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REVIEW OF CONTRACT MANAGEMENT (PHASE ONE)

Project # 20160101
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Project Team

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Executive Summary

Overview

Overall, Texas Facilities Commission's (TFC) contract management processes include sufficient controls to provide reasonable assurance that agency goals are accomplished efficiently and effectively, and 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. Contract management staff has been proactive in implementing procedures for complying with the additional requirements from the 84th Legislative Session. The procedures include online reporting (to the Legislative Budget Board (LBB)) tools, the TFC Contract Manual, templates for most contract types (that are consistent with the State of Texas Contract Management Guide's standard terms and conditions). However, the agency still has to establish procedures (by rule) to identify contracts that require enhanced monitoring and the relevant reporting to the seven-member Commission, in accordance with Texas Gov't Code, §2261.253.

The agency executed approximately 400 contract documents (i.e. 75 contracts and 327 amendments) valued at a total of approximately \$79 million in fiscal year 2015. The volume is expected to more than quadruple (to an average of at least \$300 million/year) for the next 5 to 10 years as the agency undertakes the deferred maintenance and new construction work for which it received over \$1 billion in legislative appropriations during the 84th Legislative Session.

Compliance with Mandated Contract Management Training

Management has not developed a plan to ensure all of the agency's contract managers receive the required Certified Texas Contract Manager (CTCM) training and designation. This requirement has been in place since 2013. This is a repeat issue, having been cited in the State Auditor's review of *Selected Contracts at TFC*, which was issued in September 2014.

Other Opportunities for Improvement

The review found opportunities for regulatory compliance improvement in the areas of transparency, enhanced monitoring procedures, vendor disclosures, Historically Underutilized Business (HUB) utilization, and contract planning. In addition, the review found opportunities for improvement in operational efficiency and effectiveness in the areas of unintegrated information systems, timeliness of processes, reporting, and communication.

Background

TFC's contract management process is shared between several agency divisions, with Facilities Design and Construction (FDC), Planning and Real Estate Management (PREM), Procurement, Legal Services, and Fiscal Administration Division 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 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 complies with agency 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.

Summary of Management's Response

Management agrees with the overall audit findings that TFC's contract management process and procedures are generally sound, comply with the law, and support accomplishment of agency goals. In addition, Management feels that the process meets all of the ethical standards required by law and ensures that all participants in the process remain independent, free of obligation or suspicion, and completely fair and impartial. Management agrees that there is always room for improvement in any system or process and, as addressed in the subsequent section of this report entitled "Detailed Issues with Management Responses," Management concurs with many recommendations that address the few areas of concern.

Closing

We would like to thank FDC, PREM, Procurement, Legal Services, HUB, and Fiscal staff for the cooperation and assistance provided to the audit staff during this audit. For questions or additional information concerning this audit report, please contact Amanda Jenami at 512-463-1438.

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, the review sought to 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*.

The audit focused primarily on contract management activities from September 2014 through January 2016. 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 that the agency complies with the state’s “revolving door” policies.

The agency has implemented policies that prohibit employees from accepting employment (for two years) from a vendor whose contracts they were involved with during their employment with the agency, as required by Texas Gov’t Code, §572.069.

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)

The agency has revised its contract management process to include a written acknowledgement (by the Procurement Director) that the agency used “best value” standards for each purchase, in accordance with Texas Gov’t Code, §2155.0755. The review tested a sample of 10 contract files for the Procurement Director acknowledgement, and found no exceptions.

1.3 Determine the extent to which the 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 at the project level (before solicitation) and before the contract award and executive approval of each contract at execution. The review verified commission approvals and executive director’s signature on all 4 contracts of at least \$1 million (within the audit sample).

1.4 Determine the extent to which the agency has developed accountability and 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. (SB 20)

The agency's contract management process does not adequately ensure compliance with this risk analysis provision. Contract management has revised the TFC Contract Manual to include forms and templates to guide staff on its risk assessment. However, 40% (4 out of 10) of the contract files reviewed did not include a need/risk assessment, as required by Texas Gov't Code, §2261.

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

The agency still has to establish a rule to outline procedures for identifying contracts that require enhanced monitoring and the relevant reporting to the seven-member 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)

The agency's policies and procedures require 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. Our review of a sample of 10 contract files verified compliance with these agency procedures.

Objective 3 – Regulatory Compliance – Transparency and Oversight

3.1 Determine the extent to which contract management processes ensure the agency publishes a contract management handbook. (SB 20, Sect. 18)

The agency has developed and made available (to staff) a contract management handbook via its intranet. However, this is not available to the public. The audit team believes “publishing” is making it available to the public (i.e. via the internet or some other venue).

3.2 Determine the extent to which contract management processes ensure the agency notifies the appropriate oversight agencies (i.e. LBB, Governor’s Office of Budget, Planning, and Policy) of its intent to contract.

The agency’s contract management processes ensure that the agency notifies appropriate oversight agencies of its intent to contract. The review verified that the agency notified the Office of the Attorney General of its intent to contract for legal services.

3.3 Determine the extent to which contract management processes ensure posting (on the agency website) 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)

Contract management processes provide reasonable assurance that staff will post (on the agency web site) all the contracts that the agency enters into. All (10 out of 10) of the contracts tested had been posted on the website. However, the TFC Contract Manual does not include procedures about posting contracts on the web site. This would enhance the manual’s effectiveness in guiding staff on its day-to-day duties.

