



An Audit Report on

Facilities-related Contracts at the Department of Transportation

August 2019
Report No. 19-050



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Overall Conclusion

The Department of Transportation's (Department) Support Services Division - Facilities Planning and Management Section (Facilities Section) generally planned, procured, and formed its \$1.85 million contract with Vincent's Roofing Inc. in accordance with applicable requirements. However, the Department should strengthen its controls over required disclosures.

The Facilities Section also performed monitoring activities for the audited contract. However, auditors identified weaknesses in its oversight of (1) payments, (2) change orders, and (3) contract closeout activities.

Overall, the Facilities Section should improve its processes for administering its facilities-related contracts.¹ Specifically, the Facilities Section:

- Does not have a comprehensive set of approved policies and procedures for the development and administration of facilities-related contracts. The lack of a comprehensive framework has contributed to inconsistent processes and documentation.
- Did not have adequate controls to ensure that its facilities-related contract data was accurate and complete.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Background Information

The Department of Transportation's (Department) Support Services Division - Facilities Planning and Management Section (Facilities Section) is responsible for the management, maintenance, supervision, and control of the Department's state-owned facilities, unless specifically exempted by law.

As of July 2019, the Facilities Section reported that it maintained 2,685 structures across Texas, encompassing approximately 10.3 million square feet of space.

According to its data, the Facilities Section procured 562 facilities-related contracts with a total value of \$111.5 million, between September 1, 2015, and February 28, 2019.

Source: The Department.

¹ For purposes of this report, "contracts" refers to all facilities-related construction, maintenance, or repair projects procured as a "State Let Contract" or procured as a "purchase of service," unless stated otherwise. See Chapter 1 for more information about the two categories of facilities-related contracts.

Table 1

| Summary of Chapters/Subchapters and Related Issue Ratings | | |
|---|--|---------------------------|
| Chapter/ Subchapter | Title | Issue Rating ^a |
| 1-A | The Department’s Facilities Section’s Processes Do Not Ensure That Its Contracts Are Administered in a Consistent Manner | High |
| 1-B | The Department’s Facilities Section Did Not Have Adequate Controls to Ensure That Its Facilities Contract Data Was Accurate and Complete | High |
| 1-C | The Department’s Facilities Section Should Consider Opportunities for Improving Its Facilities Planning and Management Operations | Low |
| 2 | The Department’s Facilities Section Performed Monitoring Activities for the Audited Contract; However, It Should Improve Its Oversight of Contractor Compliance with Contract Requirements | Medium |
| 3-A | The Department’s Facilities Section Planned, Procured, and Formed the Audited Contract in Accordance with Applicable Requirements | Low |
| 3-B | The Department Should Strengthen Its Controls Over Required Disclosures | Medium |

^a A chapter/subchapter is rated **Priority** if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A chapter/subchapter is rated **High** if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A chapter/subchapter is rated **Medium** if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A chapter/subchapter is rated **Low** if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

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

Summary of Management’s Response

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. The Department concurred with the recommendations in this report.

Audit Objective and Scope

The objective of this audit was to determine whether the Department has administered certain contract management functions for facilities management contracts in accordance with applicable requirements.

The scope of this audit included reviewing the Department’s contracting processes for facilities-related contracts active between September 1, 2016, and February 28, 2019. Auditors reviewed the Department’s contracting process—contract

planning, contract procurement, contract formation, and contract oversight—related to its facilities renovation contract with Vincent's Roofing, Inc., which the Department awarded in July 2017.

In addition, auditors reviewed certain aspects of the Department's contracting processes for facilities-related maintenance and repair projects procured as a purchase of service contract active between September 1, 2016, and February 28, 2019.

Auditors also performed select data analysis procedures for facilities-related contracts active between September 1, 2015, and February 28, 2019.

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Detailed Results

Chapter 1

The Department's Facilities Section Lacks Sufficient Contract Management Processes to Ensure That It Administers Its Facilities-related Contracts in Accordance with Applicable Requirements

The Department of Transportation's (Department) Support Services Division - Facilities Planning and Management Section (Facilities Section) does not have a comprehensive set of approved policies and procedures to establish a consistent process for its administration of facilities-related contracts, including planning, procurement, formation, and oversight.

