



**John Keel, CPA**  
**State Auditor**

An Audit Report on

# **Contract Management at the Department of Motor Vehicles**

July 2012

Report No. 12-043



An Audit Report on

## Contract Management at the Department of Motor Vehicles

SAO Report No. 12-043  
July 2012

### Overall Conclusion

The Department of Motor Vehicles (Department) demonstrated inconsistency in the procurement of contracted goods and services in accordance with applicable state laws, rules, and Department policies. For example, for 9 non-solicited requested purchases, totaling \$86,641, the Department did not have adequate documentation to show that it used the correct procurement method. Also, the Department did not consistently obtain the minimum number of informal bids required by the *State of Texas Procurement Manual*. In addition, the Department should strengthen its monitoring processes and controls to help ensure that (1) contractors perform according to their contracts and (2) payments are made in accordance with state laws and regulations. From September 2010 through February 2012, the Department made \$52,850,628 in payments to non-governmental entities for procured goods and services.

It is important to note that the Department, which became operational in November 2009, is making efforts to improve its procurement function by implementing the use of a standard purchase request form and a purchaser peer review process. In addition, the Department involved its project managers in the request for proposal (RFP) development process (see text box for definitions of procurements and purchases for the purposes of this audit report).

The Department should continue to strengthen its contract management by:

- Developing and maintaining a comprehensive list of contracts awarded.
- Developing and implementing purchasing policies and procedures.
- Performing a needs assessment for all contracts whose value exceeds a threshold established by the Department.

#### Background Information

The Department was created by House Bill 3097 (81st Legislature) and became operational on November 1, 2009. The Department was initially created from four divisions at the Department of Transportation. In addition, on January 1, 2012, the oversize and overweight vehicles program was transferred from the Department of Transportation to the Department.

The Department was appropriated \$169,191,700 for fiscal year 2012. As of April 1, 2012, the Department reported it had 690.5 full-time equivalent employees.

#### Formal Solicitation Procurements and Non-solicited Requested Purchases

For the purpose of this audit report:

- **Formal solicitation procurements** are procurements for which the Department issued a request for proposal (RFP) or solicited formal bids and evaluated the bids using established criteria. Since its inception, the Department issued seven RFPs. Auditors identified an additional contract for which the Department did not issue an RFP, but for which it solicited formal bids and evaluated those bids using established criteria. Five of those eight formal solicitations resulted in contracts. The Department canceled two RFPs, and it did not receive any proposals for another RFP.
- **Non-solicited requested purchases** are those for which the Department issued a purchase order without issuing an RFP or formally soliciting bids.

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

For more information regarding this report, please contact Sandra Vice, Assistant State Auditor, or John Keel, State Auditor, at (512) 936-9500.

- Keeping all evaluation scoring sheets in accordance with the State's record retention schedule.
- Providing evaluators additional guidance on completing evaluation scoring sheets.
- Considering price when scoring proposals.
- Consistently using the appropriate procurement method as required by the *State of Texas Procurement Manual*.

Auditors performed tests to determine whether (1) vendors' invoices supported payment amounts, (2) rates in vendors' invoices were consistent with rates authorized by purchase orders, (3) invoices were approved prior to payment, and (4) the Department inventoried capital and controlled assets. Auditors determined the following:

- Vendors' invoices supported all 23 formal solicitation procurement payments tested and all 60 payments tested for non-solicited requested purchases.
- The Department verified that it received all contracted deliverables prior to making payments. However, for one contract tested, auditors noted that the first deliverable the Department received, at a cost of \$91,000, made references to a state agency other than the Department, indicating that the deliverable was not originally created for the Department.
- For 55 (92 percent) of the 60 non-solicited requested purchase payments tested, the purchase order supported the invoice. However:
  - For 3 payments totaling \$26,261, auditors could not confirm that the invoiced rates were accurate because either a purchase order did not exist or the purchase order included a not-to-exceed amount without a specific billing rate.
  - For 2 payments, the invoiced rate exceeded the rate established in the purchase order, resulting in total overpayments of \$187.
- The Department did not tag and record in the State Property Accounting system 1,463 printers and computers worth a total of \$922,860 at the time of acquisition.

## ***Summary of Management's Response***

Department management agreed with the recommendations in this report. The Department's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report.

## ***Summary of Information Technology Review***

Auditors determined that the Department's user access controls over its Purchasing Fiscal Management System (purchasing system) may not adequately protect the reliability of the data. The Department did not follow its process for limiting and reviewing user access to its network or its purchasing system. As a result, internal users had excessive access rights, which increased the risk of intentional or accidental alteration or deletion of purchasing data. Auditors did not note any instances in which data had been altered or deleted.

The Department also should strengthen controls over granting user access to the Uniform Statewide Accounting System (USAS). To minimize security risks, auditors communicated details about the identified information technology weaknesses separately in writing to Department management. Because of the control weaknesses discussed above, with the exception of one payment tested, auditors did not rely on data from the purchasing system for the purposes of this audit. All other payments tested were supported by hard-copy documentation.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of this audit were to determine whether the Department:

- Procures contracted goods and services in accordance with applicable state laws, rules, and Department policies and procedures to help ensure that the State's financial interests are protected.
- Has processes and related controls to help ensure that contractors perform according to the terms of their contracts and that the Department processes contractor payments in accordance with applicable state laws, rules, Office of the Comptroller of Public Accounts requirements, and Department policies and procedures.

The scope of this audit covered (1) RFPs prepared by the Department from November 1, 2009, through November 30, 2011, and the related expenditures through February 2012 and (2) expenditures for goods and services the Department made from September 1, 2010, through November 30, 2011, and the associated procurements.

The audit methodology included collecting information and documentation; conducting interviews with Department staff; analyzing and evaluating the results of tests; observing processes; and reviewing policies, procedures, and statutes. In addition, auditors performed a limited review of general and application controls over the Department's purchasing system and reviewed user access controls over USAS.

Auditors also communicated other, less significant issues to the Department separately in writing.

