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Review of the Ethics Program

Project #20170120
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Texas Facilities Commission

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

Table of Contents

- Executive Summary 3
 - Overview.....3**
 - Summary of Management’s Response.....4**
 - Background4**
 - Closing4**
- Detailed Issues with Management Responses 5
 - 1. Encourage Dialogue.....5**
 - 2. Strengthen the Message6**
 - 3. Formalize Organizational Culture Committee.....8**
- Objective, Scope and Methodology 11
- Appendix: Employee Survey 12
- Report Distribution 13

Executive Summary

Overview

The Texas Facilities Commission's (the agency) ethics program has the framework in place to promote learning about ethics and to encourage employees to report ethical misconduct. Agency processes provide reasonable assurance for compliance with the Texas Government Code. Key controls include guidance to employees for all ethics related rules, statutes and requirements, agency policies and ethics training.

The agency has policies in place to communicate management's expectations regarding ethical conduct, including an ethics policy and several other related policies in the Human Resources Manual. Further, the agency refers employees to the Texas Government Code Chapter 572, Subchapter C, Standards of Conduct and Conflict of Interest Provisions, Section 2113.014 (Employee Standards of Conduct), and Section 2152.064 (Conflicts of Interests in Certain Transactions). Furthermore, the agency requires new employees to acknowledge their understanding of the requirement to comply with the statutes.

The agency has processes in place to promote learning about ethics, including mandatory ethics training (developed by the Texas Ethics Commission) which includes such topics as standards of conduct and conflict of interest. The agency requires new hires to complete standardized ethics training within the first thirty days of employment. In addition, agency employees are required to retake ethics training every two years.

The agency has processes in place on how to report ethical misconduct. The Human Resources (HR) Manual and the Executive Policy on Fraud, Waste, and Abuse encourage employees to report ethics violations, misconduct, including theft, suspected fraud, waste or abuse, concerns, workplace issues and disputes. Agency employees may report ethical misconduct to the General Counsel, the HR Director, the Internal Audit Director, or the State Auditor's Office (SAO). The various methods for reporting include in person, by phone, by email or anonymously through either the SAO hotline or Office of Internal Audit (OIA) hotline. In addition, the TFC public webpage and the TFC Intranet include active links for reporting fraud, waste, and abuse. Posters with the contact information for the SAO and OIA hotline are posted in the break rooms at the Central Services Building, the Warehouse and Surplus outlets.

The agency culture is in transition. Management recognizes that more work is needed to create a more participative environment where all employees are comfortable sharing their ideas. Management indicated it is committed to improving the agency culture and has implemented some initiatives, including an Organizational Culture Committee to promote executive management's vision for a culture of "mutual respect, collaboration, and continuous improvement." While the Culture Committee's initiatives bring the agency more in line with other agencies of similar size, a more formal structure (including written procedures) would enhance its operational effectiveness.

The agency has an Employee Activities Committee (EAC) which coordinates agency-wide employee appreciation events.

Summary of Management's Response

Management is very appreciative of the positive comments made by the Office of Internal Audit regarding the agency's ethics program and the acknowledgment that the agency is in compliance with State law.

Management agrees and is committed to improving and maintaining a strong, healthy organizational culture at TFC. To this end, Management has developed numerous tools and strategies including the Organizational Culture Committee (OCC); the Employee Activities Committee (EAC); and Human Resources, Commission, and Executive policies. Management will continue to improve, streamline and design additional tools and strategies to effectively communicate and reinforce a strong, healthy organizational culture at TFC.

Background

The official responsibility for the ethics program is shared between the Commissioners, the Executive Director, General Counsel, Human Resources, and OIA, with the General Counsel serving as the Ethics Officer and OIA being responsible for investigating and reporting on Fraud, Waste, and Abuse (FWA) allegations. In reality, ethics is everybody's responsibility.

Closing

We would like to thank TFC Leadership and employees for the cooperation and assistance provided to the audit staff. Additionally, we sincerely appreciate the agency employees that participated in the audit survey. For questions or additional information concerning this audit report, please contact Amanda Jenami at 512-463-1438.