Further, the Department's facilities-related contract data was not accurate or complete.

Chapter 1-A

The Department's Facilities Section's Processes Do Not Ensure That Its Contracts Are Administered in a Consistent Manner

**Chapter 1-A
Rating:
High ²**

The Department's Facilities Section does not have a comprehensive set of approved policies and procedures for its administration of facilities-related contracts, including planning, procurement, formation, and oversight. Having detailed policies and procedures could help the Department's Facilities Section:

- Improve the accuracy and completeness of its facilities-related contract data (see Chapter 1-B).
- Address the identified weaknesses in its contract oversight processes (see Chapter 2 for more information about monitoring of the contract audited).
- Improve its process for documenting significant decisions made during the planning of facilities-related contracts (see Chapter 3-A).
- Strengthen its controls over required disclosures (see Chapter 3-B).

² The risk related to the issues discussed in Chapter 1-A is rated as High because they present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

The Facilities Section uses a *Letting Manual* developed by the Department's Construction Division in 2008 as guidance for facilities-related contracts. However, that manual focuses primarily on highway construction contracts and does not include all the processes specific to facilities-related contracts. The Department has also documented some procedures for facilities-related contracts in its rules in the Texas Administrative Code. In addition, the Facilities Section asserted that it uses a *Contract Specialist Manual* to help manage its facilities-related contracts. However, as of February 2019, that manual was not approved by Department management and did not include procedures for all areas involved in the administration of facilities-related contracts. For example, as of February 2019, it did not contain any procedures for its construction project management team or how facilities-related contracts should be entered into its tracking spreadsheet.

Having detailed policies and procedures for all aspects of the Facilities Section's planning, procurement, formation, and oversight processes would help ensure that facilities-related contracts are administered in a consistent and effective manner.

Recommendation

The Department should document a comprehensive set of approved policies and procedures to establish a consistent process for its administration of facilities-related contracts, including planning, procurement, formation, and oversight.

Management's Response

TxDOT concurs with the recommendation. TxDOT's Facilities Planning and Management Section has had established policies and procedures for Facilities which governs activities for the Department. The Facilities Policy was established in July 2018 and is reviewed on annual basis for statewide operational improvements. Procedures were established for Section operations and guided how projects and their associated contracts were processed.

The Facilities Planning and Management Section is in the process of further developing a more formalized and comprehensive procedures manual, to be completed by the end of the 2019 calendar year.

Responsible Party: Project Development Manager, Support Services Division

Estimated Completion Date: December 2019

The Facilities Section Did Not Have Adequate Controls to Ensure That Its Facilities Contract Data Was Accurate and Complete

**Chapter 1-B
Rating:
High³**

The Facilities Section uses a spreadsheet to manually track the details of its facilities-related contracts. Those include facilities-related contracts procured as a (1) “State Let contract,” which uses the procurement process established in the Texas Transportation Code and (2) a “purchase of service,” which uses the procurement process established in Texas Government Code (see Figure 1 for more information).

Figure 1

| <i>The Department’s Facilities-related Contracts</i> | |
|---|--|
| <i>State Let Contract</i> | <i>Purchase of Service Contract</i> |
| <ul style="list-style-type: none"> ❖ The Department considers its facilities-related projects to be a highway improvement under the authority of Texas Transportation Code, Section 221.001. ❖ Generally used for facilities-related construction, maintenance, and repair projects with estimated costs of more than \$25,000. ❖ Relies on a manual “letting” process performed by the Facilities Section staff in accordance with the requirements established in Texas Transportation Code. This process includes providing notice, issuing solicitations, receiving bid proposals, and awarding contracts. ❖ According to its data, the Facilities Section executed 286 State Let contracts, valued at \$106.4 million, between September 1, 2015, and February 28, 2019. | <ul style="list-style-type: none"> ❖ Under Texas Transportation Code, Section 223.042, the Department may procure certain facilities-related maintenance and repair projects as a “purchase of service” in accordance with the statewide procurement laws established in the Texas Government Code if: <ul style="list-style-type: none"> ✓ The total estimated contract costs does not exceed the threshold set by the Office of the Comptroller of Public Accounts for which a formal solicitation is required, and ✓ The Department determines that the procurement process used for highway improvements is not practical. ❖ Generally used for purchases of facilities-related maintenance and repair services with estimated costs of \$25,000 or less with requirements that can be described by detailed specifications in a purchase order. ❖ The Department’s Procurement Division purchases the requested service on behalf of the Facilities Section. ❖ According to its data, the Facilities Section executed 276 Purchase of Service contracts, valued at \$5.1 million, between September 1, 2015, and February 28, |