# Contents

## *Detailed Results*

---

Chapter 1	
The Department Demonstrated Inconsistency in the Procurement of Contracted Goods and Services in Accordance with Applicable State Laws, Rules, and Department Policies .....	1
Chapter 2	
The Department Should Improve Controls for Making Payments and Strengthen Its Inventory Tracking and Information Technology Access Controls.....	15

## *Appendices*

---

Appendix 1	
Objectives, Scope, and Methodology .....	21
Appendix 2	
Top 10 Vendors Receiving Payments from the Department .....	24
Appendix 3	
State of Texas Contract Management Guide Essential Contract Provisions.....	25

# Detailed Results

Chapter 1

## ***The Department Demonstrated Inconsistency in the Procurement of Contracted Goods and Services in Accordance with Applicable State Laws, Rules, and Department Policies***

---

The Department of Motor Vehicles (Department) did not have a comprehensive list of contracts, nor did it have formalized or complete purchasing policies and procedures. In addition, the Department did not require or perform needs assessments for its procurements, as required by the Office of the Comptroller of Public Accounts' (Comptroller's Office) *State of Texas Contract Management Guide* (see text box for information on the recommended framework for effective contract management).

Some of the issues that auditors identified in the Department's procurement process included the following:

- Evaluators' scores for objective criteria (such as a vendor's years of experience) ranged from no points to the maximum available points, indicating that the evaluators did not have the same interpretation of the evaluation criteria.
- The Department did not always retain evaluation scoring sheets, verify that the evaluators completed evaluation scoring sheets in a consistent manner, or consider price in scoring one formal solicitation procurement tested.

- For 9 non-solicited requested purchases, totaling \$86,641, the Department did not have adequate documentation to show that it used the correct procurement method. The *State of Texas Procurement Manual* specifies how goods and services should be procured. The Department also did not consistently obtain the minimum number of informal bids required by the *State of Texas Procurement Manual*.

The Department had some procurement processes and controls that were working effectively. For example, the Department ensured that its formal solicitation procurements were approved by the Comptroller's Office prior to being posted, as required by the Texas Government Code and the Texas Administrative Code. The Department also involved its project managers in the request for proposal (RFP) development process and ensured that executed contracts contained all applicable contract terms required by the *State of Texas Contract Management Guide* (see Appendix 3 for more information about those contract terms).

### Contract Management Framework

- **Plan** - Identify contracting objectives and contracting strategy.
- **Procurement** - Fairly and objectively select the most qualified contractors.
- **Contract Formation/Rate/Price Establishment** - Ensure the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions, as well as establish processes that are cost-effective and aligned with the cost of providing the goods and services.
- **Contract Oversight** - Monitor and enforce the terms of the contract.

Source: *State of Texas Contract Management Guide*.

Auditors reviewed the procurement processes for 8 formal solicitation procurements and 45 non-solicited requested purchases to determine whether a documented purchase request initiated the procurement process and the Department followed the correct procurement process (see Appendix 2 for the top 10 vendors receiving payments from the Department). It is important to note that the Department is making efforts to improve its procurement function by implementing the use of a standard purchase request form and a purchaser peer review process.

Chapter 1-A

**The Department Should Continue Its Efforts to Improve Its Procurement Function by Maintaining a Comprehensive List of Contracts and Developing and Implementing Procurement Policies and Procedures**

The Department's procurement processes should be improved to help ensure that the Department can produce a comprehensive list of contracts. The Department provided auditors a list of its contracts from November 2009 through January 2012 that included formal solicitation procurements and non-solicited requested purchases. However, auditors determined that numerous contracts were missing from that list. The Department asserted that its new purchasing system, which was implemented in September 2011, will help it compile a comprehensive list of contracts going forward. However, auditors determined that the controls over the new purchasing system did not adequately ensure the reliability of the data entered into that system (see Chapter 2-C for more information). Not having a comprehensive list of all contracts reduces the Department's ability to determine whether all funds have been properly encumbered and increases the risk that the Department may overcommit its funds when entering into new contracts.

The Department was initially created from four divisions at the Department of Transportation. The Department of Transportation has several exemptions from the State's purchasing rules and regulations; however, those exemptions do not apply to the Department. As a result, the Department did not have formalized or complete purchasing policies and procedures. The Department had some written policies and procedures in draft form; however, key sections were blank. The incomplete sections included procedures for areas such as solicitation and procurement, purchasing of information systems, evaluating proposals, awarding contracts, and receiving purchased goods.

The Department is making efforts to improve its procurement function.

As of March 28, 2011, the Department began requiring that a standardized form for purchase requests be used for all purchases. In addition, the Department stated that its procurement department has begun to use a peer review process. In that process, purchasers review each other's procurement files using a peer review checklist the Department developed to verify

whether they included certain elements, such as properly completed and signed purchase orders and approved procurement and contract requests. However, as of January 2012, the Department had not developed related written procedures for the peer review process for its procurement manual.

## Recommendations

The Department should:

- Compile and maintain a comprehensive list of all contracts.
- Develop and implement purchasing policies and procedures.

## Management's Response

*The Department concurs with the recommendation and has implemented the Purchasing and Fiscal Management System (PFMS) for agency wide use which will ensure an accurate and comprehensive list of all contracts and procurements conducted by the Department. The findings of this audit stated that "...numerous contracts were missing from this list." The contracts documented as "missing" were omitted due to human error during the compilation of the comprehensive list using hard copy documentation of purchase orders created prior to PFMS. Management feels that this system has addressed the recommendation and the Director of Purchasing will ensure continued compliance with this recommendation. (Bullet 1)*

*The Department concurs with the recommendation that it needs to continue to develop and implement standard purchasing policies and procedures and is actively working to complete this task. The Director of Purchasing will ensure that departments updated purchasing policies and procedures will be available in late November 2012 with the submission of the department's annual Procurement Plan submitted to the Comptroller of Public Accounts. (Bullet 2)*

Chapter 1-B

## The Department Should Improve Its Processes for Formal Solicitation Procurements

The Department should improve the content of its RFPs to reduce cancellations and repostings. In addition, the Department did not complete needs assessments for all 8 formal solicitation procurements, nor did it consistently require approved purchase requests to initiate formal solicitation procurements. The Department also did not always retain evaluation scoring sheets, verify that evaluators completed evaluation scoring sheets in a consistent manner, or consider price in scoring one formal solicitation

procurement. However, the Department had some procurement processes and controls that were working effectively. For example, the Department's contracts contained all applicable required contract terms and the Department obtained proper purchase delegation approval from the Comptroller's Office.

The Department did not perform needs assessments for procurements.

The Department did not complete a needs assessment for its 8 formal solicitation procurements from November 2009 through November 2011. Of those 8 formal solicitation procurements, 5 resulted in awards ranging from \$82,000 to \$1,496,300 for a total of \$3,420,700 and 3 did not result in an award. The purpose of a documented needs assessment is to help ensure that the contracting team plans for the correct contracting objective. A needs assessment should also include the Department's decision to contract out for a service instead of performing it in house.