3.4 Determine the extent to which contract management processes ensure the agency retains contract records for at least 7 years after the contract is closed. (SB 20)

The contract management process has adequate controls to ensure compliance with the revised record retention requirements. Agency staff is aware of the increase in retention schedule for contracts executed September 1, 2015 and forward and has revised its procedures accordingly. The staff is working with the Texas State Library and Archives Commission on the implementation of the new retention schedule.

3.5 Determine the extent to which contract management processes ensure the agency submits contracts to the State’s Contract Advisory Team, where applicable.

The contract management process has adequate controls to ensure the agency submits contracts to the State’s Contract Advisory Team, where applicable.

3.6 Determine the extent to which contract management processes ensure the appropriate notifications are made to the LBB in compliance with the General Appropriations Act, Article IX, Sect. 7.12.

Our review of 4 contracts (with a value exceeding \$1 million) found that the agency reported all the 4 contracts to the LBB in compliance with the Article IX, Section 7.12 of the General Appropriations Act.

Objective 4 – Regulatory Compliance – Contract Procurement

4.1 Determine the extent to which the agency has processes to ensure each solicitation is appropriately advertised (on the Centralized Master Bidders List (CMBL), 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.

Contract management procedures include sufficient controls to ensure that each solicitation is appropriately advertised. The review tested a sample of 10 contracts for CMBL, ESBD, and EPL and found the solicitation to have complied with the State of Texas Contract Management Guide.

4.2 Determine the extent to which an evaluation guide was developed and approved before the receipt of responses to solicitations.

Contract management procedures ensure that an evaluation guide is developed and approved before the receipt of responses. Our review of a sample of 10 contracts found that procurement staff had developed and approved an evaluation guide before the responses to the solicitation.

4.3 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’s bid evaluation and ranking policies and procedures are in compliance with the State of Texas Contract Management Guide. Our review of a sample of 10 contract files found that the bids were evaluated and ranked in compliance with the State of Texas Contract Management Guide.

4.4 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 are adequate. They recommend direct negotiation with a sole respondent in the event of a single response. In these cases, Procurement staff indicated that it always tries to determine why the agency received only one response to a competitive solicitation, as recommended by the State of Texas Contract Management Guide. However, this determination is not always documented.

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

The procurement staff provides procurement training to all agency employees that are going to be involved in the procurement process. Procurement personnel also provides solicitation training, including a description of the evaluation process to each evaluation team. In addition, evaluation team members are required to sign a Team Briefing form, outlining evaluation team responsibilities. Our review of a sample of 10 contracts was able to verify completed and signed Team Briefing forms in each contract file.

4.6 Determine the extent to which any verbal presentations were conducted in a fair manner.

The agency’s contract management process allows top scoring respondents to perform oral presentations and demonstrations to the evaluation team, in compliance with the State of Texas Contract Management Guide.

4.7 Determine the extent to which the agency maintains adequate documentation of its “good faith effort” in involving HUB vendors (in accordance with the agency’s HUB plan).

The agency strives to provide “good faith effort” opportunities to HUB vendors via meetings with prime vendors and HUBs, sponsoring annual TFC HUB expos, attending

other state agencies' expos and providing minority trade organizations with training on "doing business with TFC." However, these efforts are not always documented.

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

TFC's bid protest procedures, which are posted on the agency website, are adequate and in compliance with §2155.076 of the Texas Gov't Code.

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

The agency's contract management processes ensure each contract documents the best value standard utilized. Our review of a sample of 10 contracts verified the best value standard used from each contract file.

Objective 5 – Regulatory Compliance – Contract Formation

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

The agency's contract management policies and procedures are summarized in the TFC Contract Manual. The audit team reviewed these procedures for compliance with the State of Texas Contract Management Guide. No exceptions were found.

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

The contract management processes ensure the agency's Legal Services team, program leadership and executive management all review and approve each contract. The review tested the contract routing/approval forms (for the audit sample of 10 contracts) for compliance with agency contract approval procedures. No exceptions were found.

5.3 Determine the extent to which the contract management process ensures each contract includes the essential contract terms and provisions, as well as the applicable recommended terms.

Overall, the agency's contract management processes include sufficient controls (e.g. templates) to ensure that each contract includes the essential contract terms and

provisions. However, a benchmark of construction contract clauses (performed as part of this review) found that the agency's *Discounts, Rebates and Refunds* clause could be improved by using more specific language.

5.4 Determine the extent to which the contract management process ensures the agency notifies LBB (in writing) of all construction projects, professional services and consulting contracts, within 10 days of contract date.

Our review of a sample of 10 contracts found that the agency reported all the contracts to the LBB. However, the agency does not maintain documentation showing that the contracts were reported to the LBB within 10 days of the contract date.

5.5 Determine the extent to which contractors comply with all insurance and bond requirements.

The agency's contract management process has adequate controls to ensure that the contractors comply with insurance and bond requirements before a contract is executed. The agency's insurance analyst provided various worksheets and checklists used to check for contractor compliance (for each of the 10 contracts selected for audit testing).

Objective 6 - Regulatory Compliance - Training & Professional Certifications

6.1 Determine the extent to which the agency's procurement personnel training meets Texas Gov't Code §2155.078 requirements.