Sources: The Department and Texas Transportation Code, Sections 221.001 and 223.042.

³ The risk related to the issues discussed in Chapter 1-A is rated as High because they present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

However, the Facilities Section did not ensure that all facilities-related contracts were entered into its tracking spreadsheet. For example, auditors reviewed the information in the Department’s financial accounting system (PeopleSoft Financials) and identified 47 facilities-related State Let contracts, with a total value of \$18.3 million, that were not included in the spreadsheet.

Multiple Facilities Section employees have access to add or otherwise modify the contracting data in that spreadsheet. However, the Facilities Section had not implemented adequate input controls, such as edit checks and drop-down menus, to help ensure the validity and accuracy of the data. For example, the spreadsheet does not require a standard format or terminology for certain fields, such as dates and purchase order numbers. In addition, the Facilities Section does not have a review process for the data entered into the spreadsheet to identify inaccuracies or inconsistencies.

As a result, auditors identified a significant number of data fields that were incomplete or contained inaccurate information. For example:

- Multiple purchase order numbers were inaccurate and/or incomplete. The purchase order number is one of the fields the Facilities Section uses to reconcile the contracts in the spreadsheet with the contract payments processed in the Department’s financial accounting system.
- A change order for one contract should have been entered as a negative amount (to reduce the final value of the contract), but instead was incorrectly entered as a positive amount, resulting in an inaccurate total value for that contract.
- Multiple records contained inaccurate vendor identification numbers and/or incorrect vendor names.

The Facilities Section uses the data in that spreadsheet to produce key management reports, including its master budget for facilities and its quarterly report to the Joint Oversight Committee on Government Facilities. As a result, Department management and state officials could potentially make decisions based on incomplete or inaccurate information.

As of July 2019, the Department was in the process of implementing an information technology system that would eventually replace the Facilities Section’s contract tracking spreadsheet (see text box for more information about that system). As a

Integrated Workplace Management System

The Department entered into a contract in November 2016 for the design and implementation of an integrated workplace management system to centralize and standardize its facilities management functions, including the management of contracts and projects.

As of July 2019, that system had not been fully implemented and the Facilities Section was not using that system to manage its facilities-related contracts and projects.

Source: The Department.

result, it is critical that the Facilities Section ensures that it has complete and accurate contract data so that a new system, if implemented, can be populated with reliable data.

Recommendation

The Department should document and implement a process and controls to help ensure the accuracy and completeness of its facilities-related contract data.

Management's Response

TxDOT concurs with the recommendation. Established controls are in place with formalized checks and balances to ensure projects are managed within the delegated authority set forth within the Department. We will continue to evaluate, refine, and further clarify processes and controls.

TxDOT's Facilities Planning and Management Section is actively pursuing alternative solutions in partnership with TxDOT's Information Management Division to integrate with our existing integrated workplace management system to ensure accuracy and completeness of contract related data and accounting.

Responsible Party: Project Development Manager, Support Services Division

Estimated Completion Date: August 2020

The Department's Facilities Section Should Consider Opportunities for Improving Its Facilities Planning and Management Operations

Chapter 1-C
Rating:

Low⁴

Auditors identified areas in which the Department's Facilities Section could improve the consistency and effectiveness of its facilities planning and management operations. Specifically, the Facilities Section:

- **Did not have approved, consistent processes for producing and maintaining important management documents and reports.** For example, the Facilities Section did not have a formal and consistent process for compiling its Statewide Facilities Master Plan and its quarterly report to the Joint Oversight Committee on Government Facilities.
- **Did not have approved, consistent processes for documenting significant management decisions made throughout the lifecycle of its facilities-related contracts.** For example, the Facilities Section does not document how it determines that a facilities-related maintenance or repair project meets the eligibility requirements established in the Texas Transportation Code for a purchase of service contract. Specifically, the Facilities Section did not document the factors it considered when it determined that the State Let contracting process was not practical for a facilities-related maintenance or repair project (see Figure 1 on Facilities-related Contracts in Chapter 1-B for more information on the eligibility requirements for a purchase of service contract).
- **Did not have a process for determining when minimum bidder qualifications are necessary.** Title 43, Texas Administrative Code, Section 9.12(a), requires that all potential bidders satisfy specific requirements, including the completion of a Confidential Questionnaire or a Bidders Questionnaire, before being eligible to bid on a highway improvement contract. This prequalification process helps ensure that potential bidders possess the technical and financial capacity to bid on certain contracts.

The Facilities Section asserted that Title 43, Texas Administrative Code, Section 9.12(h) exempts facilities-related contracts from that prequalification process; therefore, an assessment of potential bidders' qualifications is necessary only when minimum financial, technical, and other requirements are explicitly stated in the solicitation documentation (on a project-by-project basis). However, the Facilities Section did not have a policy or procedures for determining when it is necessary to require minimum bidder qualifications based on the nature, scope, and

⁴ The risk related to the issues discussed in Chapter 1-C is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

total estimated cost of a facilities-related contract. Having a documented, consistent process would help the Facilities Section ensure that its contracts are awarded to only qualified, financially sound bidders.

Recommendation

To improve the consistency and effectiveness of its facilities planning and management operations, the Department's Facilities Section should consider developing and implementing documented processes for:

- Producing and maintaining important management documents and reports.
- Documenting significant management decisions made throughout the lifecycle of its facilities-related contracts.
- Establish and implement a process to determine when minimum bidder qualifications are necessary on a facilities-related contract.

Management's Response

TxDOT concurs with the recommendation. TxDOT's Facilities Planning and Management Section will include this review as part of developing comprehensive procedures (see response for 1A). TxDOT's Facilities Planning and Management Section will:

- *Produce and maintain important management documents and reports by formalizing the process and publishing reports on TxDOT's intranet site.*
- *Formalize the process to document significant management decisions made throughout the lifecycle of its facilities-related contracts.*
- *Establish and implement a process to determine minimum bidder qualifications on facilities-related contracts on a project by project basis.*

Responsible Party: Project Development Manager, Support Services Division

Estimated Completion Date: December 2019

The Department's Facilities Section Performed Monitoring Activities for the Audited Contract; However, It Should Improve Its Oversight of Contractor Compliance with Contract Requirements

**Chapter 2
Rating:
Medium⁵**

The Department's Facilities Section performed monitoring activities for its \$1.85 million contract with Vincent's Roofing Inc. (see text box for more information about the contract audited). For example, the Facilities Section:

- Documented a monthly field inspection report for the duration of the audited contract, in accordance with requirements.
- Ensured that the payments to the contractor were for allowable costs.
- Ensured that total payments to the contractor did not exceed the total value of the contract.

Contract Audited

The Department entered into a contract with Vincent's Roofing, Inc. to complete renovations at the Fort Worth District headquarters. The scope of the renovations included the replacement of the roofs on four buildings and one building's exterior wall.

The contract began in August 2017 and ended in April 2019. The total contract amount, including amendments, was \$1,849,468.

Sources: The Department and the Uniform Statewide Accounting System.

However, the Facilities Section should improve its monitoring of (1) payment processing, (2) change orders, and (3) contract closeouts. As discussed in Chapter 1, the Facilities Section lacks a comprehensive set of approved policies and procedures for its administration of facilities-related contracts and projects, including oversight. Developing and implementing such policies and procedures could help the Facilities Section address the weaknesses in its monitoring processes discussed below.

The Department's Facilities Section did not ensure that payment applications included all required documentation before processing the payments.