The Department should improve the content of its RFPs to reduce cancellations and repostings.

Auditors reviewed the procurement processes for 8 formal solicitation procurements. Since the Department became operational in November 2009, the Department has posted seven RFPs for five different services. The Department canceled and later reposted two of those RFPs, and the reposted RFPs resulted in contracts. The Department did not receive any proposals for one of the seven RFPs and no contract resulted. In addition, the Department was not required to and did not issue an RFP for the eighth formal solicitation procurement. Specifically:

- The Department canceled one RFP for executive search services after proposals had been received and scored. According to Department management, its board decided the proposal evaluation process should include an oral presentation from each vendor. Because the original RFP did not state that an oral presentation would be used as a factor in scoring and evaluating the vendors, the Department canceled the RFP and reposted a new RFP that included an oral presentation component. In addition, the reposted RFP stated that the evaluators' scores for the written qualifying proposals received would be used only to determine which vendors advanced to the oral presentation phase. The vendor with the highest scores from the oral presentation phase would be awarded the contract. That process differed from the one the Department used for a previous RFP that also had an oral presentation component. For the previous RFP, the final selection of the vendor was based on a combined score from the written proposal and oral presentation phases.
- The Department canceled one RFP for outgoing postal mailing services before it received any proposals because the Department believed there were fundamental inconsistencies in the RFP that could create confusion and unfair respondent opportunities. The Department later reposted an RFP and awarded a contract.

- The Department canceled a third RFP for certified public accounting services because it did not receive any proposals. The Department asserted that no proposals were received because the solicitation was erroneously posted as an RFP instead of as a request for quote (RFQ). The Department did not repost it as an RFQ and did not award a contract for those services.

The Department should ensure that all RFPs are reviewed prior to posting and that they contain all of the elements necessary to help ensure that the Department receives the best value for contracted goods and services.

The Department did not consistently require approved purchase requests to initiate formal solicitation procurements.

The Department did not have an approved purchase request for three of the eight formal solicitation procurements tested. Of those three procurements, two resulted in awards totaling \$1,681,300. The Department canceled the third procurement, which did not result in a contract.

A purchase request allows the project manager to communicate to the purchaser the need for goods or services, as well as to document management's approval of the purchase. The *State of Texas Procurement Manual* requires a purchase request to initiate the procurement process. The Department implemented a purchasing process that required purchase requests effective March 28, 2011. However, two of the three formal solicitation procurements that did not have a signed purchase request were purchased after that process was in place. The Department risks procuring goods and services without obtaining documented management approval and without clearly communicating the specifications of the goods or services to its purchasing staff when it does not comply with its purchase request process and the *State of Texas Procurement Manual*.

Although the Department inconsistently complied with its purchase request process, the appropriate Department personnel approved all five formal solicitation procurements prior to the Department entering into a contract. Table 1 on the next page lists the findings for the eight formal solicitation procurements that auditors tested.

Table 1

Formal Solicitation Procurements the Department Posted from November 2009 through November 2011					
Description of Services	Contract Awarded?	Contractor	Contract Value	Did a Purchase Request Initiate the Procurement Process?	Was the RFP Approved By Management Prior to Posting?
Business Process Analysis Services	Yes	Gartner, Inc.	\$1,496,300	No	Not Applicable <sup>a</sup>
Strategic Marketing and Public Awareness	Yes	Tuerff-Davis Environmedia	\$1,200,000	Yes	Yes
Organizational Assessment	Yes	The Azimuth Group	\$ 457,400	Yes	Yes
Outgoing Postal Mail Services	Yes	MailMax Direct	\$ 185,000	No	Yes
Executive Search Services	Yes	Grant Cooper	\$ 82,000	Yes	Yes
Certified Public Accountant Services	No	Not Applicable	Not Applicable	Yes	Yes
Executive Search Services	No	Not Applicable	Not Applicable	Yes	Yes
Outgoing Postal Mail Services	No	Not Applicable	Not Applicable	No	Yes

<sup>a</sup> The Department was not required to and it did not issue an RFP for this procurement.

The Department inconsistently retained the evaluation scoring sheets for its formal solicitation procurements.

The Department retained the evaluation scoring sheets for five of the six formal solicitation procurements it scored. For a formal solicitation procurement for business process analysis services, the Department could not locate 10 of the 30 evaluation scoring sheets. The Department's formal solicitation procurement files contained the evaluation scoring tabulation sheet for that procurement summarizing all evaluators' evaluation scoring sheets, including the missing 10 evaluation scoring sheets. However, the summary did not indicate that the evaluators verified the scores. As a result, auditors could not verify that the scores on the evaluation scoring tabulation sheet matched those on the missing evaluation scoring sheets.

The state record retention schedule requires proposal scoring documents to be retained for three years after the applicable fiscal year. Additionally, if the scoring documents are associated with a successful proposal and a contract is executed, the scoring documents are required to be retained for four years after the close of the contract. The Department executed the contract for business process analysis services discussed above with Gartner, Inc. in March 2011.

The Department did not verify that evaluators consistently completed evaluation scoring sheets or that the evaluation scoring sheets were free of errors.

Department evaluators scored proposals for six of the eight formal solicitation procurements tested. Auditors identified inconsistencies and errors in the

evaluation scoring sheets for four of those six formal solicitation procurements. Specifically:

- For one procurement, the evaluators:
  - ♦ Did not follow instructions to award specific numerical values.
  - ♦ Inconsistently scored the proposals. For example, some evaluators summed individual scores, others averaged individual scores, and others assigned one overall score to each section.
  - ♦ Did not ask all questions of every vendor; therefore, all vendors did not have an equal opportunity to earn all available points.
- For three procurements, the Department made small errors when summing scores.
- For four procurements, evaluator scores for objective criteria (such as a vendor's years of experience) ranged from no points to the maximum points available, indicating the evaluators did not have the same interpretation of the evaluation criteria. The *State of Texas Contract Management Guide* states that when an evaluation differs significantly from the majority, the team leader should conduct a meeting with all team members to review the criteria and make sure that information was not overlooked or misunderstood.

Because of the various inconsistencies described above, auditors were unable to determine whether the Department selected the vendors that provided the best value to the State.

The Department did not consider price in evaluating one formal solicitation procurement.

