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An Audit Report on

Selected Contracts at the Texas Facilities Commission

September 2014

Report No. 15-001

Selected Contracts at the Texas Facilities Commission

Overall Conclusion

The Texas Facilities Commission (Commission) should improve its monitoring of the two contracts audited to help ensure that the contractors perform according to the contract terms. Additionally, the Commission did not always plan the property management services contract or form the construction manager-at-risk (CMR)¹ contract in accordance with the *State of Texas Contract Management Guide*², the *State of Texas Procurement Manual*, and Commission policies and procedures. The Commission generally procured both contracts in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts (Comptroller's Office) requirements, and Commission policies and procedures.

For the **property management services contract with Tarantino Properties, Inc.** executed in August 2011, the Commission did not sufficiently monitor the contractor's performance related to the maintenance and repair of the four buildings the contractor manages outside of Austin (see text box for details). The Commission did not receive or approve required reports for the four buildings managed under the contract. Neither the Commission nor the contractor could provide evidence showing that the contractor had (1) performed the required maintenance on mechanical, electrical, and plumbing systems for 14 of 24 months tested and (2) performed required maintenance on the elevator systems for 13 of 24 months tested.

Contract Management Processes

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

Source: *State of Texas Contract Management Guide*.

Contracts Audited

- The **property management services contract** is for property management services for four state-owned buildings in Fort Worth, Houston, San Antonio, and Waco. The contract is with Tarantino Properties, Inc. When it was executed in August 2011, the contract had a two-year term. In September 2013, the Texas Facilities Commission (Commission) renewed the contract with Tarantino Properties, Inc. through August 2015 and included some additional reporting requirements. The total contract amount is \$5,214,405. As of January 2014, the Commission had paid the contractor \$2,887,997.
- The **construction manager-at-risk (CMR) contract** is for the interior renovation at the James E. Rudder State Office Building in Austin. The contract is with SpawGlass Contractors, Inc.; it was executed in December 2011 and will end in June 2015. The total contract amount is \$5,074,184. As of January 2014, the Commission had paid the contractor \$1,985,121.

¹ According to Texas Government Code, Section 2269.251, a construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that (1) assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price and (2) acts as a general contractor that provides consultation to a governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

² The *State of Texas Contract Management Guide*, Version 1.9, is applicable for the CMR contract audited. The *State of Texas Contract Management Guide*, Version 1.7, is applicable for the property management services contract audited.

For the **CMR contract with SpawGlass Contractors, Inc.** executed in December 2011, the Commission conducted monitoring activities and had documentation showing that the contractor was meeting the contract terms that auditors selected for testing based on their significance to the contract requirements. However, the Commission did not ensure that all payment applications contained required documents.

The Commission and both contractors could not provide documentation showing that criminal background checks were performed as required. The Commission does not maintain lists of the contractor or subcontractor employees and the dates they began working on site for the Commission to ensure that all employees receive the required background checks.

The Commission procured both contracts audited in accordance with the *State of Texas Contract Management Guide*, the *State of Texas Procurement Manual*, and Commission policies and procedures. However, the Commission did not plan the property management services contract or form the CMR contract in accordance with the *State of Texas Contract Management Guide*. Specifically, for the property management services contract, the Commission did not formally document a cost estimate, needs assessment, and risk assessment during the planning process. The CMR contract did not include all required essential clauses. In addition, six of eight Commission contract managers did not attend required contract management training courses.

Auditors communicated other, less significant issues related to contract documentation and management to the Commission in writing.

Summary of Management's Response

The Commission agreed with the recommendations in this report. The Commission'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 reviewed the Commission's information technology policies and procedures and conducted an access review of the Commission's internal accounting system, the GUI Fund Accounting System (GFAS). Auditors determined that GFAS payment data for both contracts audited was reliable for the purposes of this audit. Auditors also relied on previous State Auditor's Office audit work on the Commission's construction project management system (IMPACT) and determined that IMPACT data for the CMR contract was reliable for the purposes of this audit.

Summary of Objectives, Scope, and Methodology

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

- Planned, procured, and established selected contracts for goods and services in accordance with applicable statutes, rules, Comptroller's Office requirements, and Commission policies and procedures to help ensure that the State's interests were protected.
- Managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Comptroller's Office requirements, and Commission policies and procedures.

The scope of this audit covered the Commission's entire contracting process—contract planning, contract procurement, contract formation, and contract oversight—for the property management services contract with Tarantino Properties, Inc., awarded in August 2011 and the CMR contract with SpawGlass Contractors, Inc., awarded in December 2011.

The audit methodology consisted of collecting and reviewing procurement documentation; conducting interviews with Commission staff and contractor employees; performing on-site visits; reviewing statutes, rules, Comptroller's Office requirements, and Commission policies and procedures; and performing selected tests and other procedures.

Auditors assessed the reliability of the data the Commission uses. To assess data reliability, auditors relied on previous State Auditor's Office audit work on IMPACT, verified that routing and approvals for payment requests and change orders in IMPACT were approved, and verified that the construction phase for the James E. Rudder State Office Building interior renovation project was accurately set up in IMPACT. Auditors also used expenditure information in the Uniform Statewide Accounting System and compared that information to contract payments from the Commission's internal accounting system, GFAS. In addition, auditors verified completeness and accuracy of information in the Commission's tabulation scoring worksheets (a spreadsheet), which the Commission used in determining the selection of vendors during the procurement process for the two contracts audited. Auditors also verified that property management services' change orders in the Commission's Automated Procurement System (APS) were complete for the time period tested and were reliable for the purposes of this audit.

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Detailed Results

Chapter 1

While the Commission Adequately Monitored the CMR Contract, It Should Improve Its Monitoring of Its Property Management Services Contract

For the property management services contract with Tarantino Properties, Inc., the Texas Facilities Commission (Commission) did not verify that the contractor performed all required maintenance, although it did ensure that contractor billings were valid and supported and the contractor met insurance requirements. For the construction manager-at-risk (CMR) contract with SpawGlass Contractors, Inc., the Commission generally monitored the contract to verify that the contractor performed according to contract terms. However, for both contracts audited, the Commission did not verify that the contractors complied with criminal background check requirements.