All 7 payment applications that the contractor submitted to the Facilities Section did not include one or more required documents. Specifically, of those 7 payment applications:

- All 7 payment applications did not include an updated Work Progress Schedule, which is the contractor's assertion of the work completed to date.
- 1 (14 percent) payment application did not include Historically Underutilized Business (HUB) *Progress Assessment Reports* for 3 of the 4 months of work covered in the payment application. The *Progress*

⁵ The risk related to the issues discussed in Chapter 2 is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Assessment Reports help the Department verify the contractor's compliance with HUB-related requirements in the contract audited.

- 1 (14 percent) payment application was not signed and dated by the Construction Project Manager to indicate the manager's inspection and acceptance⁶ of the work that the contractor performed.

By not ensuring that it obtains all required approvals and supporting documentation for payment applications, the Department is at an increased risk of approving payments for work not performed, making duplicate payments (for completed work that had been previously paid for), and not identifying contractor noncompliance with contract requirements.

The Department did not ensure that it processed the contractor's payment applications within the required timeframes.

For 5 (71 percent) of the 7 payment applications, the Department used an incorrect service/inspection date to determine the payment's due date. As a result, it did not process and pay those 5 payment applications within 30 days of inspection and acceptance of the work, as required by the State's Prompt Payment Act (see text box). Based on auditors' recalculations using the correct service/inspection dates, those payments were 7 days late, on average. Under the Prompt Payment Act, the Department would have incurred \$1,361.86 in interest due to the contractor as a result of those 5 late payments.

According to the Department, its financial accounting system (PeopleSoft Financials) is configured to pay a contractor within 30 days of the date on which the Department (1) receives an invoice for the services or (2) inspects and accepts the contractor's completed work, whichever is later. However, the Department did not ensure that it entered the correct service/inspection date, which should match the date the Construction Project Manager in the Facilities Section

Prompt Payment Act

Texas Government Code, Section 2251.021, states that a payment by a governmental entity is overdue on the 31st day after the later of:

- (1) the date the governmental entity receives the goods under the contract;
- (2) the date the performance of the service under the contract is completed; or
- (3) the date the governmental entity receives an invoice for the goods or service.

In addition, Texas Government Code, Section 2251.026, states that a state agency is liable for any interest that it accrues on an overdue payment under this chapter and shall pay interest from funds appropriated or otherwise available to the agency at the same time the principal is paid.

Source: The Texas Government Code.

⁶ The Construction Project Manager sent an email to the Facilities Section's contracting team to assert his inspection and acceptance of the work documented in the contractor's payment application. However, that email was not submitted to the Department's Financial Management Division, which processed the payment to the contractor.

signed the contractor's payment application, indicating the work was inspected and accepted.

The Facilities Section allowed the contractor to exceed the contract's substantial completion date without issuing a change order or assessing liquidated damages.

The Facilities Section allowed the contractor to exceed the contract's substantial completion date by 136 days. However, the Facilities Section did not issue a change order when the contractor exceeded the contract's timeline. Without that change order, the Facilities Section should have assessed \$106,760 in liquidated damages for the late completion, according of the terms of the contract.

The Facilities Section executed 7 total change orders, which increased the contract value from the original value of \$1,807,728 to approximately \$1,849,468, a 2.3 percent increase from the original cost. Auditors tested all seven change orders and determined that those change orders were reasonable and approved by the the required Department personnel.

The Facilities Section did not verify that the contractor fulfilled its contractual obligations before processing the final payment.

The Facilities Section performed certain contract closeout activities, as required (see text box for information about the Department's closeout process). Specifically, the Facilities Section:

- Performed a Substantial Completion Inspection, issued a Certificate of Substantial Completion, and documented a Substantial Completion Punchlist.
- Performed a Final Completion Inspection and documented a Final Punchlist of open items that the contractor must correct or complete before the final acceptance of the work.

However, the Facilities Section approved the contractor's request for final payment (1) without verifying that the contractor corrected and completed all items on the Final Punchlist and (2) without issuing a Certificate of Final Completion. Completing a final punchlist inspection and issuing a certificate establishing the date of Final Completion

Contract Closeout - Completion and Acceptance Process

Substantial Completion Inspection - When notified by the contractor, the Facilities Section will perform an inspection to determine if the project is substantially complete. If the work is substantially complete, the Facilities Section will issue a Certificate of Substantial Completion and will also create a "Substantial Completion Punchlist" that includes items that the contractor must complete prior to requesting a Final Completion Inspection.