All the agency's purchasing personnel meet the statutorily mandated training and certification.

6.2 Determine the extent to which the agency's contract managers' training and certifications meet Texas Gov't Code §2262.053.

The agency's contract managers (at least 20) have not completed the statutorily mandated Certified Texas Contract Manager (CTCM) designation.

Objective 7 – Operational Efficiency – Timeliness of Contract Approval

7.1 Determine the extent to which contract development and approval are performed in a timely manner.

The review found opportunities to speed up project delivery by streamlining, simplifying and making the sub-processes of contract procurement, contract development and contract execution more seamless.

7.2 Determine the extent to which the contract management processes are supported by computerized information systems that are integrated with other related systems within the agency.

Several computer systems (Automated Procurement System (APS); Legal Contract Database; GUI Fund Accounting System (GFAS); and IMPACT Construction Project Management System) are utilized by various teams during the contract management process. The lack of system integration has created redundancies and inefficiencies. An integration of the key systems and the manual contract approval process (also referred to as the purple folder) would significantly reduce data redundancy while improving data integrity.

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

Recent discussions at the Commission meetings suggest that some of the Commission members' information needs (on contracts that are being executed by the agency) are not being met.

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.

The agency's policies and procedures adequately define the roles and responsibilities of the various divisions and individuals involved in the contract management process.

Detailed Issues with Management Responses

1. Regulatory Compliance

Senate Bill 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. Contract management staff has been proactive in implementing procedures for complying with the additional requirements from the 84th Legislative Session. The procedures include online reporting (to the Legislative Budget Board (LBB)) tools, the TFC Contract Manual, forms and templates for most contract types, including Texas Contract Management Guide's standard terms and conditions. However, the agency still has to establish procedures (by rule) to identify contracts that require enhanced monitoring and reporting to the seven-member Commission.

In addition, the review found opportunities for improvement in state mandated contract manager training, transparency, HUB utilization and reporting, contract planning and vendor disclosures.

1.1 Regulatory Compliance – State Required Contract Manager Training

The agency's contract management processes do not ensure compliance with state required training. Improvements are needed in the agency's training for contract managers. All of the agency's contract managers (at least 20) do not meet the Texas Gov't Code, §2262.053(c) requirements for the mandated Certified Texas Contract Manager (CTCM) designation. This is a repeat finding having been included in the State Auditor's review of Selected Contracts at the TFC, Report # 15-001, issued in September 2014. Management has not developed a formal plan on how the agency is going to meet this requirement, which was effective in September 2013. Management has indicated it has booked several contract managers on the State Comptroller's training schedule. However, a formal (documented) training plan would provide strategies, estimated timelines and financial resources (i.e. a real meaningful way to resolving this issue).

Pursuant to Texas Gov't Code, §2262.053, the Texas Procurement and Support Services (TPASS) administers a system of training, continuing education and certification for state agency contract management personnel. To obtain the CTCM certification, a contract manager has to complete three levels of training (i.e. Texas Gov't Contract Management, Texas Gov't Project Management, and Negotiation Skills and Strategies). The training

sessions take two days each (i.e. total of 6 days), after which the contract manager is required to score at least 70% on the certification test.

Recommendations

Improve compliance with state required training by:

- (i) Identifying the employees that serve as contract managers for the agency.
- (ii) Developing a formal plan for providing all contract managers with CTCM training.
- (iii) After providing them with training, requiring contract managers to obtain the CTCM designation, as part of their performance plans.

Management Action Planned:

Recommendation (i): Management agrees that the agency's compliance with state-required training can be improved and, even prior to this audit, had been taking steps to address this issue. Each TFC division has identified staff that serve as contract administrators and/or project managers and that are required to attend the CTCM training provided by the Comptroller of Public Accounts (CPA). This training program contains three separate levels of training for each participant that must be completed through the CPA's office prior to the participant applying for the certification test. A number of TFC employees have previously completed the training and received the required certification. At this time, the CPA has classes scheduled through June 2016 and all of these classes are completely full. Several TFC employees are scheduled for these classes, including the Deputy Executive Director of FDC, the Director of Project Management, and two senior project managers. However, since this statutory training is required for all state agency employees (not just TFC employees) that serve as contract administrators and/or project managers, the timeframe for completion by all TFC employees required to complete the training and the certification test is dependent upon the availability of training classes offered by the CPA, as well as on the number of available slots for each class. Executive management continues to be in communication with the CPA's office regarding this matter and is frequently monitoring the CPA's automated Class Registration and Class Schedule so that as classes become available, TFC can register staff.

Recommendations (ii) and (iii): The list of TFC staff identified for the required training is incorporated into a form that constitutes the formal plan for providing the CTCM training and the plan has been provided to the Director of Human Resources. In consultation with the program areas, the Human Resources Division will maintain an updated list and plan based on staffing changes and the availability of classes. In addition, the Human Resources Division will work with agency managers to ensure that the employee performance plan of all TFC staff that are required to obtain a CTCM certification includes a provision for this required certification as well as for the relevant continuing education requirements to maintain such certification. The Human Resources Division will also maintain a list of all certified CTCMs employed by TFC.