Chapter 1-A

The Commission Did Not Verify That the Property Management Services Contractor Performed All Required Maintenance or Consistently Managed Physical Access; However, It Verified That the Contractor Met Insurance Requirements

Tarantino Properties, Inc. Contract

The Commission contracted with Tarantino Properties, Inc. to provide full property management services for the following state-owned buildings:

- Fort Worth State Office Building.
- Elias Ramirez State Office Building in Houston.
- Waco State Office Building.
- G.J. Sutton State Office Complex in San Antonio.

See Appendix 3 for a list of state agencies that are tenants of the buildings.

The Commission did not adequately monitor its property management services contract with Tarantino Properties, Inc. to verify that the property management services contractor performed all required maintenance for four state-owned buildings included in the contract (see text box).

It also did not verify that the property management services contractor met all custodial and security guard requirements. Neither the Commission nor the property management services contractor could provide evidence to show that:

- The property management services contractor had performed the required monthly mechanical, electrical, and plumbing maintenance for 14 (58 percent) of 24 monthly reports tested.
- The property management services contractor had performed required elevator maintenance for 13 (54 percent) of 24 monthly reports tested.
- The property management services contractor had performed the required custodial service for 9 (38 percent) of 24 monthly reports tested.
- The property management services contractor had performed the required security guard service for 9 (38 percent) of 24 weekly reports tested.

Auditors noted other weaknesses in the Commission's monitoring of the property management services contract:

- The property management services contractor did not submit to the Commission required monthly certifications that maintenance had been performed for all 24 monthly reports tested.
- The property management services contractor did not submit a preventive maintenance schedule and program—which includes (1) a preventive maintenance checklist for mechanical, electrical, and plumbing systems and (2) an elevator preventive maintenance checklist—for any of the four buildings. The contract requires that the Commission receive and approve the preventive maintenance schedule and program.
- While the Commission asserted that it conducted annual site visits to the four buildings and communicated regularly with property managers at the buildings, it did not document any of those site visits or communications. The *State of Texas Contract Management Guide* states that, for site visits, an agency should develop a monitoring checklist and contract management report to serve as a record of the contract management. The contract also states that the Commission may take corrective action, such as withholding payment, if the property management services contractor fails to maintain an acceptable level of service.
- The division within the Commission that manages the property management services contracts does not have documented policies and procedures for monitoring its contracts.

By documenting its site visits and requiring reports from the contractor, the Commission can better monitor the property management services contractor's performance and can support any performance issues that it has with the property management services contractor.

The Commission did not verify that the property management services contractor met additional maintenance requirements for the G.J. Sutton State Office Complex.

The Commission renewed the property management services contract with Tarantino Properties Inc. in September 2013 for a term through August 31, 2015. Because of structural issues identified at the G.J. Sutton State Office Complex in San Antonio, the Commission included requirements for additional inspections of that building in the renewed contract. The renewed contract required that the property management services contractor establish quarterly inspections by a structural engineer. However, the Commission did not contract with an engineering firm to begin those inspections until April 2014—seven months after the renewal was executed. That delay occurred because, according to the Commission, it was discussing with the contractor who should contract with the structural engineer, even though the contract

stated that it was the contractor's responsibility. According to the Commission, it later decided that it would contract for the structural engineer because the Commission has expertise in that area. However, during the scope of the audit, the contract was not amended to formally move the responsibility from the property management services contractor to the Commission.

Auditors identified other weaknesses in the Commission's monitoring of additional requirements. Specifically:

- The renewed contract required the property management services contractor's building engineer to inspect the building at the G.J. Sutton State Office Complex on a weekly basis and submit a quarterly inspection report to the Commission. The property management services contractor completed the inspection for all five weeks that auditors tested. However, the Commission did not receive the required quarterly inspection report that auditors tested.
- The renewed contract required the property management services contractor to perform monthly temperature and humidity tests and submit quarterly reports to the Commission. However, the Commission and the contractor could not provide evidence to show that the contractor performed temperature and humidity tests for three of five months tested. In addition, the Commission did not receive the report indicating that the tests were performed. Auditors confirmed that the property management services contractor performed the tests in December 2013 and January 2014. Verifying that the property management services contractor performs required maintenance can help the Commission ensure that structural issues are being appropriately managed.

The Commission did not monitor to verify that the property management services contractor consistently managed access to the buildings.

The property management services contract requires that Tarantino Properties, Inc. manage building access, including the issuing of electronic access cards, at all four buildings. However, the Commission did not monitor how Tarantino Properties, Inc. managed access to the buildings. The Commission also did not provide guidance to the property management services contractor for how building access should be managed. The property management services contractor did not have a process or documented procedures to manage physical access to the buildings. By not ensuring that the property management services contractor has a consistent process for managing physical access to the buildings, the Commission increases the risk that inappropriate access to state-owned assets may occur.

The Commission verified that the property management services contractor met insurance requirements.

The contract requires that Tarantino Properties, Inc. carry and maintain Workers' Compensation, commercial general liability, and crime insurance. Auditors tested the three insurance certificates for 2012-2013 and 2013-2014 and the Commission was able to provide support that its property management services contractor maintained all the required types of insurance.

Recommendations

The Commission should:

- Ensure that its property management services contractor performs all required services and completes required reports for maintenance, security, and custodial services as required by the contract.
- Ensure that it receives and approves all checklists as required by the contract.
- Document site visits to serve as a record of contract management and verify that acceptable levels of service are maintained.
- Develop and implement written contract monitoring policies and procedures for the division that manages property management services contracts.
- Amend its property management services contract for changes in responsibility between the property management services contractor and the Commission.
- Establish guidelines for its property management services contractor to manage access to its buildings and verify that the property management services contractor follows those guidelines.

Management's Response

The Commission agrees with the recommendations.

