6.6 Determine the extent to which contract management procedures ensure that the agency pays the contractors as required by the prompt payment guidelines of the Texas Government Code §2251.**

The contract management procedures in place ensure that the agency pays the contractors as required by the prompt payment guidelines of the Texas Government code. All 14 invoices reviewed were paid within 30 days of invoice receipt, in compliance with Texas Prompt Payment Act.

- 6.7 Determine the extent to which contract management procedures ensure that certain contract claims against the state are resolved in accordance with the Texas Government Code §2260.**

Contract management procedures ensure that certain contract claims against the state are resolved in accordance with Texas Government Code, §2260. TFC's Contract Manual stipulates "The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract." All (14) of the contracts tested included the dispute resolution clause, as required by the Texas Government Code §2260 and TFC's Contract Manual.

Objective 7 – Operational Efficiency

- 7.1 Determine the extent to which the contract management process is supported by computerized information systems that are integrated with other related systems within the agency.**

PREM contract managers primarily utilize the Automated Procurement System (APS) and the work order system, MicroMain, in performing their day-to-day contract management duties. These systems are not integrated. Management is aware of the inefficiencies arising from the use of unintegrated computer systems and is currently researching its options.

7.2 Determine the extent to which the process provides management with periodic robust reports (for decision making).

Agency procedures require programs to subject all contracts exceeding \$1 million to enhanced monitoring, a list of which is reported to the Commission as part of its monthly meeting materials packet. Only 29% (4 of the 14) of the contracts tested were in excess of \$1 million and, thus, required enhanced monitoring reporting to the commissioners. The review found that all the sampled contracts exceeding \$1 million (4) were included on the enhanced monitoring list that was reported to the Commission.

Agency procedures also require programs to report all the contracts that are operating under a Corrective Action Plan (CAP) to the Commission. However, PREM did not provide sufficient information about the performance issues that had made the program place an elevator maintenance contractor on a CAP. In addition, a security contractor that had been having issues fulfilling its contract obligations from the beginning of the contract, had not been placed a CAP nine months into the contract.

Objective 8 – Operational Effectiveness

8.1 Determine the extent to which agency management has clearly articulated the roles and responsibilities of the various different divisions and individuals involved in the process.

Agency management has processes in place to clearly articulate the roles and responsibilities of various divisions and individuals involved in the procurement and accounts payable process. Both Procurement and Accounts Payables staff's job responsibilities are clearly defined.

8.2 Determine the extent to which the agency's contract managers understand all of the components of the contract including expected outcome measures, costs, risk, contract performance, acceptance/rejection terms, and contract dates.

All the PREM contract managers interviewed as part of this review were familiar with all the components of a contract (procurement, development, and execution). In addition, all the contract managers interviewed have been managing contracts for more than 3 years.

Objective 9 – Operational Effectiveness – Monitoring Contractor Performance

9.1 Where applicable, determine the extent to which contract management procedures ensure that:

- (1) the agency receives the services it should**
- (2) the number of hours/units billed is the same as the number of hours/units received**
- (3) the quantity and price agree with the contract amounts**
- (4) the contractor makes corrections to services identified as not meeting requirement**

Overall, all the individuals who oversee the 14 contracts tested perform effective contract monitoring functions that ensure (for the most part) that the agency received the services it paid for. However, performance monitoring tools and procedures tends to vary from one contract manager to another.

9.2 Determine the extent to which site visits are performed and the agency has developed a comprehensive and objective site monitoring checklist that:

- (1) documents who is performing the site visit**
- (2) documents how often visits are performed**
- (3) documents the result of the site visit**
- (4) site visit results are reported to management**

The agency's contract management procedures do not provide sufficient guidance to ensure site visits are performed and documented in a consistent manner. Of the 14 contracts selected for review only 3 (21%) contracts had site visits performed using a comprehensive and objective site monitoring checklist. For 50% (7 out of 14) of the contracts tested, staff had conducted site visits albeit without the use of a comprehensive and objective site monitoring checklist. For 21% (3 out of 14) of the contracts tested, the site visits were performed by TFC property management on site, and these were not documented.

9.3 Determine the extent to which desk reviews are performed.

While desk reviews were performed on all (14 out of 14) of the contracts tested, there are no formal procedures to guide staff on how to perform a desk review. This leaves contract

managers to develop their own process for performing the desk review and creates the risk that individual reviews may not be effective and that potential issues could be overlooked.

Objective 10 – Operational Effectiveness – Monitoring Contract Payment Approval

10.1 Determine the extent to which contract management procedures ensure that the contractor’s billing:

- (1) coincides with the service contracted for and provided**
- (2) contains adequate supporting documentation**

The agency has established contract management processes to ensure that contractor billing coincides with the service contracted for and provided. In addition, the agency’s payment approval process requires that contractors provide adequate supporting documentation, including itemized invoices to support contractor charges.