Final Completion Inspection - The Facilities Section will perform an inspection and create, if needed, a "Final Punchlist" of open items that require correction or completion before final acceptance of the work. The Facilities Section must inspect the completed items and when the contract work is determined to be complete, the Facilities Section must issue a Certificate of Final Completion before issuing the final payment to the contractor.

Source: The Department.

helps the Department ensure that the contractor has completed all work before receiving final payment.

Recommendations

The Department should:

- Obtain all required approvals and support before processing payments to a contractor.
- Pay contractors within 30 days after inspection and acceptance of the contractor's completed work to avoid incurring interest for late payments.
- Process change orders or assess liquidated damages when the contract completion date is exceeded by the contractor, in accordance with the requirements of its facilities-related contracts.
- Complete all required contract closeout activities before making the final payment.

Management's Response

TxDOT concurs with the recommendations. TxDOT's Facilities Planning and Management Section will review processes and procedures to ensure the appropriate sequencing and timing of approvals and closing activities.

- *The Facilities Planning and Management Section has a process for approving payments to a contractor with appropriate signature authority and timely submittal.*
- *The Facilities Planning and Management Section will work with Financial Management Division to further qualify prompt payment criteria.*
- *The Facilities Planning and Management Section updated the change order process to ensure contract time is appropriately tracked and managed.*
- *The Facility Management - Contract Management team will process payments, review all change orders and time charges for accuracy both monthly and at contract closeout.*
- *Ongoing training shall be provided to all Construction Project Managers and Contract Managers (Contract Specialist) on processes and procedures.*

Responsible Party: Project Development Manager, Support Services Division

Estimated Completion Date: December 2019

The Department Generally Planned, Procured, and Formed the Contract Audited in Accordance with Most Requirements; However, It Should Strengthen Its Controls Over Required Disclosures and Contract Clauses for Facilities Section Contracts

The Department's Facilities Section generally planned, procured, and formed the audited contract with Vincent's Roofing Inc. in accordance with applicable requirements. However, the Facilities Section should strengthen its controls over required disclosures and contract clauses for its facilities-related contracts.

Chapter 3-A

The Department's Facilities Section Planned, Procured, and Formed the Audited Contract in Accordance with Applicable Requirements

Chapter 3-A
Rating:
Low⁷

The Facilities Section performed and documented certain planning activities in accordance with requirements.

For example, the Facilities Section:

- Considered the project in the agency-wide facilities planning process.
- Documented construction drawings and specifications.
- Developed detailed cost estimates for the contract based on project specifications.

However, the Facilities Section did not document certain significant decisions made during the planning process. For example, the Facilities Section did not document:

- Its justification for its decision to combine two separate projects into a single procurement (which resulted in the audited contract).
- Its determination to expand the planned scope of the roofing project to include the demolition and replacement of an exterior wall.

While not required, documenting its decisions such as those listed above could help the Department ensure that the Facilities Section's planning activities are appropriate and consistent.

⁷ The risk related to the issues discussed in Chapter 3-A is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

The Department's Facilities Section procured the audited contract in accordance with applicable requirements.

The Department's Facilities Section procured the audited contract with Vincent's Roofing Inc. in compliance with applicable statutes and rules. For that contract, the Facilities Section used the Department's process for procuring competitively bid contracts, which complies with the requirements in the Texas Transportation Code and the applicable rules in the Texas Administrative Code.

Specifically, for the contract audited, the Facilities Section:

- Provided a public notice of the proposed contract.
- Issued the proposal solicitation to interested parties.
- Received sealed bid proposals, which were read publicly.
- Accurately identified the lowest bidding contractor (Vincent's Roofing, Inc.) and ensured that contractor's bid proposal complied with all applicable requirements.
- Ensured that (1) the Texas Transportation Commission reviewed and approved the contract award to the lowest bidder and (2) the Department's director of support services signed the contract, as required.

The Department ensured that the audited contract included most required clauses.