- ***Ensure that its property management services contractor performs all required services and completes required reports for maintenance, security, and custodial services as required by the contract. The Commission is formulating checklists to document and ensure that the property management services contractor is performing all required services. In addition the Commission is reviewing the contract requirements to ensure that the documentation provided is of substance and brings the best value to the State.***

- ♦ *Responsible Staff: Planning and Real Estate Management Division*
- ♦ *Implementation Date: 01/31/2015*
- ***Ensure that it receives and approves all checklists as required by the contract. The Commission is implementing procedures to monitor the receipt of checklists and to document our approval of them.***
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: 01/31/2015*
- ***Document site visits to serve as a record of the contract management and verify that acceptable levels of service are maintained. The Commission is developing a checklist to be used by the contract manager during site visits to document both the site visit and to verify the adequacy of the property management service contractor's performance.***
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: 01/31/2015*
- ***Develop and implement written contract monitoring policies and procedures for the division that manages property management services contracts. The Commission is developing written contract management procedures and will place an emphasis on ongoing training of contract management staff.***
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: 08/31/2015*
- ***Amend its property management services contract for changes in responsibility between the property management services contractor and the Commission. The Commission amended the property management services contract to address the changed responsibilities.***
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: Completed.*
- ***Establish guidelines for its property management services contractor to manage access to its buildings and verify that the property management services contractor follows those guidelines. The Commission will establish guidelines for the property management services contractor in providing access to the building.***
 - ♦ *Responsible Staff: Planning and Real Estate Management Division with assistance from Risk Management*

♦ *Implementation Date: 01/31/2015*

Chapter 1-B

While the Commission Ensured That Billings for the Property Management Services Contract Were Valid and Supported, It Should Improve Its Processes for Change Orders and Passwords

All contractor billings for the property management services contract were valid and supported.

All 13 property management services contractor invoices tested were approved, were supported by subcontractor invoices, and were for expenses allowable under the contract requirements. All invoices tested also contained the correct vendor information and were for services provided by approved vendors. Auditors also confirmed that there were no double billings within the invoices. In addition, 12 (92 percent) of 13 payments tested were completed within 30 days in compliance with the Office of the Comptroller of Public Accounts' prompt payment requirements.

The Commission's payments for the property management services contract exceeded the contract's price and the Commission did not comply with change order requirements.

During fiscal years 2012 and 2013, the Commission's payments to the contractor for the property management services contract totaled \$2,410,068, which exceeded the contract's "not-to-exceed" amount by \$174,124. When the Commission renewed the contract in September 2013 through August 31, 2015, it amended the contract to (1) increase the contract's price to cover additional services and (2) require the contract to be amended for all change orders for additional services of more than \$5,000. However, the renewal amendment became effective one week after the total expenditures had already exceeded the contract's price. In addition, the Commission did not comply with the amended requirements for three change orders that occurred after September 2013, although the Commission approved the change orders. Specifically:

- Two change orders for more than \$5,000 were documented with a contract amendment after the change orders were processed. The Commission incurred those expenses on September 16, 2013, and November 12, 2013, but the contract amendment for those change orders was not created until December 18, 2013. According to the Commission, the change order in September was an emergency purchase and needed to be done before an amendment could be executed.
- The Commission incurred expenditures related to a third change order for more than \$5,000 on December 23, 2013; however, the Commission did not create a contract amendment for that change order.

By amending the contract for change orders as required, the Commission can better track the contract's price as expenditures increase.

The Commission should strengthen its password policies for its accounting system.

The Commission's internal accounting system, the GUI Fund Accounting System (GFAS), which it used to process the billings for both contracts audited, did not comply with required password configuration standards. Title 1, Texas Administrative Code, Section 202.25, requires passwords to be based on industry best practices for password usage and documented state agency risk management decisions. The Commission last reviewed its policies for access management and passwords in September 2009. By not ensuring that GFAS meets password configuration standards, the Commission faces an increased risk that data in GFAS may be compromised.

Recommendations

The Commission should:

- Monitor payments to its contractor to ensure that contract payments do not exceed the contract price.
- Monitor change orders to ensure that it complies with contract requirements.
- Ensure its password policies for its accounting system comply with password configuration standards.

Management's Response

The Commission agrees with the recommendations.

- ***Monitor payments to its contractor to ensure that contract payments do not exceed the contract price.*** *The Commission will amend the property management services contract to include funds for additional services. A delivery release will be applied to the purchase order when an additional service is required. We will ensure that delivery releases issued against the purchase order do not exceed the funding for additional services contained in the contract. If required the contract will be amended to add additional funding for additional services.*
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: 01/31/2015*

- **Monitor change orders to ensure that it complies with contract requirements.** *In addition to amending the contract to include funds for additional services, the Commission is evaluating increasing the threshold at which the need for a contract amendment is triggered.*
 - ♦ *Responsible Staff: Planning and Real Estate Management Division*
 - ♦ *Implementation Date: 01/31/2015*

- **Ensure its password policies for its accounting system comply with password configuration standards.** *The password requirement for access to GFAS system will be strengthened to comply with password configuration standards.*
 - ♦ *Responsible Staff: Information Technology*
 - ♦ *Implementation Date: December 1, 2014*

Chapter 1-C

The Commission Generally Monitored the CMR Contract to Verify That the Contractor Performed According to the Contract Terms

The Commission entered into a CMR contract with SpawGlass Contractors, Inc. (CMR contractor) to perform general, preconstruction, and construction services for the completion of interior renovations at the James E. Rudder State Office Building in Austin, Texas. For the CMR contract, the Commission generally complied with the *State of Texas Contract Management Guide*³, contract terms, and Uniform General Conditions requirements (see text box for more information about those conditions). Specifically, the Commission:

Uniform General Conditions

Under the Texas Government Code, Section 2166.302, the Commission is required to adopt “Uniform General Conditions” to be incorporated into all building construction contracts made by the State. Additionally, Texas Government Code, Section 2166.305, requires the Commission to appoint a committee at least once every five years to review the Uniform General Conditions. The most recent version of the Uniform General Conditions was dated 2010.