Even though it was not required to and did not issue an RFP, the Department obtained three proposals for business process analysis services. Five evaluators scored each proposal using the same criteria provided by the Department. However, the Department did not include price as part of the criteria for scoring the proposals. The Department selected Gartner, Inc., which submitted a proposal for \$1.48 million plus \$1.15 million in optional add-ons. The submitted prices for the other two proposals were \$1.44 million and \$1.73 million. The Department ultimately negotiated and awarded a contract to Gartner, Inc. for \$1.30 million for the services. It later added \$196,300 in amendments, for a total of \$1,496,300. Texas Government Code, Section 2155.074, states that purchase price and whether the goods or services meet the specifications are the most important considerations in determining the best value to the State. Even though Gartner, Inc.'s price was comparable with the other proposals, if the Department does not include price as part of its criteria for evaluating proposals, it cannot ensure that it is selecting the vendor offering the best value.

The Department's contracts contained all essential contract terms that were applicable.

The Department executed all five contracts tested using all of the essential contract terms in the *State of Texas Contract Management Guide* (effective February 9, 2009) that were applicable. Those contract terms included scope of work, payment, right to audit, and intellectual property. (See Appendix 3 for a complete list of all essential terms.)

The Department had some procurement processes and controls that were working effectively for the eight formal solicitation procurements.

The Department had procurement processes and controls that were working effectively. Specifically, the Department:

- Obtained purchase delegation approval from the Comptroller's Office for all four applicable formal solicitation procurements prior to posting them, as required by Texas Government Code, Section 2155.074, and Title 34, Texas Administrative Code, Section 20.41. The other four formal solicitation procurements did not require Comptroller's Office delegation approval.
- Properly posted all seven formal solicitation procurements in the *Electronic State Business Daily*, as required by Texas Government Code, Section 2155.083. For the eighth formal solicitation procurement, the Department was not required to and did not post an RFP.
- Obtained all evaluators' signatures on its conflict of interest and non-disclosure statements for all six applicable formal solicitation procurements, as required by the *State of Texas Contract Management Guide*. The Department did not receive any proposals for two of its formal solicitation procurements.
- Involved its project managers in the RFP development process for all seven of the formal solicitation procurements for which the Department posted an RFP, as required by the *State of Texas Contract Management Guide*. For the eighth formal solicitation procurement, the Department was not required to and did not post an RFP.
- Evaluated only qualified proposals for all five applicable formal solicitation procurements, as required by the *State of Texas Contract Management Guide*. Department employees verified that a proposal included all information required by the RFP before it was scored. Proposals that did not include all required information were not taken into consideration.

## Recommendations

The Department should:

- Perform a needs assessment for all contracts whose value exceeds a threshold established by the Department.
- Complete a signed purchase request before procuring goods and services.
- Keep all evaluation scoring sheets in accordance with the State's record retention schedule.
- Provide evaluators additional guidance on completing evaluation scoring sheets.
- Review evaluation scoring sheets for significant variations and, if necessary, confirm that evaluators have a common understanding of criteria.
- Develop and implement a review process for the evaluation scoring tabulation sheet to help ensure accuracy.
- Consider cost or price information as proposal scoring criteria.

## Management's Response

*The Department concurs with the recommendation and has implemented a process wherein applicable agency staff review and Department "projects" for approval prior to initiation into the procurement process. Furthermore, the Chief Financial Officer will coordinate with applicable agency staff to establish a value threshold for a mandatory needs assessment. The Director of Purchasing will ensure that this threshold is published with the Departments annual procurement plan which will be available in late November 2012. (Bullet 1)*

*The Department concurs with the recommendation and has implemented a process within the Purchasing and Fiscal Management System (March 2012) which requires the initiation of a purchase request which must be reviewed and approved electronically within the system prior to procurement activities taking place. All department divisions with the exception of Administrative Services are utilizing the Purchasing and Fiscal Management System at this time. The Director of Purchasing and Chief Financial Officer will coordinate efforts to ensure that all Divisions within the Department utilize established processes. Management anticipates that Administrative Services Division will begin utilizing the System December 31, 2012. (Bullet 2)*

*The Department concurs with the recommendation and has established a uniform file storing system and process to ensure that all necessary*

*documentation is retained in accordance with the State's record retention schedule. The Director of Purchasing will ensure continued compliance. (Bullet 3)*

*The Department concurs with the recommendation and the Director of Purchasing and Purchasing Coordinator will continue its in-house training efforts for staff responsible for the evaluation of proposals as well as establishing documentation within the purchasing policies and procedures to ensure clear and concise guidance on evaluating responses. The Director of Purchasing will ensure that documentation within the purchasing policies and procedures will be available in late November 2012 with the submission of the department's annual Procurement Plan submitted to the Comptroller of Public Accounts. (Bullet 4)*

*The Department concurs with the recommendation and the Director of Purchasing and Purchasing Coordinator have implemented a peer review process (November 2011) which established a review process that provides a multi-layer review of solicitation documents to ensure that all necessary components are included prior to solicitation posting as well as for the validation of proposal evaluation documentation after evaluator review. Any anomalies identified are addressed and documented with appropriate staff prior to continuance of the procurement process. (Bullet 5, 6 & 7)*

## The Department Did Not Consistently Follow the *State of Texas Procurement Manual* Requirements for Non-solicited Requested Purchases

### Non-solicited Requested Purchases

For purposes of this audit, “non-solicited requested purchases” refers to any contract for which the Department is not required to and did not issue an RFP or solicit formal bids. These can include goods and service purchased via State-managed contract sources, emergency purchases, proprietary purchases, and purchases for goods less than \$25,000 and services less than \$100,000.

State agencies are required to purchase from the following state contract sources (if the items offered by the sources meet the agency’s specifications) in the order listed:

- Council on Competitive Government Contracts.
- TIBH Industries Catalog.
- Texas Correctional Industries Web site.
- TxSmartBuy Term Contract.
- “Green” items on TxSmartBuy Term Contract.
- Managed Term Contracts.
- Department of Information Resources’ Information and Communications Technology Cooperative Contracts.
- State Travel Management Contracts.
- Emergency Management Contracts.
- Texas Multiple Award Schedule Contracts.

Source: Comptroller’s Office’s Web site at <http://www.window.state.tx.us/procurement/contracts/>.

The Department followed the appropriate procurement method required by the *State of Texas Procurement Manual* for 36 (80 percent) of the 45 non-solicited requested purchases tested (see text box). For the remaining 9 procurements, totaling \$86,641, the Department did not have adequate documentation to show that the procurement method was correct (see Table 2 on the next page). Examples included the following:

- The Department rented meeting space from a hotel and did not have any documentation to show that the Department had made an effort to use space at a state-owned facility.
- The Department contracted with a company to stream the Department board’s July 13, 2011, and July 14, 2011, meetings on the Internet. The purchase order stated that this was an open market purchase. However, the Department did not have documentation showing that it checked the Comptroller’s Office’s Web site for state contracts, received an exemption from using a Department of Information Resources cooperative contract, or received a minimum of three bids.