The audited contract included the provisions required by the Department's policies and procedures, including most of the essential contract clauses specified in the *State of Texas Procurement and Contract Management Guide* (Version 1.1). However, it did not include a provision that established the State Auditor's right to audit the contract. Title 43, Texas Administrative Code, Section 9.327, provides the authority for the Department and other interested state agency representatives to audit a contract. Establishing this provision within a contract is critical to ensure that the State Auditor's Office has (1) the ability to audit a contractor's construction work and costs and (2) access to all information necessary to verify that a contractor has complied with the terms of its contract. The State Auditor's Office previously reported this issue in *An Audit on a Construction Contract at the Department of Transportation* (State Auditor's Office Report No. 15-033, June 2015).

Recommendations

The Department should:

- Consider establishing a process for documenting significant management decisions made during the planning for facilities-related projects, such as decisions to combine projects or expand a project's scope.
- Include in all facilities-related contracts a provision that establishes the State Auditor's right to audit, including access rights to all contractor records related to the contract.

Management's Response

TxDOT concurs with the recommendations.

TXDOT's Facilities Planning and Management Section will continue to use the planning documents (plans, specifications and estimates) to capture all project related decisions made during the planning phase. Final PS&E validated projects and canceled projects shall be approved and documented by the Facilities Planning and Management Section Director prior to letting or cancellation.

Change orders will be processed for any changes to the approved project scope. All change orders require the approval of the Section Director of Facilities Planning and Management and/or the Support Services Division Director.

The Facilities Planning and Management Section will incorporate the right to audit by SAO into facility related contracts.

Responsible Party: Project Development Manager, Support Service Division

Estimated Completion Date: December 2019

The Department Should Strengthen Its Controls Over Required Disclosures

Chapter 3-B
Rating:

Medium⁸

Nepotism Disclosure. The Department did not ensure that the seven employees involved in the procurement of the audited contract with Vincent Roofing Inc. completed a Nepotism Disclosure Form, as required by Texas Government Code, Section 2262.004 (see text box for information about the required disclosures). The Nepotism Disclosure Form is required to be completed even in the absence of potential or actual nepotism. While auditors did not identify any instance of nepotism, ensuring that the required disclosure forms are completed by all applicable parties could help the Department ensure that the procurement process is fair and objective.

Conflict of Interest Statement. The individuals involved in the procurement and management of the audited contract did not complete a conflict of interest statement. This included the seven Facilities Section employees who procured (recommended for award) the contract and the three Facilities Section employees who managed the contract. The Department asserted that Title 34, Texas Administrative Code, Section 20.158, requires conflict of interest disclosures be documented only when a potential or actual conflict exists. Therefore, the Department did not require its employees involved in the procurement or management of a contract to document their asserted absence of a conflict of interest.

Required Disclosures

Nepotism Disclosure - Texas Government Code, Section 2262.004(b), requires each of the state agency's purchasing personnel working on a major contract to disclose certain relationships and financial interests with the business entity before the contract is awarded.

Conflict of Interest Statement - Title 34, Texas Administrative Code, Section 20.158, requires state agency employees involved in procurement or in contract management to disclose known potential conflicts of interest related to a contract with a private vendor or bid for the purchase of goods or services from a private vendor.

Sources: Texas Government Code, Section 2262.004(b) and Title 34, Texas Administrative Code, Section 20.158

Recommendations

The Department should:

- Ensure that each employee involved in the procurement of a facilities-related contract completes a nepotism disclosure form, as required by Texas Government Code, Section 2262.004.

⁸ The risk related to the issues discussed in Chapter 3-B is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

- Consider requiring all individuals involved in the procurement and management of a facilities-related contract to complete a conflict of interest statement, even in the absence of a potential or actual conflict of interest.

Management's Response

TxDOT concurs with the recommendations.

Beginning in June 2019, TxDOT's Facilities Planning and Management Section implemented a digitized system to capture the nepotism and conflict of interest disclosures. The disclosures are completed prior to contract execution.

Responsible Party: Project Development Manager, Support Services Division

Estimated Completion Date: Completed

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Department of Transportation (Department) has administered certain contract management functions for facilities management contracts in accordance with applicable requirements.

