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An Audit Report on

Selected Contracts at the Parks and Wildlife Department

August 2014
Report No. 14-042

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Overall Conclusion

The Parks and Wildlife Department (Department) should strengthen its contracting processes in the areas of procurement, payment, and monitoring. Audits of two contracts identified the following:

- **The TxParks reservations and property management system (TxParks) contract with The Active Network, Inc.¹ executed in 2008.** The Department did not have documentation showing that it complied with procurement requirements and appropriately scored vendor proposals for its contract to develop the TxParks reservations and property management system for state parks. Therefore, auditors could not verify whether the Department selected the vendor that provided best value. In procuring that contract, the Department also inappropriately disqualified three vendors whose proposals met the minimum requirements in the Department's solicitation. It also did not document whether another vendor submitted required financial statements; without those financial statements, the Department should have disqualified that vendor.

The Department established segregation of duties for its payments to the TxParks contractor, but it did not follow its payment process consistently. The Department did not have a supporting invoice for one \$64,167 payment. In addition, the Department did not track contractor payments that were associated with one contract amendment and, as a result, it overpaid the contractor \$2,182. The Department also paid the contractor

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 TxParks reservations and property management system contract is for the development of an integrated, multi-location reservation and business management system for state parks operations. The contract is with The Active Network, Inc.; it began in March 2008 and will end in December 2016. The total contract amount, including amendments, is \$8,021,899. As of February 2014, the Department had paid the contractor \$4,762,948.

The License Sales System implementation and management contract is for the development of an integrated, electronic licensing system for the sale of hunting and fishing licenses. The contract is with Gordon-Darby, Inc.; it began in March 2012 and will end in August 2018. The total contract amount is based on a per-transaction fee, and the Department estimates the total contract amount will be \$14,500,000. As of February 2014, the Department had paid the contractor \$806,780.

¹ The original contract was with InfoSpherix, Inc., which later merged with and became The Active Network, Inc.

\$1,069 in interest because it made payments late. The Department did not have documentation showing that \$160,909 in payments were properly approved.

The Department complied with most requirements for planning and forming the TxParks contract.

- **The License Sales System implementation and management (License Sales System) contract with Gordon-Darby, Inc. executed in 2012.** The Department improved its contracting processes and complied with most requirements for planning, procuring, and forming the License Sales System contract for the sale of hunting and fishing licenses. In addition, the Department appropriately processed payments for that contract.

The Department monitored both contracts audited, but it should strengthen its monitoring to help ensure contractor compliance with contract terms. Specifically, the Department did not adequately monitor 7 (41 percent) of 17 contract requirements tested for the TxParks contract and 4 (24 percent) of 17 contract requirements tested for the License Sales System contract. The Department did not perform an adequate risk assessment to identify which requirements it should monitor regularly or how it would monitor those requirements.

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

Summary of Management's Response

The Department agreed with the recommendations in this report.

Summary of Objectives, Scope, and Methodology

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

- 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 Department 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 Department policies and procedures.

The scope of this audit covered the Department's contracting activities related to the TxParks and License Sales System contracts from their inception through February 2014. The audit focused on all phases (planning, procurement, contract formation, and contract oversight) of the contracting process.

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Department staff; reviewing statutes, rules, Comptroller's Office requirements, and Department policies and procedures; and performing selected tests and other procedures.

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) and relied on previous State Auditor's Office audit work to determine that data was sufficiently reliable for the purposes of this audit. Additionally, auditors compared contract payments from the Department's internal accounting system, the Business Information System (BIS), to USAS. Auditors determined that BIS data was incomplete and did not rely on it for this audit.

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Detailed Results

Chapter 1

The Department Did Not Have Documentation Showing Its Compliance With Procurement Requirements for the TxParks Contract, and It Should Improve Its Monitoring of That Contract

The Parks and Wildlife Department (Department) did not have documentation showing that it complied with procurement requirements and appropriately scored vendor proposals for its contract to develop the TxParks reservations and property management system (TxParks). Therefore, auditors could not verify whether the Department selected the vendor that provided best value. In addition, the Department did not require vendors to disclose their employment of all former Department employees as required by the *State of Texas Contract Management Guide*.²

The Department monitored the TxParks contract, but it should strengthen its monitoring to help ensure contractor compliance with contract terms. The Department also did not consistently follow its payment processes, which resulted in one overpayment and interest payments to the contractor.

Chapter 1-A

The Department Did Not Have Documentation Showing That It Complied With Procurement Requirements and Scored Vendors' Proposals Appropriately for the TxParks Contract

Auditors could not verify whether the Department awarded the TxParks contract to the vendor that provided best value because the Department did not maintain its detailed proposal evaluations or the methodology it used to score written vendor proposals.

The Department maintained a summary document with the aggregate scores from the written vendor proposals it evaluated; however, it did not maintain the individual scoring documents to support the aggregate scores in that summary document. As a result, auditors were unable to recalculate the aggregate scores. In addition, the Department was unable to identify the staff who evaluated and scored the written vendor proposals. The *State of Texas Contract Management Guide*³ requires evaluation team members to document their judgments concisely and clearly and requires agencies to maintain contract administration files, including evaluation determinations, for the life of the contract.

² Texas Government Code, Section 2262.052(a), requires agencies to comply with the *State of Texas Contract Management Guide*.

³ *State of Texas Contract Management Guide*, Version 1.3.

Disqualification of Vendor Proposals

The Department inappropriately disqualified three vendors whose proposals met the minimum requirements in the Department's solicitation for TxParks. It also did not maintain evidence regarding whether one vendor submitted the required financial statements (if the vendor did not submit those financial statements, the Department should have disqualified that vendor).