Detailed Issues with Management Responses

1. Encourage Dialogue

The review included an agency-wide survey of employee perception on the agency's ethical culture. However, the survey results were not statistically significant (due to a low response rate), and thus the audit could not determine employee perception on the agency's ethics and culture. A list of the survey questions is included as an appendix to the report. Some employees did not believe that the survey was truly anonymous and did not want their responses to be tracked back to them. Several employees indicated they did not complete the survey because they were concerned about retaliation, although the agency has a policy against retaliation. Others thought that completing the survey would not make a difference. Employees were given sufficient time (13 calendar days) to complete the survey. In addition, the audit team followed up with email reminders 8 and 12 days after the initial roll out. The low response rate is of concern to the audit team because it suggests that a portion of the agency's employees is fearful of expressing its concerns or simply disengaged. This suggests that in some quarters, practice may not be aligned with agency policy which, in turn, suggests that management needs to set the right tone (from the top) regarding ethics and culture.

Tone at the top and management actions are key in driving agency culture. It is important for people to feel comfortable discussing ethics and culture related topics, including ethical and cultural dilemmas that they may face.

OIA has only received two allegations since taking over the fraud, waste, and abuse investigations more than two years ago. For an agency this size, this may suggest that the fraud, waste, and abuse hotline is not effective. The low complaint rate is despite OIA's outreach efforts which include FWA informational posters in common areas and presentations at the new employee orientation, which may suggest that concerns about retaliation may be at play. Using a third party vendor to administer the hotline could assist the agency in getting employees to trust the anonymity of (allegation) reports would be maintained.

Recommendations:

TFC Leadership (including Commissioners) should set the right tone by taking every opportunity to encourage and facilitate conversations about ethics and agency culture. More specifically:

- (i) Remind employees and all stakeholders to speak up and communicate their concerns, emphasizing how to report unethical behavior (including behavior that is not consistent with the agency's vision).
- (ii) Emphasize that retaliation is illegal, will not be tolerated and that individuals who report misconduct in good faith are protected from retaliation.

- (iii) Encourage discussions about ethics and ethical expectations. For example, you could provide a secure link on the agency portal for employees to "Ask the Ethics Officer" a question. In addition, the Ethics Officer could publish ethics related articles in the agency newsletter.
- (iv) The Executive Director could take advantage of the agency-wide meetings by adding a brief ethics or culture statement in his remarks.
- (v) Consider providing OIA the budget to hire a third party to administer the FWA hotline.

Management Action Planned

Management agrees that the agency needs to continue to encourage and facilitate conversations about ethics as is evidenced by agency policies. Management agrees that retaliation is illegal and that the agency has a zero tolerance policy if it is reported and supported; and, Management agrees that this practice must continue. The General Counsel acknowledges that although the agency provides the training provided by the Texas Ethics Commission, that it can be confusing to staff and agrees to provide more avenues for staff to ask questions about what is and is not allowed by law. With regards to hiring a third party to administer the Fraud, Waste and Abuse Hotline, Management does not feel that this is necessary in that the State Auditor's Office currently advertises and provides this service and TFC staff has historically used this method of reporting.

Responsible Parties

All Management

Estimated Completion Date

Immediate and ongoing

2. Strengthen the Message

The agency's guidance for reporting ethical violations is not consistent. More specifically:

The *Executive Policy on Fraud, Waste and Abuse* (FWA) states that any employee who suspects or witnesses an act of FWA occurring at a Texas agency should call the State Auditor's Office Hotline or report the incident via mail or electronically. Employees who report fraud may choose to remain anonymous. The policy further indicates TFC employees may also report FWA to the TFC Office of Internal Audit, in person or in writing or via the Office of Internal Audit Hotline.

The *Grievances Procedure* on the TFC Portal, within the HR Manual, indicates that there is a process for resolving workplace issues. The procedure states that employees are required to attempt informal resolution of grievances first by discussing their concerns with their immediate supervisor and submitting their concerns in writing to the Human Resource Director prior to filing a formal grievance except for allegations of sexual harassment, retaliation, or whistleblower retaliation.

The *Ethics Policy* on the TFC Portal, within the HR Manual, indicates that violations of the Ethics Policy should be reported to the HR Director. It further states that any employee who suspects or witnesses an act of misconduct, including theft, must immediately report such incidents to the HR Director. The policy further states suspected FWA should be reported to the State Auditor.

The FWA Policy is mostly about reporting allegations to the State Auditor's Office, with a very small section devoted to the reporting process within the agency (to OIA). In addition, the FWA Policy does not define the terms fraud, waste, and abuse. Definitions would assist in clarifying the difference between FWA allegations and other types of complaints.