- Met with the CMR contractor, architect, and engineer on a weekly basis during the construction phase for 7 (88 percent) of 8 meetings tested to discuss the progress of the project. The CMR contract required the CMR contractor to schedule and conduct regular meetings with the architect and the Commission to discuss procedures, progress, coordination, and scheduling of work during the preconstruction and construction phases of the project.

³ *State of Texas Contract Management Guide*, Version 1.9.

- Attended team meetings and reviewed observation reports and submittals for changes to contract specifications that were uploaded into the Commission’s project management system, IMPACT (see text box for more information about that system), as required by the *State of Texas Contract Management Guide* and the Uniform General Conditions.

IMPACT

The Commission uses IMPACT, a Web-based, third-party application, as a project management system to track construction project budgets, time lines, and progress. IMPACT also serves as a repository for construction documents and allows for the submission and approval of payment requests and change orders.

Source: Texas Facilities Commission.

Substantial Completion Inspection and Packet

Each phase of a renovation project requires a substantial completion inspection and packet. When the contractor considers the entire work, or part thereof, substantially complete, it notifies the Commission in writing that the work is ready for substantial completion inspection and submits a substantial completion packet.

Source: Uniform General Conditions.

- Verified that the CMR contractor had a safety plan in place specific to the project for the interior renovations at the James E. Rudder State Office Building as required by the Uniform General Conditions.
- Inspected the construction project to verify that phase 1 was substantially complete and complied with Uniform General Conditions requirements. Auditors tested the phase 1 substantial completion packet (see text box for more information about that packet) and verified that the packet contained a list of items to be completed or corrected, updated drawings, copies of manuals, written warranties, observation reports, and a substantial completion certification. The interior renovations at the James E. Rudder State Office Building were completed in three distinct phases, which allowed the building to remain fully occupied and accessible to the public during construction. The architect, the engineer, the Commission’s project manager, and the contractor jointly attended the substantial completion inspection for phase 1.

Auditors attended one of the substantial completion walkthroughs, which included the renovation of the building’s 4th floor, and a project team meeting during audit fieldwork. The 4th floor walkthrough included going room-to-room on the entire floor. The attendees for the walkthrough and the project team held a meeting at which they discussed the progress of the project; meeting attendees included individuals from the Commission, the CMR contractor, the architect, the engineer, and representatives from the building’s tenant agency.

The CMR contractor and its subcontractors generally met insurance and bond requirements. However, auditors were unable to verify that the contractor’s performance and payment bonds were submitted within 10 days of a fully executed guaranteed maximum price, as required by the Uniform General Conditions, because the guaranteed maximum price did not contain a date of execution. Not ensuring that all bond and insurance requirements are met could increase the Commission’s financial liability.

All six payments tested were approved, paid in a timely manner, supported by contractor invoices, and allowable under contract requirements. In addition, the architect and engineer observed and certified the condition of work presented in the application for payments. However, all six payments, which represented approximately \$2 million or 39 percent of the total contract

amount, did not include the required wage rate notification associated with the payments. The Uniform General Conditions require the contractor to submit a copy of each worker's wage-rate notification with each payment application. The wage-rate notification identifies the general prevailing wage rate to be paid to workers for their services. The Commission did not request the required documents. Not obtaining the wage-rate notifications associated with each payment application could increase the risk that the Commission does not identify that the contractor and subcontractor employees are not being paid the prevailing wage rate for their services as required.

Recommendations

The Commission should:

- Verify that performance and payment bonds are obtained within 10 days of a fully executed guaranteed maximum price.
- Ensure that all required payment application documents are requested and obtained.

Management's Response

The Commission agrees with the recommendations:

- ***Verify that performance and payment bonds are obtained within 10 days of a fully executed guaranteed maximum price.*** *The Commission agrees that compliance with the terms and conditions of the contract with respect to Payment and Performance Bonds should be documented and verifiable. Guaranteed maximum price ("GMP") amendments are currently documented in an executed and dated contract amendment. Following the execution of these amendments, there are two points in the process when the Commission can verify bonds have been submitted and approved after a fully executed GMP: (i) prior to the issuance of the notice to proceed ("NTP") with construction document; and (ii) prior to the approval of the first pay application. In general, the NTP will be withheld until approved bonds have been received. In an instance where the NTP must be issued to expedite a project and prior to 10 days after the amendment execution, the Commission payment approval process will be altered to verify receipt of approved bonds for all first pay applications. Payment will not be issued until bonds are in place. This practice may vary as circumstances demand, but variances will be noted in the contract file.*
 - ♦ *Responsible Staff: Facilities Design and Construction Division*
 - ♦ *Implementation Date: 01/31/2015*

- ***Ensure that all required payment application documents are requested and obtained.*** *The Commission will revisit procedures and provide training to ensure that this requirement is not overlooked in the future.*
 - ♦ *Responsible Staff: Facilities Design and Construction Division*
 - ♦ *Implementation Date: 01/31/2015*

Chapter 1-D

The Commission Should Verify Compliance with Criminal Background Check Requirements

For both the CMR contract and the property management services contract, the Commission could not verify whether both contractors had obtained the required criminal background checks for all contractor and subcontractor employees.

The Commission did not maintain a list of contractor and subcontractor employees for both contracts and the dates they began working on site. The Commission also does not monitor to determine whether all contractor and subcontractor employees received the required criminal background checks. In addition, both contracts audited contain conflicting language regarding whether all contractor and subcontractor employees are required to receive criminal background checks before working on site for the Commission.

The Commission did not verify whether all contractor and subcontractor employees received the required criminal background checks.

The Commission did not have a monitoring process to verify that all contractor and subcontractor employees received the required criminal background checks. By not verifying that a contractor is (1) conducting criminal background checks as required and (2) consistently managing physical access to the state-owned buildings (see Chapter 1-A), the Commission faces increased risks to state-owned buildings and assets.

The Commission did not maintain a list of contractor and subcontractor employees and the dates they began working on site.