Auditors also could not verify whether the Department received 3 (43 percent) of the 7 proposals by the due date (1 of those 3 was the proposal submitted by the contractor to which the Department awarded the TxParks contract). The Department did not maintain documentation of the time and date of receipt for those proposals as required by the *State of Texas Procurement Manual*. That manual requires agencies to disqualify proposals received after the due date.

Inconsistency in determining whether proposals meet minimum solicitation requirements could unfairly affect the Department's contract award process and increases the risk that the Department might not receive the best value.

Conflicts of Interest

The Department did not require vendors that submitted proposals in response to the TxParks solicitation to disclose their employment of all former Department employees, as required by the *State of Texas Contract Management Guide*.⁴ In addition, it was unable to provide nondisclosure and conflict of interest forms for all employees involved in the evaluation of the proposals as required by the *State of Texas Contract Management Guide*⁵ and the Department's policy. Specifically:

- Because the Department did not retain sufficient documentation, auditors were unable to determine which Department staff scored the vendors' written proposals and could not verify compliance with nondisclosure and conflict of interest requirements.
- The Department did not retain evidence that it obtained conflict of interest forms for the employees who evaluated vendor presentations. However, those employees completed nondisclosure statements.
- The Department's purchaser did not complete a nondisclosure or conflict of interest form for the procurement. In addition, the Department could not provide documentation that the purchaser completed an annual conflict of interest form as required by the *State of Texas Procurement Manual* and the Department's policy.

Not ensuring compliance with disclosure requirements increases the risk that potential conflicts of interest could go undetected. Auditors performed

⁴ *State of Texas Contract Management Guide*, Version 1.3.

⁵ *State of Texas Contract Management Guide*, Version 1.3.

limited audit procedures to detect conflicts of interest and did not identify any potential conflicts.

Contract Planning and Formation

The Department complied with most planning and contract formation requirements. Specifically, it:

- Effectively planned the procurement and developed a detailed statement of work that it included in its solicitation. The statement of work described contractor qualifications, best value criteria, quantifiable goals, and clearly defined deliverables.
- Advertised the solicitation on the *Electronic State Business Daily* for at least 21 days, as required by Texas Government Code, Section 2155.083.
- Properly identified subcontracting opportunities during the planning of the solicitation and required vendors to include historically underutilized business subcontracting plans in their proposals, as required by Texas Government Code, Section 2161.252.
- Included in the contract all essential terms required by the *State of Texas Contract Management Guide*.⁶

The Department did not assign the oversight of the planning and procurement phases for the TxParks contract to a contract manager who met training requirements as required by Texas Government Code, Section 2262.053. Having a contract manager who has not received the required training increases the risk that the Department may not comply with procurement requirements. However, the purchasers and contract managers for subsequent phases of the TxParks contract administration met the training and certification requirements in Texas Government Code, Sections 2155.078 and 2262.053.

Through the TxParks contract, the Department directly purchased significant information technology services. However, it did not obtain an exemption from purchasing those services through the Department of Information Resources, as required by Title 1, Texas Administrative Code, Section 212.10. In addition, the Department did not report the contract to the Legislative Budget Board, as required by Texas Government Code, Section 322.020. Not requesting an exemption and not reporting the contract hinders State oversight of contracting.

The Department presented its solicitation documents to the State's Contract Advisory Team for review as required by Texas Government Code, Chapter 2262, and the *State of Texas Contract Management Guide*.⁷ It appropriately

⁶ *State of Texas Contract Management Guide*, Version 1.4.

⁷ *State of Texas Contract Management Guide*, Version 1.3.

considered 10 (77 percent) of that team's 13 recommendations, but it did not adopt the remaining 3 recommendations and did not document its rationale for not implementing those 3 recommendations. At the time of the solicitation, adopting that team's recommendations was not required; however, auditors concluded that the remaining three recommendations could have enhanced the solicitation. Those three recommendations were:

- Including park pass specifications or samples in the solicitation to assist respondents in identifying the extent of resources necessary for producing passes.
- Establishing specific minimum qualifications in the solicitation, such as required certifications and years of project management experience, to exclude potential respondents that do not meet the required standards.
- Including a severability clause in the solicitation. That clause would state that, if any provision of the contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of the contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

The Department could not provide evidence showing that its legal staff or management approved (1) its solicitation for the TxParks contract and (2) the final TxParks contract. However, the Department had evidence that both legal staff and management reviewed the contract. In addition, the Department did not have documentation to support that management approved 2 (22 percent) of 9 TxParks contract amendments. One (11 percent) of 9 TxParks contract amendments also was not appropriately initiated by the project manager or an end user. The Department could not provide the approval policy that was in place at the time of the TxParks solicitation or execution of the contract, but its current policy requires the deputy executive director and the director of purchasing to approve contracts and related documents. Not documenting approvals decreases accountability and increases the risk that errors could go undetected.

Recommendations

The Department should:

- Develop and implement a process to retain documentation related to its vendor scoring methodologies and the details of all scores to support its contractor selection. At a minimum, those details should include the names of the evaluation team members, the individual scoring documents for each team member, and the tabulation of all scores.
- Develop, document, and implement a process to review vendor proposals to help ensure that it evaluates and scores all proposals that meet the

minimum criteria in its solicitation and disqualifies only proposals that do not meet the minimum criteria.