Recommendations:

TFC Leadership should revisit the current guidance provided to stakeholders and revise as necessary to ensure management's expectations are clearly communicated. More specifically, TFC Leadership should:

- (i) Review current guidance and consider whether it is in alignment with management expectations.
- (ii) If not, further contemplate and define reporting expectations for ethical misconduct, FWA, concerns and issues using consistent terminology and messaging.
- (iii) Revise current guidance to include the revised terminology and messaging.
- (iv) In collaboration with the Office of Internal Audit, revise the FWA Policy to include more emphasis of OIA's role and a definition of the terms fraud, waste, and abuse.
- (v) Clearly communicate expectations to TFC stakeholders.
- (vi) Consider an at-a-glance info-graphic or flowchart to facilitate providing employees with guidance.
- (vii) Periodically evaluate the guidance and communication thereof to ensure continued alignment with leadership's expectations.

Management Action Planned

Management agrees to review all of the current policies to insure that they are consistent and provide a clear message to staff about ways to report various issues. In addition, as discussed during the audit exit conference, the General Counsel and the Director of Human Resources feel that it is important to encourage reporting of misconduct or wrongdoing, regardless of who it is reported to and that message needs to be made very clear; therefore, if an employee does not want to report something to the Legal Services Division or the Office of Internal Audit, he or she should be encouraged to report to the Human Resources Division or his or her supervisor. It would then be the responsibility of those individuals to get the right people involved and follow the processes set out in policy. Regarding the recommendations on the Fraud, Waste and Abuse

Policy, the General Counsel has offered to assist the Office of Internal Audit with review of this policy.

Responsible Parties

Legal Services Division, Human Resources Division, Office of Internal Audit

Estimated Completion Date

September 30, 2017

3. Formalize Organizational Culture Committee

The agency culture is in transition. Management is taking steps to improve the agency culture. Key accomplishments include a formal vision statement, an Organizational Culture Committee to “develop tools and activities to promote executive leadership’s vision.” The Committee implemented an Employee of the Month (EOM) Program to acknowledge, celebrate, and reward employees whose work accomplishments and demeanor at work exemplify excellence, quality service, and commitment to TFC’s vision and mission. Via this program, TFC management had recognized 12 employees (as of June 2017) for outstanding work. Employee of the Month procedures indicate that the program is administered by the Organizational Culture Committee in collaboration with the Human Resources (HR) Division. The Committee informed OIA that it sends an email to the HR Director requesting her “assessment and advice” on a potential employee of the month candidate. However, discussions with the HR Director indicate that her input has not been sought on a consistent basis. In addition, the HR Director has only been to one Organizational Culture Committee (on August 5, 2016). The Committee recognized its first Employee of the Month in June 2016. The HR Director indicated that, when consulted, she reviews the potential candidate’s personnel file for any pending disciplinary action and other personnel issues. Management indicated that the Committee’s administration of EOM program is temporary, and would be assigned to HR once it (HR) is fully staffed. This is a good idea, and should help ensure sensitive personnel information is kept confidential.

TFC’s Vision Statement

We are committed to fostering a culture of mutual respect, collaboration, and continuous improvement.

The Organizational Culture Committee has also implemented a quarterly agency newsletter, the TFC Times, an agency-wide communication tool. As of July 5, 2017, the Committee has published five editions.

The Committee’s initiatives bring the agency more in line with other agencies. A benchmark against five agencies of similar size found that all five have an employee recognition program, and an employee newsletter (or other regular communication). Eighty percent (4 out of 5) of the agencies surveyed have a culture committee or other internal group that has a cultural component.

A more formal structure would enhance the Committee’s operational effectiveness. Currently, the Committee operates with two permanent members, who (in order to inject fresh ideas) periodically invite agency employees from different divisions to the meeting. So far, the Committee has invited employees from various divisions, including Plant Operations, Warehouse

Operations, Finance, Legal and Facilities, Design and Construction (FDC). Some individuals have been invited once while others have been invited twice. While the audit team understands that management is trying to ensure Culture Committee membership is not burdensome on individuals, it still believes a more stable membership (e.g. a year) would increase consistency, transparency, and operational effectiveness. It would provide the rotational members with not only greater opportunity to impact the work of the Committee, but also the opportunity to learn from fellow Committee members.

Further, formal written procedures would assist in the transparency of the workings of the Committee. For example, currently the criteria used for determining who to invite to the meetings is not clear. Formally documenting the criteria (as part of the written procedures) would assist with the rest of the employees who may be interested in participating. The selection criteria should ensure the Committee is representative of the agency workforce. In addition, opening up the Committee meetings to agency employees (who are not Committee members) would increase transparency. Posting the Committee procedures on the TFC Intranet would further enhance the effort.