Without using the appropriate procurement method, the Department does not have assurance that purchases are in the best interest of the State.

**The Department did not consistently require approved purchase requests to initiate non-solicited requested purchases.**

The Department had an approved purchase request from the project manager for 34 (76 percent) of the 45 non-solicited requested purchases tested. The 11 purchases without an approved purchase request had expenditures totaling \$258,437. As discussed in Chapter 1-B, a purchase request allows the project manager to communicate to the purchaser the need for goods or services, as well as to document management’s approval of the purchase. By not consistently complying with its purchase request policy and the *State of Texas Procurement Manual*, the Department risks procuring goods and services without obtaining proper initial management approval and without clearly communicating the specifications of the goods or services to its purchasing staff.

The Department did not consistently obtain the minimum number of informal bids required.

Four of the 45 non-solicited requested purchases tested met the *State of Texas Procurement Manual* threshold requiring the Department to obtain a minimum of 3 informal bids using the centralized master bidders list (CMBL). For two of those four procurements, the Department obtained the required minimum number of bids. By not obtaining the sufficient number of informal bids as required by the *State of Texas Procurement Manual*, the Department cannot determine whether the Department is getting the best value.

Table 2 lists the findings for the 45 non-solicited requested purchases that auditors tested.

Table 2

Department Non-solicited Requested Purchases Paid From September 1, 2010, to November 30, 2012								
No.	Contractor or Vendor Name	Description of Goods and Services	Expenditure Amount	Contract Value	Reason for Finding			
					Purchase Request Not Approved	Purchase Order Not Approved	Inadequate Documentation for Purchase Method	Did Not Obtain the Minimum Number of Bids from CMBL Vendors
1	Adjacent Technologies, Inc.	Software Support and Update Services	\$ 92,590.40	\$ 92,590.40	X			Not applicable
2	Computer Wholesale Products of America, Inc.	Toner Cartridges	81,484.00	84,880.00	X			Not applicable
3	Hewlett Packard State and Local Enterprise Services	Law Enforcement Web Service Inquiry Enhancement Work	62,850.00	62,850.00	X		X	Not applicable
4	Mailmax Direct	June 2011 Mail Services	7,416.25	35,000.00	X		X	X
5	ATX/HD, Inc.	Webstream - Department Board Meeting	10,857.00	12,000.00			X	X
6	SHI Government Solutions, Inc.	Computer Software and Licenses	5,352.00	5,532.00	X			Not applicable
7	On The Record Reporting and Transcription, Inc.	Transcription of Department Board Meeting	1,011.85	5,000.00	X			Not applicable
8	CDW Government, Inc.	Hewlett Packard Laptops	3,150.00	3,913.20	X			Not applicable
9	Joyce E. Adejumo	Award Frames	1,877.00	1,877.00	X		X	Not applicable

**Department Non-solicited Requested Purchases Paid  
From September 1, 2010, to November 30, 2012**

No.	Contractor or Vendor Name	Description of Goods and Services	Expenditure Amount	Contract Value	Reason for Finding			
					Purchase Request Not Approved	Purchase Order Not Approved	Inadequate Documentation for Purchase Method	Did Not Obtain the Minimum Number of Bids from CMBL Vendors
10	Wyndham El Paso Airport	Room Rental	1,093.64	1,093.64	X		X	Not applicable
11	Wellington Banquet and Conference Center	Room Rental/ Dealer Training Seminar	750.00	750.00			X	Not applicable
12	Pitney Bowes	Adhesive Roll Tape/Ink	233.00	233.00	X		X	Not applicable
13	PPI and Associates, Inc.	Moving of Copier	185.00	185.00			X	Not applicable
14	Central Freight Lines, Inc.	Delivery Services	1,378.61	0.00 <sup>a</sup>	X	X	X	Not applicable
<b>Totals for Contracts with Errors</b>			\$ 270,228.75	\$ 305,904.24	11	1	9	2
<b>Totals for Contracts without Errors</b>			\$ 2,116,528.42	\$ 5,705,841.16	34	44	36	2
<b>Totals for All Contracts</b>			\$2,386,757.17	\$6,011,745.40	45	45	45	4

<sup>a</sup> This payment did not have a purchase order; therefore, auditors could not determine a contract value.

### Recommendations

The Department should:

- Comply with all procurement requirements in the *State of Texas Procurement Manual*.
- Complete a signed purchase request before procuring goods and services.

### Management's Response

*The Department concurs with the recommendation and the Director of Purchasing and Purchasing Coordinator will ensure compliance with all procurement requirements in the State of Texas Procurement Manual. (Bullet 1)*

*The Department concurs with the recommendation and with the implementation of the purchase request module in the Purchasing and Fiscal Management System (March 2012) all purchases are requested, reviewed and*

*approved electronically within the system. The Director of Purchasing will ensure continued compliance. (Bullet 2)*

## ***The Department Should Improve Controls for Making Payments and Strengthen Its Inventory Tracking and Information Technology Access Controls***

---

The Department should improve its controls for making payments and strengthen its review of vendor invoices. Auditors tested all 23 payments associated with the 5 formal solicitation procurements that resulted in contracts discussed in Chapter 1. The Department ensured that all 23 payments were supported by a vendor's invoice and verified that it received all contracted deliverables prior to making payments. However, for one contract tested, auditors noted that the first deliverable the Department received, at a cost of \$91,000, made references to a state agency other than the Department, indicating that the deliverable was not originally created for the Department.

The Department ensured that all 60 non-solicited requested purchase payments tested were supported by a vendor's invoice. In addition, for 55 (92 percent) of the 60 payments tested, the purchase order supported the invoice. However, as of May 9, 2012, the Department had not tagged and recorded 1,463 printers and computers worth a total of \$922,860 as required by the *State Property Accounting (SPA) Process User's Guide*. In addition, the Department did not adequately limit access to its information technology systems to help protect the accuracy and completeness of data in those systems.

### Chapter 2-A

#### **The Department Ensured Receipt of Contract Deliverables Prior to Making Payments, But It Should Strengthen Its Review of Vendor Invoices**

As of February 2012, the Department made 23 payments, totaling \$2,052,198, associated with the 5 formal solicitation procurements that resulted in contracts from November 2009 through November 2011. Auditors tested the 23 payments to determine whether (1) the specified contract deliverables were received prior to payment, (2) a vendor's invoice supported each payment amount, (3) the total payments to each vendor were within the total executed contract amount, (4) a project manager approved each invoice prior to payment, and (5) rates in vendors' invoices were consistent with rates authorized by the purchase orders.