- Record the date and time it receives all vendors' proposals.
- In its solicitations, require vendors to disclose their employment of former Department employees in their proposals.
- Develop, document, and implement a process for all proposal evaluation team members to complete nondisclosure and conflict of interest forms.
- Ensure that purchasers complete annual conflict of interest forms.
- Assign contract managers who meet training and certification requirements to all phases of contract administration.
- Obtain an exemption from the Department of Information Resources for all applicable information technology purchases.
- Report all major contracts to the Legislative Budget Board.
- Develop, document, and implement a process to incorporate the Contract Advisory Team's recommendations and document its rationale for not implementing the Contract Advisory Team's recommendations.
- Develop and implement a process to obtain and document legal and management approval of solicitation and contract documents.
- Develop and implement a process to document the initiation and review of all contract amendments.

Management's Response

Management agrees. As noted in Chapter 2 of this audit, the Department improved its contracting processes and procedures subsequent to TxParks. Management has taken steps to ensure that the Department's planning, procurement, and contract formation procedures conform with guidance provided in the Texas Contract Management Guide and processes currently in place are consistently followed so that: (1) vendor evaluation and scoring documentation is improved and complete; (2) qualification screening of vendor offers/proposals effectively and efficiently disqualifies unresponsive proposals and effectively scores only responsive and qualified proposals; (3) proposal receipt date and time are appropriately recorded per the deadlines established in the solicitation; (4) solicitation instruments require vendor disclosure of former Department employees in offers/proposals; (5) execution and archival of nondisclosure and conflict of interest forms are documented in the contract file; (6) all agency purchasers complete annual conflict of interest forms; (7) agency contracts are assigned trained and certified

contract managers for all phases of contract administration for major contracts; (8) appropriate exemptions are secured from DIR when applicable; (9) all major contracts are reported to the LBB; (10) CAT recommendations are implemented or documentation is archived in the contract file that provides a rationale why such recommendations were not implemented; and (11) documentation of solicitation development, contract initiation, review, and approvals, when required, are captured in the contract file.

Chapter 1-B

The Department Established Proper Segregation of Duties for Its Payments to the TxParks Contractor, But It Did Not Follow Its Payment Processes Consistently

An amendment to the TxParks contract added additional programming services for a fee of \$120,000 to be divided equally among the remaining monthly payments for the contract term (May 2009 to December 2013). The Department overpaid the contractor for services it delivered in January 2014 by \$2,182 because the Department did not adequately track contractor payments that were associated with that amendment. After auditors brought this matter to the Department's attention, the Department obtained a credit from the vendor for the full amount of the overpayment.

In addition, the Department did not consistently pay the contractor by the due date as required by Texas Government Code, Section 2251.021. Payments ranged from 3 to 49 days late between October 2008 and December 2013. During that time, the Department made 16 late payments, which resulted in it paying the contractor interest penalties totaling \$1,069. According to the Department, those payments were late because the Department did not approve invoices in a timely manner.

The Department established segregation of duties for all 15 payments to the TxParks contractor tested, but it did not have a supporting invoice for 1 (7 percent) of those payments. The *State of Texas Contract Management Guide*⁸ requires all vendor invoices to be retained as part of the contract file. The amount of that payment was \$64,167 and the payment date was October 2008. Although the Department had supporting documentation for the remaining 14 payments tested, auditors identified the following:

- The Department did not ensure that the contractor provided a breakdown of invoiced charges for 3 (21 percent) of those 14 payments, as required by the contract. Insufficient detail on invoices increases the risk of an incorrect payment.
- The Department did not maintain adequate documentation of program staff's approval as required by the *State of Texas Contract Management*

⁸ *State of Texas Contract Management Guide*, Version 1.4.

*Guide*⁹ for 6 (43 percent) of those 14 payments. Those 6 payments totaled \$160,909. Obtaining program staff's approval helps to ensure that the Department pays only for services received and at the agreed-upon rate.

Recommendations

The Department should:

- Ensure that all contract payments align with current contracted amounts.
- Approve invoices in a timely manner to avoid paying interest penalties.
- Require contractors to include sufficient detail on invoices—such as a list of individual services provided—to support the amounts invoiced.
- Maintain documentation to support all contract payments, including vendor invoices and program staff approval of invoices.

Management's Response

Management agrees and has taken steps to ensure that adjustments to procedures are made as necessary and established payment processes are consistently followed so that: (1) all contract payments align with current contracted amounts; (2) invoices are approved in a timely manner to avoid paying interest penalties; (3) the vendor includes sufficient detail on invoices to support the amounts invoiced; and (4) documentation is maintained to support all contract payments, including vendor invoices and program staff approval of invoices. The following actions are now in place or will be in place by August 31, 2014:

- *The TxParks contract manager will require the vendor to break down the invoice to reflect the amounts due for particular services, amendment numbers and associated amounts, and description of any credits, if applicable. The TxParks contract manager will create and maintain a spreadsheet reflecting the date each invoice is received, invoice number(s), amounts of each invoice, a breakdown of the payments to reflect portions which are attached to contract amendments, review date, reviewer, date submitted to Accounts Payable for processing, date email sent to vendor to acknowledge receipt of invoice and advisement to vendor that payment is being processed. The breakdown of payments by the vendor shall match the spreadsheet maintained by the contract manager before payment is authorized.*
- *The contract manager will appoint a person who will act as a backup to the contract manager when the contract manager is unavailable to review*

⁹ *State of Texas Contract Management Guide*, Version 1.4.

and approve payment of the invoice due to illness or leave. The backup person will be trained to use the spreadsheet created for monitoring payments and will be trained to review the invoice as specified in the spreadsheet before approving for payment. The contract manager will train the backup on all processes involving payment of invoices so no invoice is delayed and no penalties will be applied.