Objective 11 – Operational Effectiveness – Monitoring Contract Vendor Relations

11.1 Determine the extent to which contract management procedures ensure that there is frequent communication between the agency’s contract managers and vendors pertaining to all aspects of contract, including issues, technical assistance, and overall progress of the contract.

Contract management procedures require frequent communication between the agency’s contract managers and vendors pertaining to all aspects of the contract, including issues, technical assistance, and overall progress of the contract. The *TFC Contract Manual* and *State of Texas Contract Management Guide* both list communication with vendors as administration duties required of contract managers. Additionally, auditors interviewed the contract managers associated with the 14 contracts selected for testing as part of this audit. All contract managers indicated that they had ongoing communication with the vendors.

11.2 Determine the extent to which dispute resolution or contract issues’ policies and procedures are clearly defined.

Dispute resolution policies and procedures are clearly defined in the *TFC Contract Manual*. Additionally, auditors reviewed the 14 contracts selected for testing for the dispute resolution clause required by Texas Government Code §2260.004. All (14 out of 14) of the contracts reviewed contained the required dispute resolution clause.

Objective 12 – Operational Effectiveness – Monitoring Contract Administration File

12.1 Determine the extent to which contract management procedures ensure that the agency maintains one complete master contract administration file.

Contract management procedures do not ensure that the agency maintains one complete master contract administration file. Multiple systems are used for contract administration activities. The legal contract database is searchable, can be used to create reports, and houses information including: vendor contact, vendor ID, insurance and other requirement expirations, and project manager. Signed contracts and amendments are kept in the “Contracts” folder in within the agency’s share drive. Contracts and amendments, along with procurement and accounts payable documentation is maintained in the Automated Procurement System (APS). Information regarding activities (materials, hours worked, etc.) within individual work orders is maintained in the Work Order System, MicroMain. While the different systems serve distinct purposes, some level of integration would improve efficiencies and data integrity.

Objective 13 – Operational Effectiveness – Monitoring Contract Bond and Insurance

13.1 Determine the extent to which contract management procedures ensure that the contractor carries the required payment and performance bonds and liability insurance coverages.

Overall, the agency has process in place to ensure contractor compliance with contract requirements regarding payment and performance bonds, and liability insurance coverage.

For 7% (1 out of 14) of the contracts reviewed, the contractor did not have a valid certificate of insurance, as required by the contract. The contractor’s certification of insurance had expired by 193 days. In addition, another contractor had not submitted payment bonds, as required by the contract.

Objective 14 – Operational Effectiveness – Monitoring Contract Technology

14.1 Determine the extent to which the agency’s contract management systems allow for the approval, uploading, monitoring and automated reporting of contracts.

The agency does not have a contract management system which allows for the approval, uploading, monitoring and automated reporting of contracts. The review found that staff

utilizes the Automated Procurement System (APS), Legal Services' Contract Database, and the Work Order System (MicroMain) to track contract activity. However, these systems are not designed for auto-generation of reports. Also, these systems are not integrated.

14.2 Determine the extent to which the agency has independent and formal mechanisms in place to track compliance.

The agency has independent and formal mechanisms in place to track vendor compliance. The level of effort required to monitor a specific contract is determined by the completion of a simple risk assessment. These efforts can include: desk reviews, quarterly reviews with the vendor, site visits, and management meetings. However, for 36% (5 out of 14) of the contracts tested there is no evidence that a risk assessment was performed.

Scope and Methodology

The overall objective of this audit was to determine the extent to which TFC's contract management processes ensure that agency goals are accomplished efficiently and effectively, and in compliance with relevant regulations, policies and procedures. Further, determine the extent to which contract management activities (including contract planning, contract procurement, and contract formation) are performed in line with the *State of Texas Contract Management Guide*.

Review of Contract Management (Phase III) focused on Planning and Real Estate Management (PREM) contracts with the exception of those of the Leasing Division. The audit focused primarily on contract management activities from September 2016 through January 2018. Fieldwork was conducted in May 2018 through June 2018.

The audit was based upon standards as set forth in Texas Government Codes, Senate Bill 20, 84th Legislative Session, Texas Contract Management Guide, Texas Procurement Manual, TFC Contract Manual, agency policies and other sound administrative practices. The audit was performed in compliance with the Institute of Internal Auditors' "International Standards for Professional Practice of Internal Auditing."

Additionally, 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. Our evidence-gathering methods included the following:

- We reviewed applicable laws, rules, and established procedures.
- We reviewed the agency's Strategic Plan for fiscal years 2015 – 2019.
- We reviewed reports regarding inspections performed by external entities.
- We conducted interviews with staff.
- We reviewed and observed some Facilities Maintenance procedures.

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TFC Mission Statement

The Texas Facilities Commission (TFC) mission is to support state government through strategic planning, asset management, design, construction, maintenance, and leasing of state facilities and the reallocation and/or disposal of state and federal surplus.

Office of Internal Audit's Mission Statement

Our mission is to enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight.

Project Team

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