The results for all 23 formal solicitation procurement payments tested were as follows:

- Each contract stipulated deliverables—such as specific work products, services, and reports—for each phase of the project. Deliverables help the Department ensure that the contractor is performing all duties in

accordance with the contract. For all 23 payments tested, the Department verified that it received a contract deliverable prior to making the related payment. However, for one contract tested, auditors noted that the first deliverable the Department received made references to a state agency other than the Department, indicating the deliverable was not originally created for the Department. The payment for that deliverable was \$91,000.

- The vendors' invoices supported the payments, and the total payments for each contract were within the total amount the contract authorized.
- For all 23 payments tested, invoices were approved by the project manager prior to payment. However, for 3 (13 percent) of the 23 payments tested, the Department did not sufficiently review the vendor's invoices. All three payments were for a contract for mailing services, which included addressing, collating, packaging, sorting, and delivery services. Each payment included charges for processing fees and postage; the 3 payments totaled \$13,766, and \$10,024 of that amount was for postage. The Department did not verify that the postage billed to the Department for those three invoices was equal to the amount of postage the vendor paid. Also, two of the three invoices contained billing rates that were not in accordance with the contract. While this did not result in any overpayments, the Department should strengthen its reviews of vendors' invoices to decrease the risk of future overpayments.

## Recommendations

The Department should:

- Verify that contract deliverables address the Department's needs.
- Perform a detailed review of vendors' invoices prior to payment to determine whether the charges are supported and consistent with contracted rates.

## Management's Response

*The Department concurs with the recommendation and will continue its in-house training efforts for staff responsible for validation and review of contract deliverables in compliance with contract terms, conditions and needs. Training efforts will be coordinated by the Director of Purchasing and Director of Financial Administration and will be ongoing. Additionally, the Director of Financial Administration will ensure specific training will be provided to Payment Processing staff in the review of invoices to ensure compliance with established contract rates and terms. (Bullet 1 & 2)*

## The Department Should Improve Controls for Making Payments and Strengthen Its Inventory Tracking Controls

Auditors tested 60 non-solicited requested purchase payments, totaling \$3,747,382, to determine whether (1) vendors' invoices supported payment amounts, (2) rates in vendors' invoices were consistent with rates authorized by purchase orders, and (3) invoices were approved prior to payment. In addition, auditors determined whether the purchase was for a capital or controlled asset and whether those assets had been inventoried as required (see text box for definitions).

### Capital and Controlled Assets

**Capital assets** have an estimated life of more than one year and are valued at dollar thresholds set by the Comptroller's Office, such as \$5,000 for furniture and equipment.

**Controlled assets** have a value less than the capitalization threshold, but due to the assets' high-risk for theft, the assets are required to be tagged and tracked. Examples include desktop computers and portable computers.

The payment amount was supported by a vendor's invoice for all 60 procurement payments tested. For 55 (92 percent) of the 60 payments tested, the Department verified that the purchase order supported the invoice before the Department paid the invoice. However, auditors identified the following issues for five payments tested:

- For three payments, auditors could not confirm that the invoiced rates were accurate because either a purchase order did not exist or the purchase order included a not-to-exceed amount without a specific billing rate. Those 3 payments totaled \$26,261 and were for delivery services, system development and maintenance services, and mailing services. Purchase orders that do not specify the agreed-upon rates for each good and service increase the risk that invoiced rates may exceed the intended rates and that total project costs may exceed the project budget.
- For two payments, the invoiced rate exceeded the rate established in the purchase order, resulting in total overpayments of \$187.

Prior to July 2011, the Department's purchasing staff was responsible for both making purchases and approving invoices for payment. Having purchasing staff approve invoices for payment increased the risk of fraudulent or erroneous billing and payments. In addition, that process did not comply with the *State of Texas Contract Management Guide*. While that policy was in effect, the Department's purchasing staff approved 21 of the 60 payments tested prior to payment.

In July 2011, the Department's chief financial officer segregated the requisitioning and receiving functions to reduce the risk of unauthorized purchases. That new process complied with the *State of Texas Contract Management Guide*. End users should approve invoices for payment because they can best determine whether the goods or services were received and meet their needs. Of the 39 payments tested that were approved after the new policy was in effect, the end user approved 35 (90 percent) as required, while the purchasing staff approved the other 4 invoices.

Of the 60 non-solicited requested purchase payments tested, 5 were for capitalized or controlled assets. Two of those five payments were for assets that had not been tagged and entered into the State Property Accounting (SPA) system. Both payments were related to an \$8.4 million<sup>1</sup> project to replace vehicle registration and titling equipment at various county tax assessor-collector offices throughout the state. The Department contracted with a vendor to configure, install, and apply asset tags to the new equipment; however, the contract did not stipulate that the tags should be applied at the time of acquisition in accordance with the *State Property Accounting (SPA) Process User's Guide*. Assets that are not tagged and recorded are at increased risk of being lost or stolen.

Based on the testing results discussed above, auditors performed additional analysis on the equipment replacement project and identified a total of 1,463 printers and computers worth \$922,860 that had not been tagged and recorded in the SPA system as of May 9, 2012. Payments for those assets were made between August 2011 and January 2012, and installation of the assets began in October 2011 and concluded in April 2012.

## Recommendations

The Department should:

- Prepare a purchase order for all procurements that includes detailed pricing schedules.
- Perform a detailed review of vendor invoices prior to payment to determine whether the charges are consistent with contracted rates.
- Consistently apply Department policy to require that end users approve invoices prior to payment.
- Develop and implement a formal policy for tagging and recording controlled assets at the time of acquisition.

## Management's Response

*The Department concurs with the recommendation and the Director of Purchasing and Purchasing Coordinator will ensure that detailed pricing schedule documentation is included for procurements where applicable. (Bullet 1)*

*The Department concurs with the recommendation and will continue its in-house training efforts for staff responsible for validation and review of*

---

<sup>1</sup> The Department provided this estimate for the project's total cost. Auditors did not verify the accuracy of that estimate.