- *The contract manager will ensure that all payment-related documentation, including invoices, emails, approvals, and other support documentation, is maintained electronically on a Department drive that is backed up regularly and that hard copies of such are kept in the contract manager's project file.*

Chapter 1-C

The Department Should Strengthen Its Monitoring of the TxParks Contract

The purpose of contract monitoring is to help ensure that the contractor performs all duties in accordance with the contract and for the Department to be aware of and address any developing problems or issues. Adequate monitoring helps ensure that contract requirements are satisfied, services are delivered in a timely manner, and that the financial interests of the Department are protected.

The Department adequately monitored 10 (59 percent) of 17 TxParks contract requirements that auditors selected for testing based on their significance to the contract deliverables. In most cases, the Department took corrective action when it determined the contractor did not adequately comply with requirements. However, it did not report its monitoring results to management as required by the *State of Texas Contract Management Guide*.¹⁰ Not reporting the results of monitoring to management increases the risk that information about progress and contractor performance may not reach appropriate levels so that corrective action can be taken.

The 10 contract requirements the Department adequately monitored were:

- Tracking and approving changes to the TxParks system.
- The operation of the TxParks system support and maintenance help desk, staffed and hosted by the contractor.
- Compliance with payment card industry data security standards.
- Development of system functionality to accommodate sales and inventory of the Department's food services.

¹⁰ *State of Texas Contract Management Guide*, Version 1.4.

- Ability for Department staff to add and update system information, such as park facility sites and catalog items.
- Capability to capture reservations across multiple sales channels, including an Internet Web site, contact center, and at the state park locations.
- Capability to accommodate balancing of the cash drawer.
- Capability for an automated reconciliation to verify that all credit card payments are associated with a transaction.
- Receipt of a monthly report, prepared by the contractor, addressing performance relative to each service level agreement.
- Service level agreements from the original contract (from the implementation of the system in May 2010 through June 2012) to help ensure effective operations of TxParks.

The Department did not adequately monitor 7 (41 percent) of the 17 contract requirements tested, because it did not perform an adequate risk assessment to identify which contract requirements it should regularly monitor or how it would monitor those requirements. Specifically, the Department:

- Did not accurately document incidents related to the availability of the TxParks field application, which resulted in an incorrect calculation of the penalty that the contractor was required to pay. For two of four incidents tested, the Department made data entry errors that prevented it from collecting an additional \$250 in penalties. (The Department uses the field application to check in customers and sell inventory at parks.)
- Did not accurately document incidents related to availability of the credit card processing application. For one of three incidents tested, the Department made a data entry error. While that data entry error did not affect the calculation of penalties, not accurately documenting the availability of the credit card processing application increases the risk that the Department may not calculate penalties correctly.
- Did not consistently approve the contractor's project managers as required by the contract. The Department did not approve two of the contractor's three project managers, which increases the risk that the contractor's personnel may not be qualified to manage the contract.
- Did not consistently verify that the contractor deposited computer programming source code with a third-party escrow agent in a timely manner. Not depositing source code in a timely manner increases the risk that the operation of TxParks could be disrupted if the contractor defaults or ceases operations. The contractor was required to deposit each of the

11 major TxParks releases with an escrow agent. However, for 7 (64 percent) of those 11 deposits, the Department could not provide evidence that it verified the deposits occurred. Auditors verified that the contractor made all 11 deposits; however, it did not make the first three deposits in a timely manner.

- Did not maintain evidence that the contractor provided written certification that prerequisite testing was completed for 8 (73 percent) of 11 major system releases. The contract required the contractor to certify, in writing, that it performed adequate testing of system releases prior to delivering the releases to the Department for user testing. Not verifying the contractor's compliance with that requirement increases the risk that system releases may contain errors that could go undetected.
- Did not verify that the contractor performed system backups as required by the contract, which increases the risk of the loss of data in the event of system interruptions or failures. However, auditors verified that the contractor performed system backups on a daily basis.
- Did not verify that the contractor complied with database software version requirements. The contract requires the database software version to be at the current version or the previous version defined for agencies that participate in the State Data Center (see text box for additional information on the State Data Center). The Department could not provide evidence that it monitored the contractor's version of the database software, which increases the risk that the database software may not be supported by the software vendor or the State Data Center. However, auditors verified that the contractor's database software version met the contract requirement.

State Data Center

The State Data Center consolidated agency data centers and houses data for multiple state entities. The consolidation, overseen by the Department of Information Resources, allows the State to employ an enterprise program approach to improve management of major technology infrastructure projects and promote efficient and effective data center operations.

The State Data Center determines which software versions state entities must use to ensure efficient operations.

Source: Department of Information Resources.

Recommendations

The Department should:

- Report results of monitoring activities to the appropriate level of management.
- Develop, document, and implement a risk assessment process to determine the extent of monitoring necessary to verify contractor compliance with contract requirements.

- Review data entry of incidents related to the availability of TxParks applications to ensure it calculates downtime and penalties correctly.
- Review and approve all contractor project managers.
- Verify that the contractor deposits computer programming source code with an escrow agent in a timely manner.
- Verify that the contractor completes prerequisite testing for major system releases and submits the required written certification.
- Develop, document, and implement a process to verify the contractor performs the required system backups.
- Develop, document, and implement a process to verify the contractor complies with database software version requirements.