Responsible Parties: *Executive Director, General Counsel, Chief Financial Officer, Deputy Executive Director of Facilities Design and Construction, Deputy Executive Director of Planning and Real Estate Management, Deputy Executive Director of Risk Management, Director of Human Resources*

Estimated Completion Date:

Recommendation (i): February 2016

Recommendation (ii): February 2016

Recommendation (iii): Partially completed; further completion by June 2016 and ongoing

1.2 Regulatory Compliance – Posting Procedures on Agency Website

The agency has not posted its contract management handbook on the website, as required. Texas Gov't Code, §2261.256(b) states “Each state agency shall *publish* a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the State of Texas Contract Management Guide.”

Recommendation

Improve regulatory compliance by posting the TFC Contract Management Manual on the agency web site.

Management Action Planned

Management acknowledges that TFC's contract manual is not posted on the agency's Internet website but does not agree that the referenced statute requires TFC or any other state agency to post its contract management handbook on the website.

The chapters of the Texas Gov't Code that address contract requirements are very clear regarding what is required to be reported and what is required to be made public. Section 2261.256, the statute referenced in this audit report, clearly states what an agency is required to post on its website concerning the agency's purchasing accountability and risk analysis procedure – specifically, the agency procedures identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff and the agency procedures establishing clear levels of purchasing accountability and staff responsibilities related to purchasing. These requirements for posting certain information on the website are distinguished in the statute from the separate requirement for agencies to “publish” a contract management handbook. While some agencies have chosen to post their full contract manual on their website, others have created and posted a modified manual that excludes internal procedures, and yet

others have posted only what is specifically required by law. Historically, TFC has “published” the agency’s full contract manual (handbook) by maintaining this document on the agency’s intranet portal where it is available to all agency employees. However, staff has not posted the full TFC Contract Manual on the agency’s website as this document includes not only policies and procedures that mirror the CPA Contract Management Guide and the law, but also desk/internal procedures that provide no public value and that are continually evolving as the agency grows and divisions and staff change. In addition, in conversations with the Office of the Attorney General, they have also stated that they do not feel that an agency is required to publish its entire manual for the public. The full TFC Contract Manual goes far beyond what is required in Section 2261.256 and really only addresses the process at the contracting phase with a link to the TFC procurement training and guidelines which also provide an overview of the contracting process. It is the procurement documents that address purchasing accountability and processes.

At this time, staff has placed a copy of the required TFC procurement documents on the TFC website and has submitted such documents to the Comptroller’s office, as also required by Section 2261.256. In addition, staff has been working on the “enhanced contract monitoring” rule and associated procedures to be presented to the Commission in March 2016. Once each of these items is finalized, the procedures and the rule will also both be placed on the agency website. With the addition of the rule and associated procedures, these documents should collectively meet the requirements of Texas Government Code Section 2261.256. As for the TFC Contract Manual, if it is the direction of the Commission to publish this document on the TFC website, then staff will comply. However, Management disputes the appropriateness of an audit finding stating that the agency is not complying with the law by not doing so.

Responsible Parties

Executive Director, General Counsel, Chief Financial Officer, Director of Procurement

Estimated Completion Date

Partially complete. The administrative rule process takes approximately 63 days, so a proposed rule most likely would be presented to the Commission in an open meeting on March 16, 2016 and could be published on the website thereafter. Associated procedures can be published after the March 2016 meeting. The rule would be ready for adoption at the May, 18, 2016 Commission meeting.

1.3 Regulatory Compliance – HUB Utilization and Reporting

Good Faith Effort

While the TFC HUB Program complies with Title 34, Texas Administrative Code (TAC), §20.13(a), the program’s documentation of its “good faith effort” could be enhanced. Management informed the audit team that current “good faith effort” includes meetings with prime contractors

and HUBs, one-on-one sessions with HUBs to discuss various topics (including the procurement process, connecting with prime contractors, connecting with Texas State Small Business Development Centers (SBDC) or other business organizations), attending HUB expos, attending pre-submittal and pre-proposal conferences and educating minority trade organizations on doing business with TFC. Documented attendee sign-in log sheets for all the various events, participant surveys, telephone logs, and staff's notes-to-file would greatly enhance the documentation of the agency's efforts.

HUB Planning

The agency has not set agency-specific HUB utilization goals. Management indicated that due to staff turnover and manual systems, there is incomplete and miscoded data for the last several fiscal years, which is why it has opted to adopt the statewide goals for fiscal year 2016. Management recognizes the benefits of setting agency-specific goals and plans to use the statewide goals only as a starting point, to be amended to agency-specific ones as soon as the data integrity issue is resolved.

Outreach

The review could not evaluate the agency's outreach to HUB vendors because staff's efforts are generally not documented. The program does not have a formal outreach program to ensure that management and staff are aware of products and services offered by HUBs and that HUBs are aware of available contracting opportunities. The new HUB Director indicated she has only performed limited outreach with agency's program staff because she has been focused on addressing the HUB database's data integrity issues.

Monthly HUB Reporting

The program did not maintain, and compile monthly, information relating to the agency's and each of the program's use of HUBs, including information regarding subcontractors and suppliers (as required by TAC) until only recently (December 2015). This has been a requirement since 1995. In addition, the program does not currently track vendor performance (i.e. progress assessment reports) against their respective HUB subcontracting plans. The current system does not have the capability for data analytics (including tracking vendor expenditures for compliance with HUB Subcontracting Plans).