*contract deliverables in compliance with contract terms, conditions and needs. General agency training for TxDMV staff was provided in September 2011 and November 2011. Specific training on the utilization of the Purchasing and Fiscal Management System was conducted in March 2012. Agency training in the use of the Purchasing and Fiscal Management System which will include specific training addressing validation of invoices will be coordinated by the Director of Purchasing and Director of Financial Administration and will be reoccurring beginning in November 2012. (Bullets 2 & 3)*

*The Department concurs with the recommendation to develop and implement a formal policy for tagging and recording controlled assets in accordance with the State Property Accounting System (SPA) rules, regulations and policies. Work has already begun to formally document asset control procedures. The agency's Inventory Control and Asset Manager will ensure the formal document is implemented by December 1, 2012. (Bullet 4)*

Chapter 2-C

### **The Department Should Strengthen Its Information Technology Access Controls**

Auditors determined that the Department's user access controls over its Purchasing Fiscal Management System (purchasing system) may not adequately protect the reliability of the data in that system. The Department did not follow its process for limiting and reviewing user access to its network or its purchasing system. As a result, internal users had excessive access rights, which increased the risk of intentional or accidental alteration or deletion of purchasing data. Auditors did not note any instances in which data had been altered or deleted. To minimize security risks, auditors communicated details about the identified information technology weaknesses separately in writing to Department management. Because of the control weaknesses discussed above, with the exception of one payment tested, auditors did not rely on data from the purchasing system for the purposes of this audit. All other payments tested were supported by hard-copy documentation.

The Department also should strengthen controls over granting user access to the Uniform Statewide Accounting System (USAS). Specifically, the Department did not adequately segregate duties and seven users could enter and approve payments, which increased the risk that unauthorized payments could be made. Auditors verified that since the Department became operational in November 2009 through January 2012, no transactions had been entered and approved by the same user.

## Recommendations

The Department should:

- Implement a formal policy for granting, reviewing, and changing user access rights as needed to its network and its purchasing system.
- Segregate duties in USAS so that the same users cannot enter and approve payments.

## Management's Response

*The Department agrees. The TxDMV Chief Information Officer shall coordinate efforts to develop and implement formal policy and procedures to better ensure access to the TxDMV network which is currently being overseen by the Texas Department of Transportation through a Memorandum of Understanding. (Bullet 1)*

*The "Purchasing System" is a small application developed in house and not maintained on the "TxDMV Network". The Director of Purchasing will coordinate with Chief Information Officer and other Information Technology staff to develop and implement policies and procedures to control user access rights and define user roles within the Purchasing and Fiscal Management System. The project should be completed by November 30, 2012. (Bullet 1)*

*The Department agrees and has completed the necessary steps to segregate duties in the Uniform Statewide Accounting System (January 2012) to ensure continued compliance. The Director of Financial Administration will ensure continued compliance. (Bullet 2)*

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

---

### **Objectives**

The objectives of this audit were to determine whether the Department of Motor Vehicles (Department):

- Procures contracted goods and services in accordance with applicable state laws, rules, and Department policies and procedures to help ensure that the State's financial interests are protected.
- Has processes and related controls to help ensure that contractors perform according to the terms of their contracts and that the Department processes contractor payments in accordance with applicable state laws, rules, Office of the Comptroller of Public Accounts requirements, and Department policies and procedures.

### **Scope**

The scope of this audit covered:

- Requests for proposals (RFPs) prepared by the Department from November 1, 2009, through November 30, 2011, and the related expenditures.
- Expenditures for goods and services the Department made from September 1, 2010, through November 30, 2011, and the associated procurements.

### **Methodology**

The audit methodology included collecting information and documentation; conducting interviews with Department staff; analyzing and evaluating the results of tests; observing processes; and reviewing policies, procedures, and statutes. In addition, auditors performed a limited review of general and application controls over the Department's purchasing system and reviewed user access controls over the Uniform Statewide Accounting System (USAS).

Information collected and reviewed included the following:

- Department policies and procedures related to procurements and payment processing.
- Department board meeting minutes.
- Department list of contracts and purchase orders.

- Department vendor payments in fiscal years 2011 and 2012.
- USAS user access listings.
- Department procurement files.
- Department contract files.
- Department proposal scoring documentation.
- Department payment documentation, including vendor invoices.
- Department conflict of interest and non-disclosure statements.
- Department contract deliverables and monitoring documentation.
- State Property Accounting (SPA) system reports.
- Office of the Secretary of State business filing information.
- Department Purchasing Fiscal Management System (purchasing system) user access list and approval authentication programming code.
- Department purchasing system invoice and approval data.

Procedures and tests conducted included the following:

- Interviewed Department staff.
- Reviewed Department policies and procedures.
- Reviewed Department procurement files, including evaluation scoring documents, approvals, and supporting documentation.
- Reviewed Department contracts, including terms and amendments.
- Reviewed Department contract deliverables.
- Reviewed Department purchaser conflict of interest statements.
- Reviewed Office of the Secretary of State business filings for evaluator conflicts of interest.
- Tested whether the Department followed the hierarchy in the *State of Texas Contract Management Guide* and the *State of Texas Procurement Manual* when selecting a vendor.
- Tested whether Department procurement expenditures were appropriately supported, for the correct amounts, and approved.
- Reviewed the Department's USAS user access.

- Reviewed the Department's purchasing system user access.
- Reviewed segregation of duties and reliability of approval data in the Department's purchasing system.
- Tested whether controlled goods were inventoried.

Criteria used included the following:

- Texas Government Code, Chapters 2155, 2156, and 2157 (Purchasing).
- Title 34, Texas Administrative Code, Chapter 20 (Texas Procurement and Support Services).
- Title 1, Texas Administrative Code, Chapter 202 (Information Security Standards).
- *State of Texas Contract Management Guide.*
- *State of Texas Procurement Manual.*
- The Department's policies and procedures.
- *State Property Accounting (SPA) Process User's Guide.*

### **Project Information**

Audit fieldwork was conducted from March 2012 through May 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

- Cesar Saldivar, CGAP, CICA (Project Manager)
- Lauren Godfrey, CGAP (Assistant Project Manager)
- Olivia Gutierrez
- Robert G. Kiker, CGAP
- Barrett Sundberg, CPA, CIA, MPA
- Brenda Zamarripa
- Charles P. Dunlap, Jr., CPA (Quality Control Reviewer)
- Sandra Vice, CIA, CGAP, CISA (Assistant State Auditor)

## ***Top 10 Vendors Receiving Payments from the Department***

The Department of Motor Vehicles (Department) made \$52,850,628 in vendor payments for procured goods and services to non-governmental entities during fiscal year 2011 and the first two quarters of fiscal year 2012 (September 1, 2010, through February 29, 2012). Of those payments, \$37,415,641, or 71 percent, was made to 10 vendors. Table 3 summarizes the 10 vendors that received the highest dollar amount of payments from the Department.