Management's Response

Management agrees and is taking steps to ensure that the Department strengthens its monitoring of the TxParks contract to ensure that: (1) results of monitoring activities are reported to the appropriate level of management; (2) a risk assessment process to determine the extent of monitoring necessary to verify contractor compliance with contract requirements is developed, documented and implemented; (3) accurate calculations of downtime and penalties are made; (4) qualifications of contractor's prospective project managers are reviewed and their appointment is approved, as appropriate; (5) verification that the contractor deposits computer programming source code with an escrow agent in a timely manner occurs and is documented; (6) verification that the contractor completes prerequisite testing for system releases and submits written certification of such occurs and is documented; (7) development, documentation and implementation of a process to verify the contractor performs required system backups occurs; and (8) a process to verify the contractor complies with database software version requirements is developed, documented and implemented. The following actions are now in place or will be in place by August 31, 2014:

- *The contract manager will develop a monthly summary report of contract monitoring activities and submit the summary report along with support documentation for the previous month to appropriate Division Directors and Deputy Division Directors by the 10th of each month.*
- *Department staff has incorporated a weekly internal meeting to review data entries on the Service Level Agreement (SLA) spreadsheet as part of the monitoring process for the SLAs. The internal meeting is held by the contract manager and includes the assistant to the project manager. Prior to the meeting these team members will each formulate an independent*

tally of downtime. During the meeting a review of weekly entries and discussion of submitted Business Disruption Reports (BDRs) is done in preparation for the weekly meeting with the vendor. When discrepancies between these team members exist they will explore them together to reach consensus. Their results will then be compared with the vendor's downtime tally. This process should minimize the likelihood of errors.

- *While the Department did not review the qualifications or approve the appointments of the contractor's first two project managers the Department did review the qualifications of the contractor's last two project managers by requiring their resumes and did approve their appointments via a formal interview and approval process and will continue with this protocol.*
- *A process has been developed and implemented to ensure that the contract manager monitors when source code deposits by the vendor with the third-party escrow agent following each release are due; maintains documentation to verify when the contractor deposits computer programming source code; and to follow up with the contractor if such deposits are not made within the timeframe required by the contract.*
- *A process has been developed and implemented to ensure that the project manager verifies that the contractor provides written certification that they performed adequate testing of system releases prior to delivering the releases to the Department for user testing as required by the contract. The TxParks project manager will use the TxParks schedule in Microsoft Project to establish due dates in the schedule for this task and make this task a required predecessor to the Department beginning user acceptance testing of any release. The project manager will also ensure that this documentation is maintained in the TxParks project files in a manner so it is accessible to appropriate Department team members.*
- *A process has been developed and implemented for the contractor to supply the previous month's backup logs to the contract manager by the 5th of each month. The contractor has supplied a log of system backups for the months of June and July 2014.*
- *The Department verified that the contractor's database software version met the "N" or "N-1" contract requirement. The Department has implemented a procedure whereby the TxParks project manager will perform quarterly checks to determine what the latest version of the database software is, what version the contractor is using, and take steps necessary to ensure the contractor complies with the "N" or "N-1" requirement.*

Since the TxParks contract will expire in December 2016 utilizing the necessary resources to conduct an exhaustive risk assessment of all TxParks contract requirements has limited value at this stage of the contract. The

contract manager will develop, document, and implement a risk assessment process relative to the TxParks contract service level agreement (SLA) to aid in determining the extent of monitoring necessary to verify contractor compliance with SLA-related contract requirements for the remaining life of this contract. The risk assessment process is expected to be developed and implemented by November 30, 2014. Documentation of the process will be maintained in the TxParks project files in such a manner that it is accessible to appropriate Department team members.

The Department Planned, Procured, and Formed the License Sales System Contract in Accordance With Most Applicable Requirements, But It Should Strengthen Its Monitoring Processes

The Department improved its contracting processes and complied with most requirements for planning, procuring, and forming its License Sales System implementation and management (License Sales System) contract for the sale of hunting and fishing licenses. In addition, the Department appropriately processed payments for that contract and monitored most of the contract requirements that auditors selected for testing. However, it should strengthen its monitoring processes to help ensure that it is aware of potential contractor and system issues to enable it to take corrective action when necessary.

Chapter 2-A

The Department Planned, Procured, and Formed the License Sales System Contract in Accordance With Most Applicable Statutes, Rules, and Policies

Planning

The Department complied with most applicable statutes, rules, and policies when planning for the License Sales System contract with Gordon-Darby, Inc. executed in March 2012. Specifically, the Department:

- Involved key personnel in the development of the solicitation and developed a detailed statement of work.
- Included a statement of work in the solicitation that described contractor qualifications, best value criteria, reporting requirements, quantifiable goals, and clearly defined deliverables, as required by the *State of Texas Contract Management Guide*.¹¹
- Properly identified subcontracting opportunities during the planning of the solicitation and required vendors to include historically underutilized business subcontracting plans in their proposals, as required by Texas Government Code, Section 2161.252.
- Submitted solicitation documents to the State's Contract Advisory Team for review, as required by Texas Government Code, Chapter 2262, and the *State of Texas Contract Management Guide*¹² and implemented that team's suggestions as appropriate.

¹¹ *State of Texas Contract Management Guide*, Version 1.7.

¹² *State of Texas Contract Management Guide*, Version 1.7.

- Ensured that purchasers and contract managers met certification and training requirements, as required by Texas Government Code, Sections 2155.078 and 2262.053.

In addition, Department legal staff and management were involved in the development of the solicitation. However, the Department did not comply with its policies to document legal staff's and management's approvals of the solicitation. A lack of documented approvals decreases accountability and increases the risk that errors could go undetected.