Recommendations:

Agency leadership should improve the operational effectiveness of the Organizational Culture Committee by providing more structure to its operations by:

- (i) Developing and implementing formal written procedures to guide the Organizational Culture Committee activities.
- (ii) Ensuring the written procedures distinguish Culture Committee responsibilities from those assigned to Human Resources and the Employee Activities Committee.
- (iii) Reassigning the EOM program to HR once HR is fully-staffed. In the meantime, working closely with the HR Director to ensure consistency of practice across the agency from month to month.
- (iv) Increasing the service terms for the rotational Committee members.
- (v) Developing a formal criteria for inviting rotational Committee members.
- (vi) Ensuring the Committee policies require its membership to be representative of the agency workforce.
- (vii) Opening up Committee meetings to agency employees (that are not Committee members).

Management Action Planned

Management agrees to review current policies and procedures to see if a more formal framework is needed to enhance operational effectiveness. Management agrees to review employee membership procedures to clarify the process and encourage employee participation. Management will take all recommendations into consideration and review. OCC is a work in progress and management feels that efforts to promote the program are moving forward and strives to make the program open and accessible to all employees. OCC is only one tool in promoting a healthy organizational culture at TFC.

Responsible Parties

Executive Management

Estimated Completion Date

Ongoing

Objective, Scope and Methodology

The audit objective was to examine and assess the TFC ethics program to determine the extent to which there are processes in place to promote learning about ethics, encourage employees to report ethical misconduct, and establish and maintain an acceptable agency-wide culture. The audit focused on the TFC Ethics Program and ethics related activities from the period July 2015 through April 30, 2017, including Commission and TFC Agency policies in place as of April 30, 2017 and rules, regulations and requirements applicable during that period. Fieldwork was conducted May through June, 2017.

According to the Institute of Internal Auditors (IIA), ethics is a sensitive area that does not easily lend itself to traditional audit rating systems. An audit of an entity's ethics program can sometimes create unease or discomfort because of the subject matter and the challenge of evaluating a subject that may mean different things to different people. Rather than give an opinion on ethics overall, the audit team determined it may be more useful to assess specific elements of the agency's ethics program. Therefore the audit team narrowed the audit focus to three specific elements of the ethics program. More specifically, the audit team would examine and assess the agency's ethics program to determine if:

- A. Processes are in place to promote learning about ethics;
- B. Processes are in place to encourage employees to report ethical misconduct; and,
- C. Processes are in place to establish and maintain an acceptable agency-wide culture.

It is important to use a common terminology during the audit, especially in regard to an ethics "program." For purposes of this audit the ethics program is the plan or system that the agency uses to communicate ethical expectations, ensure compliance with statutory requirements, promote ethical conduct, and ensure an ethical environment consistent with leadership's ethical expectations. An "acceptable agency-wide culture" is what agency leadership defines it to be. For purposes of this audit, an "acceptable agency-wide culture" is compliance with the HR Policy Manual, Commission Policies, and Executive Policy.

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 a review of applicable laws, rules and established Commission policies and procedures and staff interviews.

Appendix: Employee Survey

1. Management of my work unit communicates and demonstrates expected ethical behavior.
2. I am aware of and understand the agency's ethics policy.
3. I believe my coworkers conduct themselves in accordance with the ethics policy.
4. The ethics training I took was easy to understand and relevant to what I do.
5. Persons who report suspected unethical behavior are protected from retaliation.
6. I believe that management handles ethics violations appropriately.
7. The agency holds management to the same or a higher ethical standard as all other agency employees.
8. Employees in my work unit are treated fairly and justly.
9. I have been disrespected or bullied at work.
10. Employees in my work unit have received sufficient diversity training for an inclusive and productive work environment.
11. I believe ethical conduct is rewarded at TFC.
12. I believe unethical conduct is not tolerated at TFC.
13. If I witnessed or had suspicions of fraud, waste or abuse at TFC I would report it to:
 - a. My supervisor
 - b. Human Resources
 - c. Legal Division
 - d. Internal Audit (OIA)
 - e. Anonymously to the OIA hotline
 - f. State Auditor's Office
 - g. I would NOT report it to anyone
 - h. Other

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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 Mission Statement

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

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