Housekeeping

The approved HUB Subcontracting Plans are not being filed consistently, with some in APS, the HUB folder and the official contract folder (within Legal Services). A more uniform filing system would enhance efficiencies. Management indicated that the General Counsel and HUB Director have discussed merging the HUB files with the official contract file so that everything is in one place. Apart from streamlining the process, merging Subcontracting Plan with the official contract would assist in enforcing the idea that the HUB Subcontracting Plan is part of the contract.

HUB Staffing

With 5 different staff/directors in 5 years, the program has not seen consistent, sustained leadership to develop formal procedures to help it grow into a strong program. Management is aware of this issue and hired a new HUB Director (in August 2015) who is working to address the issues discussed above.

Recommendations

Improve regulatory compliance and operational effectiveness of the HUB program by:

- (i) Developing and implementing agency-specific HUB goals, and a formal (written) plan on how the agency is going to accomplish its HUB goals.
- (ii) Developing and implementing a formal (documented) HUB outreach program, including vendor sign-in sheets at events, evaluations and documented follow-up contacts.
- (iii) Developing formal (written) procedures for the program.
- (iv) Addressing the data integrity issues with the current HUB database.
- (v) Providing senior management with monthly reports, analyzing the agency's expenditures on HUBs (per progress assessment reports) against HUB subcontracting plans; and,
- (vi) Merging the completed HUB Subcontracting Plan with the official contract file.

Management Action Planned

Management agrees with the recommendations.

Recommendation (i): HUB staff is in the process of collating and obtaining accurate data from past reporting periods in order to develop and implement agency-specific HUB utilization goals. After accurate trend data is verified, staff will propose a plan with agency-specific HUB goals, with an effective date for the goals beginning FY2017 (9/1/2016).

Recommendation (ii): HUB staff currently performs outreach activities that incorporate the following methods: one-on-one meetings with vendors interested in doing business with TFC as both prime and subcontractor; attendance at state-sponsored HUB outreach events; and telephone interviews and assistance. The HUB Coordinator will formally document all outreach activities, including copies of sign-in sheets for vendors and summaries of meetings and follow-up contacts.

Recommendation (iii): The HUB Coordinator is in the process of formally documenting program policies and procedures in writing.

Recommendation (iv): Staff is currently reviewing alternative solutions to record and track HUB prime and subcontracting utilization with greater efficiency and documentation. One alternative under consideration is implementation of a new software system that would enable the agency's vendors to input their own subcontracting data which would then be reviewed by HUB staff; the other alternative is to refine the agency's current system.

Recommendation (v): The HUB Coordinator began issuing monthly reports to management on the status of the agency's HUB utilization in December 2015.

Recommendation (vi): The HUB Coordinator will work with Legal Services to incorporate the initially-approved HUB Subcontracting Plan (HSP) into the official contract file.

Responsible Parties

Executive Director, Chief Financial Officer, General Counsel, HUB Coordinator

Estimated Completion Date

Recommendations (i), (ii), (iii), (iv), and (vi): August 31, 2016

Recommendation (v): December 2015

1.4 Regulatory Compliance – Need/Risk Assessment

Forty percent (4 out of 10) of the contract files reviewed did not include a need/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.

A needs assessment ensures the contracting team plans for the correct contracting objective. A clear definition of the contracting objectives and purpose to be accomplished by the contract will assist the team later in developing the statement of work, solicitation, negotiation and contracting documents, and in verifying the performance of a contractor. This assessment should incorporate the initial needs assessment conducted by the agency when the determination was made to contract out for the service instead of performing it in-house.

Recommendation

Improve regulatory compliance by requiring a review of both the need and risk assessment before the project is submitted for Commission approval, to ensure the contracting team plans for the correct contracting objective.

Management Action Planned

Management agrees that regulatory compliance can be improved in this area; however, TFC procurement procedures currently require that a needs and risk assessment be completed prior to developing a statement of work for a contract. Procurement staff has been working with the program areas on the needs and risk assessment process and will require that a needs and risk assessment for all contracts be submitted with the initial requisition when it is entered into the Automated Procurement System (APS) in order to ensure appropriate review and documentation within APS. This requirement will be effective immediately. The proper time for management review of the needs and risk assessment, and resulting statement of work, is during requisition approval routing in the APS. This occurs prior to the contract development and posting of the solicitation, long before a project is submitted for Commission approval. TFC management recognizes the importance of the needs and risk assessment and will be diligent in ensuring this review of the required documentation during the automated requisition approval process.

Responsible Parties

Executive Director, Chief Financial Officer, Director of Procurement

Estimated Completion Date

February 2016

1.5 Regulatory Compliance – Cost Estimate

Eighty percent (8 out of 10) files reviewed did not contain a cost estimate, as required by the Texas Contract Management Guide. The cost estimate should assist the agency in determining which type of procurement method to use. Even if limited by budget restraints, an estimated cost will provide an idea of the range of services that the agency can include in the statement of work.

Recommendation

Improve regulatory compliance by requiring a review of both the cost estimate before the project is submitted for Commission approval.