Procurement

The Department advertised the solicitation on the *Electronic State Business Daily* for at least 21 days, as required by Texas Government Code, Section 2155.083. It also selected the contractor using its proposal evaluation documents and a methodology that was consistent with its solicitation. The Department appropriately disqualified three vendors that did not meet minimum solicitation requirements.

However, the Department did not require vendors to disclose their employment of all former Department employees as required by the *State of Texas Contract Management Guide*.¹³ In addition, three Department purchasers who worked on the License Sales System contract did not complete nondisclosure and conflict of interest forms for the procurement as required by the *State of Texas Contract Management Guide*.¹⁴ All 17 other proposal evaluation team members completed the required nondisclosure and conflict of interest forms. In addition, two purchasers did not complete annual conflict of interest forms required by the *State of Texas Procurement Manual* and the Department's policy.

Not ensuring compliance with disclosure requirements increases the risk that potential conflicts of interest could go undetected. Auditors performed limited audit procedures to detect conflicts of interest and did not identify any potential conflicts.

Contract Formation

Department management and legal staff properly approved the contract. In addition, the Department included in the contract all essential and relevant recommended contract clauses required by the *State of Texas Contract Management Guide*.¹⁵ Those terms help protect the State's interests. The Department also complied with the requirement in Texas Government Code, Section 322.020, to report the contract to the Legislative Budget Board.

¹³ *State of Texas Contract Management Guide*, Version 1.7.

¹⁴ *State of Texas Contract Management Guide*, Version 1.7.

¹⁵ *State of Texas Contract Management Guide*, Version 1.9.

However, the Department should improve certain aspects of its contract change management processes. Specifically:

- The Department could not provide evidence that all three contract amendments were initiated by an end user or approved by management. The *State of Texas Contract Management Guide*¹⁶ and Department policy requires that a single point of contact be established through which changes are requested and/or authorized.
- For two of the three contract amendments, the Department did not evaluate the effect of the changes, one of which increased the cost of the contract, as required by the *State of Texas Contract Management Guide*.¹⁷

Weaknesses in contract change management processes increase the risk of unintentional or unauthorized changes to the contract, including modifications to the scope of work, extensions of the schedule, or increases in costs.

Recommendations

The Department should:

- Develop, document, and implement a process to obtain legal staff's and management's approvals of solicitations.
- In its solicitations, require vendors to disclose employment of former Department employees in their proposals.
- Develop, document, and implement a process for all proposal evaluation team members, including purchasers, to complete nondisclosure and conflict of interest forms.
- Ensure that purchasers complete annual conflict of interest forms.
- Develop and implement a process to document the initiation, review, and evaluation of the effect of contract amendments.

Management's Response

Management agrees and has taken steps to ensure that the Department's planning, procurement, and contract formation procedures conform with guidance provided in the Texas Contract Management Guide and processes currently in place are consistently followed so that: (1) documentation of legal staff's and management's approvals of solicitations are captured in the contract file; (2) solicitation instruments require vendor disclosure of former

¹⁶ *State of Texas Contract Management Guide*, Version 1.9.

¹⁷ *State of Texas Contract Management Guide*, Version 1.9.

Department employees in offers/proposals; (3) execution and archival of nondisclosure and conflict of interest forms are documented in the contract file - including forms signed by purchasers who participated in immaterial or tangential solicitation activities; (4) all agency purchasers complete annual conflict of interest forms; and (5) documentation of solicitation development, contract initiation, review, and approvals, when required, are captured in the contract file.

Chapter 2-B

The Department Should Strengthen Its Monitoring of the License Sales System Contract

The Department adequately monitored 13 (76 percent) of 17 License Sales System contract requirements that auditors selected for testing based on their significance to the contract deliverables. It also appropriately reported the results of those monitoring activities to management as required by the *State of Texas Contract Management Guide*.¹⁸

The 13 contract requirements the Department adequately monitored were:

- Complete and successful migration of data from the previous contractor's system to the new contractor's system.
- System capability to provide a monthly file of all customer information to the Office of the Attorney General.
- Ability to sell licenses through multiple channels, including the Department's call center, headquarters, park locations, and law enforcement offices; and Internet and retail license agents.
- Ability for designated Department staff to make additions, updates, or deletions to license offerings and business rules through the system.
- Capability for each license agent to have a unique identifier.
- Compliance with payment card industry data security standards.
- Reporting functionality to compare revenue sweeps to license sales.
- Creation of a disaster recovery plan and a schedule to test that plan.
- Capacity to process sales transactions, including fulfillment of licenses to customers, and resolve transaction capacity issues within two hours of detection.
- Successful automated processing for the collection of sales revenue.

¹⁸ *State of Texas Contract Management Guide*, Version 1.9.

- Successful daily database replication.
- Successful completion of development milestones.
- Development of a public hunt drawing system.¹⁹

The Department did not adequately monitor four contract requirements because it did not perform an adequate risk assessment to identify which requirements needed regular monitoring or how it would monitor those requirements. Specifically, the Department:

- Did not ensure that the availability of the sales application met agreed-upon standards in the contract. Auditors verified the contractor complied with the availability standards; however, if the Department does not adequately monitor availability, it may be unaware of outages and unable to take corrective action when necessary.
- Did not have a documented process to verify whether it received critical system issue notifications from the contractor in a timely manner. The contract required the contractor to notify the Department within 30 minutes of detection of a critical system issue. The Department maintained documentation showing that it received a notification from the contractor for the one critical issue that occurred during the audit scope; however, it did not maintain documentation showing that it determined when the contractor detected the issue to help ensure that it received that notification within the required 30 minutes. Auditors verified that the Department received the notification within 30 minutes of detection; however, the absence of a process for monitoring notification timeliness increases the risk that the Department may not become aware of critical system issues and take corrective action when necessary.
- Did not (1) verify that the contractor complied with a contract requirement to deposit computer programming source code with a third-party escrow agent in a timely manner and (2) ensure that the related source code integrity test required by the contract was performed.