For the documented criminal background checks, auditors could not determine whether those checks were performed prior to the employees working on site or in state-owned buildings because the Commission did not have a list of contractor and subcontractor employees and the dates they began working on site. Auditors obtained a list of contractor and subcontractor employees from the contractors for the property management services and CMR contracts; however, there is no assurance that those lists were complete and accurate. For another contract for custodial services, according to the Commission, it obtains from that contractor a quarterly list of current employees. The

Commission should consider using a similar process to maintain a list of contractor and subcontractor employees for both contracts audited to help verify that criminal background checks were conducted as required.

The Commission and both contractors could not provide documentation showing that criminal background checks were performed as required. Specifically:

- For the property management services contract, the Commission did not have evidence that required criminal background checks were performed for 36 (47 percent) of 77 contractor and subcontractor employees, as reported by the contractor, who worked at the four state-owned buildings managed by the contract (see Appendix 3).
- For the CMR contract, the Commission did not have evidence that required criminal background checks were performed for 80 (60 percent) of 133 contractor and subcontractor employees, as reported by the contractor, who worked on site.

Both contracts audited contain conflicting language regarding the requirements for criminal background checks.

Both contracts audited contain conflicting language regarding whether all contractor and subcontractor employees are required to receive criminal background checks before working on site for the Commission. Specifically, attachments incorporated into the terms of both contracts audited do not align with (1) the language in the contracts and (2) the Commission's processes for conducting criminal background checks on its contractors and subcontractors. Specifically, the Commission's informal process, as well as the main body of both contracts audited, gives contractors some discretion regarding which employees require a criminal background check. For example, the property management services contract states that contractor and subcontractor employees completing work on site may be subject to a criminal background check. The Commission's informal process for that contract is that only the contractor's employees and all custodial and security subcontractor employees are required to receive criminal background checks. The attachments, however, require a criminal background check for all contractor and subcontractor employees.

Conflicting language within the contracts, as well as between the contracts and the Commission's internal processes, increases the risk that the contractors may misinterpret the requirements and that some required criminal background checks will not be conducted.

Recommendations

The Commission should:

- Ensure that contractor and subcontractor employees receive required criminal background checks prior to working on site.
- Ensure that it has a list of contractor and subcontractor employees and the dates those employees began working on site for the Commission.
- Ensure that its contracts are clear about which contractor and subcontractor employees must receive criminal background checks, and that its processes align with those requirements.

Management's Response

The Commission agrees with the recommendations.

- *Facilities Design and Construction Division: A thorough process and system for vetting and monitoring the status of criminal background checks is necessary for all workers engaged in capital improvement activities on state property in order to protect the State's interest and manage risk. The Commission's system for processing these activities is constantly improving. The Facilities Design and Construction Division has allocated a significant part of one of our administrative positions to assist the project managers in requesting the background checks as well as to track the workers on each project.*

For emergency and/or short duration activities where there is not sufficient time to perform a proper background check, law enforcement or other security trained escorts will be used to monitor workers on state property.

- ♦ *Responsible Staff: Facilities Design and Construction Division*
- ♦ *Implementation Date: 01/31/2015*
- *Planning and Real Estate Management Division: The Commission is implementing procedures to ensure that the property management services contractor and their subcontractor have received criminal background checks; that it has a list of all property management services contractor's employees and their subcontractor's employees including dates they began working on-site; and that the requirements for criminal background checks for subcontractors is clear to the property management services contractor.*

- ♦ *Responsible Staff: Planning and Real Estate Management Division
with assistance from Risk Management*
- ♦ *Implementation Date: 01/31/2015*

While the Commission Procured Both Contracts in Accordance with Applicable Statutes and Its Policies and Procedures, It Did Not Always Plan or Form the Contracts in Accordance with State and Commission Requirements

The Commission complied with statutes and its policies and procedures when it procured the property management services contract and the CMR contract. However, it did not plan one contract and form the other contract audited in accordance with the *State of Texas Contract Management Guide*.⁴ In addition, the Commission did not ensure that contract managers received training required by the Texas Government Code.

The Commission procured both contracts audited in accordance with applicable statutes and rules and its policies and procedures. In addition, the Commission planned the CMR contract and formed the property management services contract in accordance with applicable statutes and rules. Specifically, the Commission:

- Advertised the solicitations for both contracts on the *Electronic State Business Daily* for at least 21 days, as required by Texas Government Code, Section 2155.083.
- Selected the contractors using the proposal evaluation documents and a methodology that was consistent with its solicitations, as required by the *State of Texas Contract Management Guide*.
- Selected the procurement method that best matched the type of goods or service being procured, as recommended by the *State of Texas Contract Management Guide* and the *State of Texas Procurement Manual*.
- Ensured that its governing board approved the award of the CMR contract to SpawGlass Contractors, Inc., as required by the Commission's policies and procedures.
- Documented the planning process for the CMR contract, including a cost estimate, needs assessment, and risk assessment, as required by the *State of Texas Contract Management Guide*.
- Included all essential clauses required by the *State of Texas Contract Management Guide* in its property management services contract.

⁴ *State of Texas Contract Management Guide*, Version 1.9 is applicable for the CMR contract. Version 1.7 is applicable for the property management services contract.

However, the Commission did not plan the property management services contract or form the CMR contract in accordance with applicable statutes and rules. Specifically:

- For the property management services contract, according to the Commission, it did not formally document a cost estimate, needs assessment, and risk assessment during the contract planning process (see text box). The Commission asserted that it had performed an informal needs assessment and risk assessment, and that it based the cost estimate on a review of previous property management services contract costs and spending patterns. However, auditors were not able to verify that the Commission took appropriate steps to develop an estimated cost for services because the Commission did not document its methodology. Not formally documenting the planning process increases the risk that the Commission will execute a contract that does not adequately address its needs or provide the best value to the State.
- For the CMR contract, the Commission did not include all essential clauses required by the *State of Texas Contract Management Guide*. The contract did not include a funding out clause, a technology access clause, or a buy Texas clause, as required. The Commission submitted the solicitation for the CMR contract to the State's Contract Advisory Team as required. The Contract Advisory Team had noted that the solicitation did not include the funding out clause; however, the Commission still did not include it in the CMR contract. Not having all essential contract clauses increases the risk that the State's interests may not be adequately protected.