Management Action Planned

Management agrees that regulatory compliance in terms of documenting cost estimates can be improved. TFC's customary contracting practices always include development of a cost estimate although the procedures followed will vary depending on the nature of the contract and/or the solicitation process. In order to ensure consistent documentation of cost estimates, Procurement staff will require submission of a cost estimate for all contracts be submitted with the initial

requisition when it is entered into the Automated Procurement System (APS) in order to ensure appropriate review and documentation within APS. This requirement will be effective immediately. The proper time for management review of the cost estimate is during requisition approval routing in the APS. This occurs prior to the contract development and posting of the solicitation, long before a project is submitted for Commission approval. TFC management recognizes the importance of adequately documenting the cost estimates prepared for each contract and will be diligent in ensuring this review of the required documentation during the automated requisition approval process.

Responsible Parties

Executive Director, Chief Financial Officer, Director of Procurement

Estimated Completion Date

February 2016

1.6 Regulatory Compliance – Vendor Disclosure of Interested Parties

The agency's contract management process does not adequately ensure that, for all contracts executed on or after January 2016 valued at \$1 million, the vendor submits a disclosure of interested parties to the agency. Fifty percent (2 out of 4) of the contract vendors tested had not submitted the disclosure. Texas Gov't Code, §2252.908, requires vendors for contracts valued at \$1 million to submit a disclosure of interested parties to the agency at *the time the vendor signs the contract*.

In addition, the requirement applies not to only new contracts that are entered into after January 1, 2016, but also to all active contracts that are amended/extended/renewed after that date. Due to the current approval amounts set by Commission policy, this represents a large number of contracts for TFC.

Management indicated that one of the obstacles has been that the Texas Ethics Commission's database was not available until January 9, 2016.

Recommendation

Improve regulatory compliance by requiring the vendor to submit a vendor disclosure of interested parties before the Executive Director signs the contract.

Management Action Planned

Staff has implemented this new requirement which applies not only to contracts over \$1 million, but to all contracts that are required to be approved by an agency's governing board. Additionally, the requirement applies not to only new contracts that are entered into after January 1, 2016, but also to all active contracts that are amended/extended/renewed/ after that date. Due to the current approval amounts set by Commission policy, this represents a large number of contracts for TFC. In order for a vendor/contractor to comply with the new requirement and submit the disclosure of interested parties, they must be able to access a database that is maintained by the Texas Ethics Commission (TEC). Issues with the TEC database that were present after the January 1st effective date had to be addressed by TEC and these issues created an obstacle for compliance. The two contractors identified in this audit report as not having submitted the required disclosure at contract signing subsequently submitted the proper certificate to TFC and the Legal Services Division provided the appropriate notice to the Texas Ethics Commission within the statutory "30 days from effective date of contract" period. In addition, Legal Services staff has been contacting all contractors that currently contract with the agency and that have contracts approved by the Commission that may be amended/extended/renewed by TFC so these contractors can complete this requirement in advance in order not to hold up any work in the future.

Responsible Parties

Executive Director, General Counsel

Estimated Completion Date

Completed

1.7 Regulatory Compliance – Procedures for Identifying Contracts Requiring Enhanced Monitoring

The agency has not established a rule to outline procedures to identify contracts that require enhanced monitoring, in compliance with accordance with recent legislation. Texas Gov't Code, §2261, Sub-Chapter F also requires contract management to "immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this requirement."

Management has indicated it is working on the rule, and expects to present it to the Commission in March 2016.

Recommendations

Improve regulatory compliance by:

- (i) Developing and implementing the required rule.

- (ii) Procedures on notifying the Commission of serious issues or risk identified with respect to any of the contracts under enhanced monitoring.

Management Action Planned

Recommendation (i): Management agrees that the required rule has not yet been established. Legal and Procurement staff have been working together on the required rule and have been seeking advice from other agencies, including the Comptroller of Public Accounts and the Office of the Attorney General, regarding appropriate wording and implementation. Due to the procedural and time restraints posed by the Texas rulemaking process, most agencies, including the Office of the Attorney General, are proposing a general rule stating that risk assessments will be completed to identify contracts that require enhanced contract monitoring and then identify who the contract will be reported to and on what schedule.

Recommendation (ii): These rules would then be accompanied by detailed risk assessment procedures that can be reviewed and amended easily outside the formal rulemaking process, as necessary, and as the process further develops.

It is the staff's intent to follow a similar process and present the proposed rule and procedures to the Commission at the March meeting.

Responsible Parties

Executive Director, General Counsel, Chief Financial Officer, Director of Procurement

Estimated Completion Date

Recommendation (i) – March 2016 (presentation of proposed rule and procedures to Commission)

Recommendation (ii) - May 2016 adoption of rule, June 2016 effective date of adopted rule

2. Operational Efficiency

2.1 Operational Efficiency – Contract Clauses and Provisions

A benchmark of contract clauses and provisions for construction contracts, performed as part of this review, found that the agency's current contract clause for Discounts, Rebates and Refunds could be improved by including more specific language regarding rebates, refunds, discounts and any savings identified by cost review or audit. The agency could realize significant savings and reimbursements under this clause.

The agency's current Rebate & Discount clause (Article 5.1.8) of the TFC's Construction-Manager-At-Risk (CMAR) agreement reads: "Discounts, Rebates, and Refunds. All cash discounts obtained or otherwise realized on payments made by CMAR shall accrue to TFC if, before making the payment, CMAR included them in a pay application and received payment from TFC; otherwise, all cash discounts shall accrue to CMAR. In no instance may CMAR retain as profit or gain, a discount, rebate or refund received as a result of a purchase or work performed as part of the project."