The contract required the contractor to deposit programming source code with an escrow agent within 30 days of system deployment and on a quarterly basis thereafter. The system was deployed on October 20, 2013; however, the contractor did not make the deposit by November 20, 2013, because it did not reach an escrow agreement with the Department until April 1, 2014. The escrow agent informed the Department that the contractor made the deposit on May 14, 2014, but that a source code integrity test had not been performed.

¹⁹ According to the contract, the public hunt drawing system's primary purpose is to provide the hunting public with controlled, fair, and equitable access to public lands where hunting must be restricted.

Not depositing source code in a timely manner and not obtaining a source code integrity test increases the risk that operation of the License Sales System could be disrupted if the contractor defaults or ceases operations.

- Did not ensure that the contractor received either a service organization control report²⁰ or an agreed-upon financial audit, as required by the contract. That increases the risk that the Department could be unaware of and unable to follow up on any weaknesses identified. However, auditors confirmed that the contractor obtained an opinion audit of its financial statements.

The Department processed payments appropriately.

From the deployment of the License Sales System in October 2013 through February 2014, the Department made four payments, totaling \$806,780, to the contractor. All four payments were supported, approved, made in a timely manner, and consistent with the contract. The Department also maintained adequate segregation of duties for its processing of payments.

Recommendations

The Department should:

- Develop, document, and implement a risk assessment process to determine the extent of monitoring necessary to verify contractor compliance with contract requirements.
- Verify that the contractor meets agreed-upon standards for the availability of the sales application.
- Develop, document, and implement a process to determine whether it receives critical system issue notifications from the contractor within 30 minutes of detection.
- Verify that the contractor deposits computer programming source code with an escrow agent in a timely manner and obtains required integrity tests of the source code.
- Verify that the contractor provides contractually required reports and review those reports.

Management's Response

Management agrees and has taken steps to ensure that adjustments to procedures are made as necessary and are consistently followed so that (1) a

²⁰ The American Institute of Certified Public Accountants recommends a service organization control report on the security, availability, and processing integrity of the systems that a service organization uses.

risk assessment process to determine the extent of monitoring necessary to verify contractor compliance with contract requirements is developed, documented and implemented; (2) verification that the contractor meets agreed-upon standards for the availability of the sales application; (3) a process to determine whether it receives critical system issue notifications from the contractor within 30 minutes of detection is developed, documented, and implemented; (4) verification that the contractor deposits computer programming source code with an escrow agent in a timely manner and obtains required integrity tests of the source code; and (5) verification that the contractor provides contractually required reports and those reports are reviewed. The following actions are now in place or will be in place by August 31, 2014:

- *Department staff has incorporated scheduled internal meetings to review contract deliverables, system enhancements and potential SLAs. The internal meetings are held by the contract manager and include staff from the license system team. This process should minimize the likelihood of the vendor missing contract deliverables.*
- *A process has been developed and implemented to ensure that the availability of the system meets contract requirements. The contractor provides a monthly report showing system up-time.*
- *A process has been developed and implemented to review the critical system issue after action report, which will act as verification of the 30 minute notification requirement.*
- *A process has been developed and implemented to ensure that the contract manager monitors when source code deposits by the vendor with the third-party escrow agent are due; maintains documentation to verify when the contractor deposits computer programming source code; and to follow up with the contractor if such deposits are not made within the time frame required by the contract.*
- *The license system manager and the license system team have regularly scheduled teleconferences to review the contractor's progress on compliance with report requirements.*

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to determine whether the Parks and Wildlife Department (Department):

- 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 Department 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 Department policies and procedures.

Scope

The scope of this audit covered the Department's contracting activities related to the following two contracts from their inception through February 2014:

- The TxParks reservations and property management system (TxParks) contract with The Active Network, Inc.²¹, which the Department executed on March 18, 2008.
- The License Sales System implementation and management (License Sales System) contract with Gordon-Darby, Inc., which the Department executed on March 20, 2012.

The audit focused on all phases (planning, procurement, contract formation, and contract oversight) of the contracting process.

Methodology

The audit methodology consisted of collecting and reviewing procurement documentation and contracts; conducting interviews with Department staff; reviewing statutes, rules, Comptroller's Office requirements, and Department policies and procedures; and performing selected tests and other procedures.

²¹ The original contract was with InfoSpherix, Inc., which later merged with and became The Active Network, Inc.

The selection methodology for the contracts audited was based on contract dollar amount, length, and the relationship to the Department's core services.

Data Reliability and Completeness

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) and relied on previous State Auditor's Office audit work to determine that data was sufficiently reliable for the purposes of this audit. Additionally, auditors compared contract payments from the Department's internal accounting system, the Business Information System (BIS), to USAS. Auditors determined that BIS data was incomplete and did not rely on it for this audit.

Auditors verified the completeness of information in the Department's monitoring tools (spreadsheets, schedules, and reports) for both contracts audited (1) by comparing contract requirements listed in those tools with the requirements in the audited contracts (when applicable) and (2) by comparing the dates of service in those tools to the dates of services in the audited contracts (when applicable). Auditors determined that the information in the monitoring tools was sufficiently reliable for the purposes of this audit.