Cost Estimate, Needs Assessment, and Risk Assessment

- A **cost estimate** assists an agency in determining which procurement method to use and an idea of the range of services to include in the statement of work.
- A **needs assessment** helps ensure an agency develops a clear definition of the contracting objectives and purpose.
- A **risk assessment** determines the level, type, and amount of management, oversight, and resources required to plan and implement the contract from beginning to end.

Source: *State of Texas Contract Management Guide*, Version 1.7.

In addition, the Commission ensured that its procurement staff complied with training requirements and had either a Texas Purchaser or Texas Purchaser Manager certification as required. However, the Commission's contract managers for the two contracts audited did not consistently meet the training requirements. While all 8 contract managers had relevant experience, 6 (75 percent) of those contract managers did not attend contract management training courses required by Texas Government Code, Section 2262.053. Four of those six contract managers were associated with the CMR contract and two were associated with the property management services contract. The Commission did not document a formal training plan for employees to address gaps in critical knowledge and technical skills, as required by the Commission's policies and procedures. According to the *State of Texas Contract Management Guide*, a contract manager is someone who is involved in planning, forming, and administering contracts. Ensuring that its contract managers receive all required training would help the Commission to ensure that its contracts can be managed appropriately.

Recommendations

The Commission should:

- Include all required essential clauses in its contracts.
- Formally document its planning process for all contracts, including a completed cost estimate, needs assessment, and risk assessment.
- Ensure that all contract managers have a documented training plan and attend the required contract manager training courses.

Management's Response

The Commission agrees with the recommendations.

- ***Include all required essential clauses in its contracts.*** *The Commission has updated all contract templates to include the essential clauses.*
 - ♦ *Responsible Staff: Legal Services Division*
 - ♦ *Implementation Date: Completed.*
- ***Formally document its planning process for all contracts, including a completed cost estimate, needs assessment, and risk assessment.*** *The Commission agrees that its contract planning process should be more consistently applied in the property management contracts, and we will reinforce the importance of the documentation with the employees now responsible for those areas.*
 - ♦ *Responsible Staff: Planning and Real Estate Management and Facilities Design and Construction Divisions with assistance from Procurement*
 - ♦ *Implementation Date: Needs / risk assessment documentation process completed.*
- ***Ensure that all contract managers have a documented training plan and attend the required contract manager training courses.*** *The Commission agrees with the need to identify which staff members are subject to the contract-manager training requirements, identify cost-effective training, and develop a plan for training the affected employees.*
 - ♦ *Responsible Staff: Planning and Real Estate Management and Facilities Design and Construction Divisions with assistance from Procurement*

- *Implementation Date: We intend to have a plan in place no later than March 1, 2015.*

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine whether the Texas Facilities Commission (Commission):

- Planned, procured, and established selected contracts for goods and services in accordance with applicable statutes, rules, Office of the Comptroller of Public Accounts (Comptroller's Office) requirements, and Commission policies and procedures to help ensure that the State's interests were protected.
- Managed and monitored selected contracts for goods and services to help ensure that contractors performed according to the terms of the contracts and that contractor billings were valid and supported, in accordance with applicable statutes, rules, Comptroller's Office requirements, and Commission policies and procedures.

Scope

The scope of this audit covered the Commission's entire contracting process—contract planning, contract procurement, contract formation, and contract oversight—related to the following two contracts:

- The property management services contract with Tarantino Properties, Inc., which the Commission awarded in August 2011.
- The construction manager-at-risk (CMR) contract with SpawGlass Contractors, Inc., which the Commission awarded in December 2011.

Methodology

The audit methodology consisted of collecting and reviewing procurement documentation; conducting interviews with Commission staff and contractor employees; performing on-site visits; reviewing statutes, rules, Comptroller's Office requirements, and Commission policies and procedures; and performing selected tests and other procedures.

The selection methodology for the contracts audited was based on contract dollar amount, type of contract and services, recent audit coverage, length of contract, and risks identified during the audit planning process.

Data Reliability and Completeness

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) and compared that information to contract payments from the Commission's internal accounting system, the GUI Fund Accounting System (GFAS). Auditors performed analysis regarding GFAS data completeness. Additionally, auditors traced GFAS payment information to invoice documents. Access testing was also performed on GFAS to determine whether user access to the GFAS application was appropriate. Auditors determined that GFAS payment data for both contracts audited was reliable for the purposes of this audit.

Auditors relied on previous State Auditor's Office audit work on the Commission's construction project management system (IMPACT) and verified that routing and approvals for payment requests and change orders in IMPACT were properly approved by required parties. Additionally, auditors verified that the construction phase for the James E. Rudder State Office Building interior renovation project was accurately set up in IMPACT by tracing the contract number, construction start and end dates, and budget to source documents. Auditors determined that IMPACT data for the CMR contract with SpawGlass Contractors, Inc. was reliable for the purposes of this audit. Auditors also reviewed an American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements (SSAE) No. 16 report for IMPACT, which covered the time period from June 1, 2012, through May 31, 2013. That report did not identify any significant issues in the Commission's controls over IMPACT.

Auditors verified completeness and accuracy of information in the Commission's tabulation scoring worksheets (a spreadsheet), which the Commission used in determining the selection of vendors during the procurement process for the two contracts audited, by tracing scoring information to source documents. Additionally, auditors verified that access to the tabulation scoring worksheets was limited to procurement personnel.

Auditors verified that property management services' change orders in the Commission's Automated Procurement System (APS) were complete for the time period tested by comparing the change orders to the information in the Legislative Budget Board's contracts database. Auditors determined that APS change order data for the property management services contract with Tarantino Properties, Inc. was reliable for the purposes of this audit.

Sampling Methodology

To test contract deliverables, auditors used professional judgment to select a risk-based sample of deliverables for testing. The sample deliverables were not representative of the population and, therefore, it would not be appropriate to extrapolate those test results to the population.