Recommendation

Improve contract effectiveness by adopting more specific language on discounts, rebates and refunds. Seek the advice of legal counsel, if deemed necessary.

Management Action Planned

Management agrees with this recommendation. Legal Services will work with the Facilities Design and Construction Division to enhance the contract provision involving discounts, rebates and refunds, using language similar to that found in contracts of the University of Texas System contracts. The revised language for this enhanced provision will be used in all future contracts.

Responsible Parties

Executive Director, General Counsel, Deputy Executive Director of Facilities Design and Construction

Estimated Completion Date

February 2016

2.2 Operational Efficiency – Unintegrated Information Systems

An integration of the key systems (i.e. APS; Legal System; GFAS and Impact) and the manual contract approval process would significantly reduce data redundancy while improving data integrity. The different divisions/ teams use different systems: FDC uses IMPACT, a hosted project management system for construction. PREM uses MicroMain, a maintenance management system, Procurement uses the Automated Procurement System (APS), HUB uses the Progress Assessment Report (PAR) access database, Legal Services uses a homegrown contracts database and a (manual) contract routing/approval folder (i.e. the purple folder), and Fiscal Services uses GUI Fund Accounting System (GFAS). To supplement, some teams have developed spreadsheets as tracking tools. These systems are not integrated and operating them results in significant operational inefficiencies for contract managers.

The review found a significant amount of data redundancy between APS and the purple folder.

Recommendations

Improve operational efficiency by implementing the following short-term solutions:

- (i) Merging the purple folder process with APS.
- (ii) Creating a mechanism to seamlessly merge data from IMPACT into APS.
- (iii) Creating a mechanism to seamlessly merge data from APS into GFAS.

For the long term, continue to include the agency's system integration initiative in the agency's Legislative Appropriations Request.

Management Action Planned

Recommendation (i): Management agrees with the recommendation to merge the current manual contract request form (CRF) process with the agency's Automated Procurement System (APS). Staff from both Legal Services and Procurement have already met with Information Systems (IS) staff to discuss this merger which will automate the contract request system, create one process, reduce data redundancy, and assist the requesting divisions with compliance with all procurement and contract requirements. Now that Legal Services and Procurement staff have identified, updated, and tested all processes and procedures to ensure compliance with the new requirements of SB 20, staff believes work can now proceed to address the necessary approval paths and work flow issues involved in merging the contract request process into APS. This work will be accomplished in coordination with IS staff who will develop the programming needed to implement this merger.

Recommendation (ii): Management agrees with the recommendation to pursue any practicable short-term solutions that will further integrate data between existing systems used by the agency and will continue to formally request specific data integration projects within the limited current capital budget authority provided to TFC in the FY2016-2017 General Appropriations Act. With Commission approval, TFC will again request funding in the agency's FY2018-2019 Legislative Appropriations Request (LAR) for a comprehensive Integrated Workplace Management System and will also request funding for other Enterprise Resource Planning technology systems that contain robust contract performance measure and construction project management capabilities to achieve full integration of agency systems.

Recommendation (iii): Management will continue to make progress internally to advance additional data integration including, but not limited to, an automated HUB compliance, monitoring, and reporting system.

Responsible Parties

Executive Director, General Counsel, Chief Financial Officer, Chief Information Officer, Director of Budget, Director of Procurement, HUB Coordinator

Estimated Completion Date

Recommendations (i) and (ii): August 2016 (LAR and merger of CRF with APS)

Recommendation (iii): Ongoing (Further integration of data between agency systems)

2.3 Operational Efficiency – Timeliness of Processes

There are opportunities to speed up project delivery by streamlining, simplifying and making the sub-processes of contract procurement, contract development and contract execution more seamless. The process from contract procurement to contract execution could be performed more timely. Together, the contract procurement, contract development and execution take an average of 146 days. Purchase requisition (PR) approval averages 26 days, the vendor solicitation process takes an average of 85 days. Once the award is made, the contract development and approval takes 14 days, after which contract execution takes 17 days. The vendor solicitation timeline includes any time spent waiting for Commission approval.

There are opportunities to streamline the purchase requisition and purple folder approval requirements, especially for smaller-dollar contracts. The review found that the same 9 or so approvals are required for both the purchase requisition and the purple folder, which seems duplicative. In addition, discussions with staff indicated that there has been instances where project information included in the purple folder (in the form of a computer disk (CD)) has been misplaced during the routing process, causing major delays. Automating the purple folder by integrating it into APS could not only reduce some of the duplication but also eliminate the need for manually routing project information on CDs.

Discussions with staff indicated that some of the untimeliness is due to external vendor/contractor delays. For example, even though contracts are included in solicitations, sometimes the vendor's attorney waits until they receive the final contract before negotiating contract terms. Invariably, these negotiations require issuing new documents for signature.

The agency's pilot on an electronic purple folder a few years ago was not successful due to a lack of senior management support.

Recommendations

Improve operational efficiency by:

- (i) Eliminating the purple folder.
- (ii) Working closely with the vendor's attorney during the period after solicitation and before contract execution to minimize delays.