Table 3

Top 10 Vendors Receiving Payments from the Department From September 1, 2010, to February 29, 2012		
Vendor Name	Total Payments	Description of the Goods and Services Offered by Vendor
HDI Solutions, Inc.	\$7,581,709	Provides software development, records administration, and data management services.
Standard Register Company	\$6,654,255	Provides documentation management services.
Insight Public Sector, Inc.	\$6,287,036	Global provider of information technology hardware, software, and service solutions.
Global 360 BGS, Inc.	\$5,508,645	Provides process and case management services.
License Plates of Texas, LLC	\$3,060,672	Designs, markets, and sells new specialty license plates in the State of Texas.
Allied Consultants, Inc.	\$2,006,355	Information technology firm specializing in solutions integration and management consulting.
Gartner, Inc.	\$1,823,134	Provides information technology research and advisory services.
PrintMailPro	\$1,793,880	Provides printing and mailing services.
Thinkstreet, Inc.	\$1,612,190	Provides logo, brand, and Web site development services.
TIBH Industries	\$1,087,765	Offers products, services, and temporary services to state and local government entities through 150 statewide community rehabilitation programs that employ Texans with disabilities.

Source: Uniform Statewide Accounting System vendor payment data.

## State of Texas Contract Management Guide *Essential Contract Provisions*

---

Table 4 lists the 21 essential contract provisions that the *State of Texas Contract Management Guide* (updated on February 9, 2009) states should be included in all state contracts.

Table 4

<i>State of Texas Contract Management Guide Essential Contract Provisions</i>
<b>Abandonment or Default</b> - Specifies that the contractor will be held accountable for breach of contract or substandard performance without unfairly limiting competition in accordance with Texas Government Code, Section 2261.101.
<b>Affirmation Clauses</b> - Requires the contractor to affirm that all statements and information prepared and submitted in response to a solicitation are current, complete, and accurate.
<b>Antitrust</b> - Requires that the contractor represent and warrant that neither the contractor nor any firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Texas Business and Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for the contract.
<b>Buy Texas</b> - Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.
<b>Consideration/Price</b> - Describes a definite amount at a certain rate with a total maximum cost.
<b>Contractor Responsibilities</b> - Describes details of the contractor's responsibilities.
<b>Dispute Resolution</b> - Describes a dispute resolution process in accordance with Texas Government Code, Chapter 2260.
<b>Force Majeure</b> - An agency may grant relief from performance of the contract if the vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the contractor. The burden of proof for the need of such relief shall rest upon the contractor. To obtain release based on force majeure, the contractor shall file a written request with the agency.
<b>Funding Out Clause</b> - Describes conditions if the contract term extends into the next biennium. For example, "This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature."
<b>Indemnification/Damage Claims</b> - Contractor shall defend, indemnify, and hold harmless the state of Texas, its officers, and employees, and the agency, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract. Contractor shall coordinate its defense with the Texas attorney general as requested by the agency. This paragraph is not intended to and shall not be construed to require contractor to indemnify or hold harmless the state or the agency for any claims or liabilities resulting from the negligent acts or omissions of the agency or its employees.
<b>Independent Contractor</b> - Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. The contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the contractor's employees.
<b>Ownership/Intellectual Property, including Rights to Data, Documents and Computer Software</b> - Requires that the contractor will indemnify, defend, and hold harmless the State of Texas and the system against any action or claim brought against the State of Texas/system that is based on a claim that software infringes any patent rights, copyright rights, or incorporated misappropriated trade secrets.
<b>Introduction</b> - Describes all parties involved in the contract that may include a contractor's complete name, any assumed names, and all addresses for the contractors.

## State of Texas Contract Management Guide Essential Contract Provisions

**Payment** - Describes conditions such as the frequency of payment, time frame to submit payment, invoice specifications and compliance with the Texas Prompt Payment law, Texas Government Code, Subtitle F, Chapter 2251.

**Right to Audit** - Describes that the State Auditor's Office's, the agency's, or any successor's right to conduct an audit or investigation and obtain all records requested.

**Rights to Data, Documents, and Computer Software (State Ownership)** - Specifies that any software, research, reports, studies, data, or other documents prepared by the contractor in the performance of its obligations under the contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the contractor upon completion, termination, or cancellation of the contract. In addition, conditions may describe instances in which the State does not wish the work products of the contractor to be made available to any other entity, public or private, but the contractor also is not entitled to any additional profit or benefit when payment for the said products was by public funds, unless the state agency has given its prior approval of the use of the materials.

**Scope of Work** - Defines the scope of work from the solicitation document and may include the contractor's response outlining the proposed scope of work.

**Specifications** - Describe the services to be performed, and may specify that the agency will determine the answers to all questions that may arise as to the interpretation of the specifications, the quality or acceptability of work performed, the rate of progress of the work, and the conditions for determining the acceptable fulfillment of the service on the part of the contractor.

**Technology Access Clause** - (1) Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility Requirements for Electronic and Information Resources specified in Title 1, Texas Administrative Code, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) Vendor shall provide the Department of Information Resources with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the U.S. Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department of Information Resources with a report that addresses the same accessibility criteria in substantively the same format.

**Term of Contract** - Describes the duration of the contract including the beginning date and ending date of the contract, and may include conditions for renewal and conditions for price increases.

**Termination** - Specifies that, upon full performance of all requirements contained in the contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions, the contract will terminate.

Copies of this report have been distributed to the following:

### **Legislative Audit Committee**

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

### **Office of the Governor**

The Honorable Rick Perry, Governor

### **Department of Motor Vehicles**

Members of the Department of Motor Vehicles Board

Mr. Victor T. Vandergriff, Chair  
Mr. Barney Barnwell, III  
Mr. Blake Ingram  
Ms. Cheryl Johnson  
Mr. Raymond Palacios, Jr.  
Mr. Victor Rodriguez  
Mr. Marvin Rush  
Ms. Laura Ryan  
Mr. John Walker, III  
Ms. Linda Flores, Interim Executive Director



This document is not copyrighted. Readers may make additional copies of this report as needed. In addition, most State Auditor's Office reports may be downloaded from our Web site: [www.sao.state.tx.us](http://www.sao.state.tx.us).

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9500 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

The State Auditor's Office is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government call the SAO Hotline: 1-800-TX-AUDIT.