To test Commission payments for the property management services contract audited, auditors stratified expenditure population by building and selected a non-statistical sample through random selection designed to be representative of the population. In some cases, auditors used professional judgment to select additional items for testing. Those sample items generally are not representative of the population and, therefore, it would not be appropriate to extrapolate those results to the population.

To test the Commission's payments for the CMR contract audited, auditors tested all payments made during the audit scope.

Information collected and reviewed included the following:

- Property management services contract with Tarantino Properties, Inc., including amendments and change orders.
- CMR contract with SpawGlass Contractors, Inc., including amendments.
- Commission procurement files, including planning documentation, purchase requisition forms, approvals, invoices, and other supporting documentation.
- Commission solicitations, bid documentation, evaluation criteria, and scoring sheets.
- Commission policies and procedures, Uniform General Conditions, and applicable rules and regulations.
- Commission personnel training and certification records, nepotism forms, and nondisclosure forms.
- Emails and other documentation that supported information the Commission and the contractor provided to auditors.
- Contractor maintenance reports.
- Legislative Budget Board's contracts database.
- Commission contract expenditure data from USAS and GFAS.
- Commission payment documentation, including contractor invoices, approvals, and other supporting documentation.
- GFAS access lists of database and application users.
- Commission internal audit reports.
- Sunset Advisory Commission staff report on the Texas Facilities Commission, November 2012.

- *An Audit Report on Performance Measures at the Texas Facilities Commission*, State Auditor's Office Report No. 13-039, June 2013.

Procedures and tests conducted included the following:

- Interviewed Commission and contractor employees.
- Tested whether the Commission followed applicable guidelines in the *State of Texas Contract Management Guide* and the *State of Texas Procurement Manual* when planning for the contracts audited.
- Reviewed applicable conflict of interest statements and nondisclosure and nepotism forms.
- Reviewed contracts to determine whether the Commission included essential contract terms in the *State of Texas Contract Management Guide*.
- Reviewed contracts and amendments for appropriate authorizations.
- Tested criteria the Commission used to evaluate vendor proposals to determine whether it followed applicable requirements in the Texas Government Code.
- Tested scoring of Commission evaluations to determine whether all evaluators completed the same scoring matrix and to test mathematical accuracy.
- Tested samples of payments on invoices for appropriate documentation, required approvals, and whether the payments were made in a timely manner.
- Tested a sample of deliverables to review the Commission's monitoring process.
- Reviewed the Commission's report on the American Institute of Certified Public Accountants' SSAE No. 16 to verify whether automated controls were appropriately designed and operating effectively.
- Tested user access to the GFAS database and application.
- Reviewed password configuration to the GFAS application.
- Conducted on-site visits to four state-owned buildings to observe the conditions of the buildings and to test maintenance records.
- Attended a project team meeting and a substantial completion inspection walkthrough for the CMR contract audited.

Criteria used included the following:

- Texas Government Code, Chapters 322, 572, 2054, 2152, 2155-2157, 2161, 2166, 2251, 2252, 2261, 2262, and 2267.
- Title 34, Texas Administrative Code, Chapters 20 and 123.
- *State of Texas Contract Management Guide*, Versions 1.7 and 1.9.
- *State of Texas Procurement Manual*.
- The Commission's *2010 Uniform General Conditions*.
- Commission policies and procedures.

Project Information

Audit fieldwork was conducted from January 2014 through July 2014. 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. Those standards also require independence in both fact and appearance. A family member of the State Auditor is the executive director for the Commission⁵, which was the subject of this audit. This condition could be seen as potentially affecting our independence in reporting results related to this agency. However, we proceeded with this audit as set forth by the annual state audit plan, operated under the Legislative Audit Committee. The State Auditor recused himself from this audit, and the audit was supervised, reviewed, and approved by Chief of Staff Anita J. D'Souza. This condition did not affect our audit conclusions.

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

- Kristyn Hirsch Scoggins, CGAP (Project Manager)
- Anton Dutchover, CPA (Assistant Project Manager)
- Andrea Focht-Williams, MACT
- Nicole McClusky-Erskine, MAcc
- Namita Pai, CPA
- Fred Ramirez, MA

⁵ Mr. Terry Keel is the Commission's executive director.

- Sherry Sewell, CGAP
- Doug Stearns
- John Zhang, MPA
- Dana Musgrave, MBA (Quality Control Reviewer)
- Jennifer Wiederhold, CGAP (Audit Manager)

Contractor Information

The Texas Facilities Commission (Commission) contracted with Tarantino Properties, Inc. to provide full property management services for a total of four state-owned buildings in Fort Worth, Houston, San Antonio, and Waco (see Appendix 3 for a list of tenants in those buildings).

According to its Web site, Tarantino Properties, Inc. is a full-service real estate company that was established in 1980 specializing in income-producing properties and currently controls more than \$1.0 billion in real estate. Tarantino Properties, Inc. is based in Houston and has corporate locations in Austin, San Antonio, and Dallas. Figure 1 shows a screenshot of the Tarantino Properties, Inc. Web site.

Figure 1

Tarantino Properties, Inc. Web Site

Tarantino
PROPERTIES, INC.

Personalized Service. Proven Results.

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Full-service real estate specializing in income producing properties and currently controls over a billion dollars in real estate.

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Properties for Lease
Tarantino's professional associates represent Landlords in marketing commercial spaces. Our specialties include office buildings, retail and industrial.
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Featured Property
1811 and 2000 Bering Drive Office Buildings
Houston, Texas
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Tarantino signs 50,102 SF lease at 2000 Bering Office Building
Tarantino Properties leases 50,102 SF to Texas American Title Company at 2000 Bering in Houston, TX.
TPI Announces the sale of 7880 San Felipe Office Building
Tarantino Properties announces the sale of 7880 San Felipe office building in Houston, TX to a private investor.
Tarantino Properties Announces 8,457 SF Lease at 1811 Bering Drive in Houston
Tarantino leases 8,457 square feet to FuelFX at 1811 Bering office building in Houston, TX.