Management Action Planned

Recommendation (i): As stated in response to the previous item, Management agrees with the recommendation to merge the current manual contract request form (CRF) process with the agency's Automated Procurement System (APS). Staff from both Legal Services and Procurement have already met with Information Systems (IS) staff to discuss this project which will automate the contract request system, create one process, reduce data redundancy, and assist the requesting divisions with compliance with all procurement and contract requirements. Legal Services and Procurement staff have now identified, updated, and tested all processes and procedures to ensure compliance with the new requirements of SB 20 and so staff believes work can now proceed on addressing the necessary approval paths and work flow issues involved in merging the contract request process into APS. This work will be accomplished in coordination with IS staff who will develop the programming needed to implement this project.

Recommendation (ii): Management agrees that working with the vendor to finalize a contract after solicitation adds additional time to the process and staff does its best to be as responsive as possible. The agency's contract documents are created to form the basis for the solicitation of the contract so communications with a vendor's attorney cannot take place until after the award of a contract; at that point in the process, the ability of the State to make changes is minimal. Wording changes or clarifications and other clerical issues can be addressed; however, major issues must be raised during the solicitation phase by a vendor by submitting questions and/or comments, at which time an agency can issue an addendum to the solicitation for the benefit of all participating contractors. Staff will continue to encourage vendors to submit any questions and/or comments earlier in the process to preclude delay after the award of a contract.

Responsible Parties:

Executive Director, General Counsel, Chief Information Officer, Chief Financial Officer, Director of Procurement

Estimated Completion Date:

Recommendation (i): August 2016 (Merger of CRF with APS)

3. Operational Effectiveness

3.1 Robust Reporting (to the Commissioners)

Recent discussions at the Commission meeting suggest that some of the Commissioners' information needs (regarding the contracts the agency is entering into) are currently not being met.

Recommendation

Improve operational efficiency and the effectiveness of the Commissioners' oversight role by enhancing the monthly contract reports (for commissioners).

Management Action Planned

Historically, staff has provided information in the form requested by the Commission. This is the basis for the memorandums, charts, and reports currently provided to the Commission and is also the basis for the level of detail currently included in those documents. It is Management's recommendation that staff work with the Commission Policy Work Group to review the current information provided to the Commission in terms of monthly contract reporting and make recommendations to the full Commission on any necessary changes to the current forms, level of detail, and process.

Responsible Parties:

Executive Director, General Counsel, Chief Financial Officer, Deputy Executive Director of Facilities Design and Construction; Deputy Executive Director of Planning and Real Estate Management; Commission Policy Work Group

Estimated Completion Date:

May 2016

3.2 Communication and Collaboration

With approximately 80% of the agency's purchases being executed via contracts, the contract management process is critical to TFC's mission, and impacts most of the agency's functions. However, its decentralized nature (i.e. being a shared responsibility across several divisions/ areas) requires higher levels of communication and collaboration for a seamless process. Discussions with staff indicate that the multi-discipline contract management team does not necessarily perceive itself as a team and that team communication could be improved. For example, procurement staff could attend construction project planning to stay informed about upcoming projects, and potential issues. In addition, agency-wide multi-disciplinary contract management goals could be thematic and concrete mechanism to help unify employees from different operating units.

Discussions with program staff also indicated that having a program contract specialist within FDC function as liaison between the program areas and contract management support functions (i.e. Procurement, Legal Services, and Fiscal). The specialist would also be responsible for assisting contract managers with the preparation of contract documents, thereby freeing them to focus on

project management. FDC's project managers typically oversee approximately 10 projects, each with several contracts associated with it.

Recommendations

Improve operational efficiency by:

- (i) Improving multi-disciplinary communication and professionalism.
- (ii) Implementing a contract specialist position within FDC.

Management Action Planned

Recommendation (i): Management agrees there is always room for improvement in interdisciplinary communication and coordination. Management will continue to work to strengthen effective communication across agency divisions and disciplines.

Recommendation (ii): Management agrees with the recommendation to implement a new contract specialist position in FDC as described below. FDC has discussed with the Executive Director and the CFO the possibility of posting such a position to assist the project managers with contract monitoring and reporting, insurance renewals, and contract development status. Management hopes to identify the needed resources within the agency's current funding and FTE count limits to authorize this position for FDC in the near future.

Responsible Parties:

Executive Director, Chief Financial Officer, Deputy Executive Director of Facilities Design and Construction

Estimated Completion Date:

Recommendation (i): Ongoing

Recommendation (ii): July 2016 (adding FTE and funding for new position in FDC)

2016

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*.

The audit focused primarily on contract management activities from September 2014 through January 2016. Fieldwork was conducted in December 2015 through January 2016.

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, including Comptroller's Office requirements and Commission policies and procedures.
- We reviewed and followed-up on the State Auditor's review of *Selected Contracts at the TFC*, Report # 15-001, issued in September 2014.
- We reviewed contract planning, contract procurement, and contract development documentation (including the contract routing (the purple) folder).
- We conducted interviews with staff.
- We reviewed contract reporting to the Commission as well to external agencies.
- We observed staff as well as Commission procedures regarding contract management.
- We benchmarked processes against a comparable peer organization.

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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 assist the agency in achieving its operational goals by using innovative and disciplined methods to objectively evaluate the effectiveness, efficiency, and integrity of agency operations and governance processes and making recommendations to improve operational performance and governance processes.

**To obtain a hard copy of this TFC Audit Report, please e-mail
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