Scope

The scope of this audit including reviewing the Department's contracting processes for facilities-related contracts active between September 1, 2016, and February 28, 2019. Auditors reviewed the Department's contracting process—contract planning, contract procurement, contract formation, and contract oversight—related to its facilities renovation contract with Vincent's Roofing, Inc., which the Department awarded in July 2017.

In addition, auditors reviewed certain aspects of the Department's contracting processes for facilities-related maintenance and repair projects procured as a purchase of service contract, active between September 1, 2016, and February 28, 2019.

Auditors also performed select data analysis procedures for facilities-related contracts active between September 1, 2015, and February 28, 2019.

Methodology

The audit methodology included collecting and reviewing the Department's planning and procurement documentation; reviewing and testing the Department's contract payments; reviewing the Department's contract monitoring processes and documentation; reviewing contract requirements and related deliverables; conducting interviews with Department management and staff; reviewing statutes, rules, and Department policies and procedures; and performing selected tests and other procedures.

Data Reliability and Completeness

Auditors determined that Department's population of facilities-related contracts was not reliable (see Chapter 1). However, auditors used the data for the purpose of selecting facilities-related contracts for testing.

Auditors reconciled expenditure data in the Department's PeopleSoft Financials (PeopleSoft) system to the expenditure data in the Uniform Statewide Accounting System (USAS) and determined the expenditure data was sufficiently reliable for the purposes of this audit.

Sampling Methodology

To test the Department's facilities-related contracting processes, auditors applied a risk-based approach to select one facilities-related contract based on contract dollar amount, the total number of change orders, and risks identified during the audit planning process. The sampled contract may not be representative of the population and, therefore, it would not be appropriate to extrapolate this result to the population.

Auditors tested all seven payments that the Department paid to Vincent's Roofing, Inc.

Information collected and reviewed included the following:

- Department policies and procedures.
- Department's contract documentation.
- Department expenditure data from USAS and PeopleSoft.
- Department payment documentation, including contractor invoices; approvals; payment vouchers; and receipts.

Procedures and tests conducted included the following:

- Interviewed Department management and employees.
- Tested selected Department planning, procurement, formation, and monitoring processes for compliance with Department policies and procedures, and applicable statutes and rules.
- Tested contractor payment applications and the Department's contractor payments to determine whether those payments were properly supported, accurate, reviewed and authorized prior to payment, processed in a timely manner, and allowable according to the terms of the contract audited.
- Tested all facilities-related procurements within the audit scope valued less than \$300,000 when executed, but eventually exceeded that amount through change orders, to determine if the director of the Department's Support Services Division approved the change orders for those procurements, as required.

- Tested all facilities-related procurements executed within the audit scope and valued at \$25,000 or more to determine if the purchase method used was appropriate.

Criteria used included the following:

- Texas Transportation Code, Chapters 221 and 223.
- Texas Government Code, Chapters 656, 2155, 2251, 2261, 2262, and 2270.
- Title 43, Texas Administrative Code, Chapter 9.
- Title 34, Texas Administrative Code, Chapter 20.
- The Department's policies and procedures.
- Office of the Comptroller of Public Accounts' *State of Texas Procurement and Contract Management Guide*, Version 1.1.

Project Information

Audit fieldwork was conducted from January 2019 through June 2019. 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 objective. 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:

- Justin H. Griffin, CISA (Project Manager)
- Alexander Sumners (Assistant Project Manager)
- Brady Bennett, CFE, CGAP
- Alexander Grunstein, CFE, CFCS
- Teri Lynn Incremona, CFE
- Lauren Ramsey
- Robert G. Kiker, CGAP (Quality Control Reviewer)
- Dana Musgrave, MBA (Quality Control Reviewer)
- Hillary Eckford, CIA, CFE (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgment and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

| Summary of Issue Ratings | |
|--------------------------|---|
| Issue Rating | Description of Rating |
| Low | The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited. |
| Medium | Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level. |
| High | Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity. |
| Priority | Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity. |

Related State Auditor's Office Work

| Related State Auditor's Office Work | | |
|-------------------------------------|---|--------------|
| Number | Product Name | Release Date |
| 15-033 | An Audit on a Construction Contract at the Department of Transportation | June 2015 |

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