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- Receivership
- Construction Management
- Hotel Management
- Senior and Assisted Living
- Accounting Services

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Tarantino Properties, Inc. | Corporate Office: 7887 San Felipe Suite 237, Houston, Texas 77063 | Corporate Office Phone: 713 974 4282 | Fax: 713 974 5848

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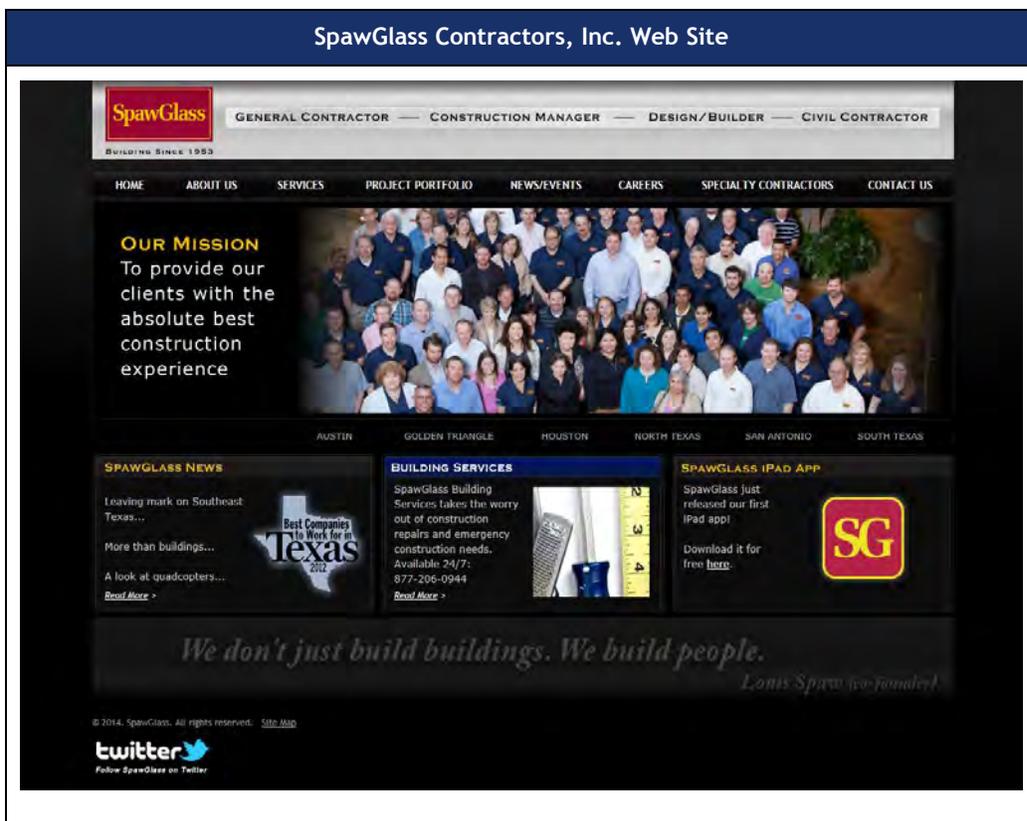
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Source: Tarantino Properties, Inc.'s Web site at <http://www.tarantino.com/>.

The Commission entered into a construction manager-at-risk contract with SpawGlass Contractors, Inc. to perform general, preconstruction, construction, and construction services for the completion of a public works interior renovation project at the James E. Rudder State Office Building in Austin.

According to the company, Texas-based SpawGlass Contractors, Inc. was founded in 1953 and is 100 percent employee-owned and operated with more than 300 employee shareholders. SpawGlass Contractors, Inc. provides preconstruction and construction services; its revenues exceed \$475 million per year. SpawGlass Contractors, Inc. is located in the following regions/cities: Austin, Houston, San Antonio, South Texas Region (Harlingen), North Texas Region (Fort Worth), and Golden Triangle Region (Beaumont). Figure 2 shows a screenshot of the SpawGlass Contractors, Inc. Web site.

Figure 2



Source: SpawGlass Contractors, Inc.'s Web site at <http://www.spawglass.com/index.php>.

List of Tenants in Buildings Included in the Commission's Contract with Tarantino Properties, Inc.

Table 1 lists the tenants for fiscal year 2014 of three of the four state-owned office buildings that Tarantino Properties, Inc. managed under the contract with the Texas Facilities Commission (Commission). No tenants are listed for the G.J. Sutton State Office Complex in San Antonio because that building became vacant in August 2013 due to structural issues.

Table 1

Tenants in Buildings Included in the Commission's Contract with Tarantino Properties Inc. ^a Fiscal Year 2014
Fort Worth State Office Building
Department of Aging and Disabilities Services
Department of Assistive and Rehabilitative Services
Department of Family and Protective Services
Health and Human Services Commission
Elias Ramirez State Office Building (Houston)
Department of Aging and Disabilities Services
Department of Assistive and Rehabilitative Services
Commission on Environmental Quality
Department of Agriculture
Department of Family and Protective Services
Health and Human Services Commission
Department of Insurance / Division of Workers' Compensation
Department of Licensing and Regulation
Department of State Health Services
Department of Public Safety
Office of the Attorney General's Medicaid Fraud Unit
Greater Texas Federal Credit Union
Texas Senator Sylvia Garcia
Tarantino Properties, Inc.
Waco State Office Building
Department of Aging and Disabilities Services
Department of Assistive and Rehabilitative Services
Department of Criminal Justice
Department of Family and Protective Services
Department of Housing and Community Affairs

Tenants in Buildings Included in the Commission's Contract with
Tarantino Properties Inc. ^a

Fiscal Year 2014

Department of State Health Services

Department of Transportation

Health and Human Services Commission

Office of the Attorney General

Office of the Comptroller of Public Accounts

State Office of Administrative Hearings

Worker's Compensation Commission

^a The G.J. Sutton State Office Complex in San Antonio was vacant as of August 2013.

Source: The Commission.

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