Sampling Methodology

To test the Department's payment of contractor invoices for the TxParks contract, auditors selected a nonstatistical sample of payments primarily through random selection. In some cases, auditors used professional judgment to select additional items for testing. The sample items were not necessarily representative of the population; therefore, it would not be appropriate to extrapolate the test results to the population.

To test the Department's payment of contractor invoices for the License Sales System contract, auditors tested all payments made during the audit scope.

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

Information collected and reviewed included the following:

- TxParks and License Sales System contracts and associated amendments.
- Department policies and procedures, manuals, and applicable rules and regulations.
- Department solicitation and bid documentation, evaluation criteria and documentation, and related supporting documentation.

- Department procurement files, including planning documentation, approvals, and other supporting documentation.
- Department personnel training and certification records and nondisclosure and conflict of interest forms.
- Reports, workbooks, reconciliations, and spreadsheets the Department used to monitor contracts and contract costs, including supporting documentation.
- Office of the Secretary of State business registration records.
- Legislative Budget Board contract database.
- Quality Assurance Team reports and documents.
- Department contract expenditure data from USAS and BIS.²²
- Department payment documentation, including contractor invoices, approvals, and other supporting documentation.
- Emails and other documentation that supported the information that Department employees provided during interviews.
- Prior State Auditor's Office reports.
- Department internal audit reports.

Procedures and tests conducted included the following:

- Interviewed employees at the Department.
- Tested whether the Department followed applicable requirements in the *State of Texas Contract Management Guide* and the *State of Texas Procurement Manual* when it planned the contracts audited.
- Reviewed applicable conflict of interest and nondisclosure forms.
- Tested whether the Department properly documented bid evaluation criteria and evaluation scores, and tested the Department's scoring of bids to determine whether all evaluators completed the same scoring matrix and ensured mathematical accuracy.
- Reviewed contracts to determine whether the Department included essential and recommended contract terms listed in the *State of Texas Contract Management Guide*.
- Reviewed contracts and amendments for appropriate authorizations.

²² As noted above, auditors determined that BIS data was incomplete and did not rely on it for this audit.

- Tested criteria the Department used to evaluate vendor proposals to determine whether it followed applicable requirements in the Texas Government Code.
- Tested samples of payments for appropriate documentation, required approvals, and timely payment.
- Tested samples of contract requirements to review the Department's monitoring process.

Criteria used included the following:

- Texas Government Code, Chapters 322, 572, 2054, 2155 through 2157, 2161, 2251, 2252, 2261, and 2262.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 1, Texas Administrative Code, Chapter 212.
- *State of Texas Contract Management Guide*, versions 1.3, 1.4, 1.7, and 1.9.
- *State of Texas Procurement Manual*.
- Department 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.

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

- Lauren Godfrey, CIA, CGAP (Project Manager)
- Cyndie Holmes, CISA (Assistant Project Manager)
- Matthew M. Owens, CFE
- Justin Saunders
- Nakeesa Shahparasti
- Jennifer Wiederhold, CGAP (Quality Control Reviewer)

- James Timberlake, CIA (Audit Manager)

Contractor Information

The Parks and Wildlife Department (Department) contracted with InfoSpherix, Inc. to develop and manage the TxParks reservations and property management system. The name of the contractor on the original contract was InfoSpherix, Inc. The Active Network, Inc. acquired InfoSpherix, Inc., and the Department executed a contract amendment to reflect that change.

According to its Web site, the Active Network, Inc. is headquartered in San Diego, California and serves more than 47,000 global customers with more than 87 million transactions annually. Customers of The Active Network, Inc. include Fort Worth Parks and Community Services, the City of Columbus Recreation and Parks Department, the Minneapolis Park and Recreation Board, and the YMCA of Metropolitan Los Angeles. Figure 1 shows the home page of The Active Network, Inc.'s Web site.

On July 3, 2014, the Active Network, Inc. announced in a press release that it is moving its headquarters from San Diego, California to Dallas, Texas.

Figure 1

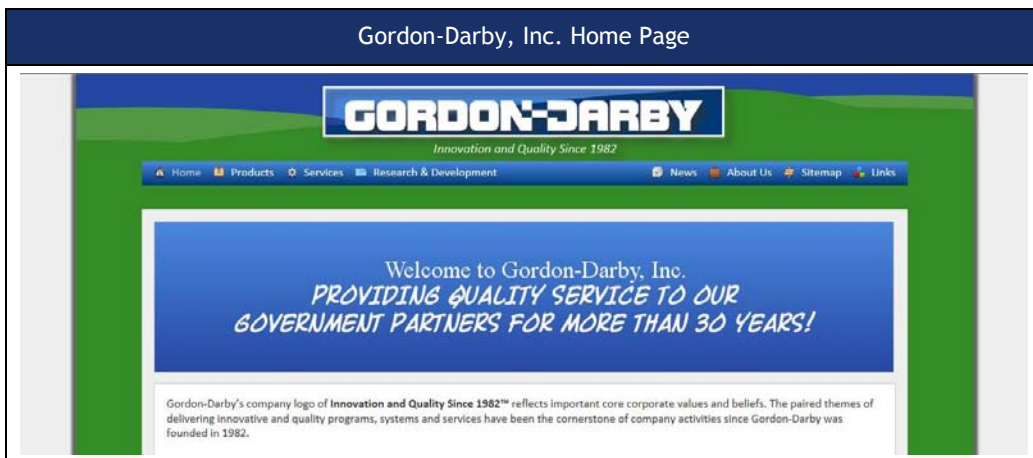


Source: The Active Network, Inc.'s Web site at <http://www.activenetwork.com/>.

The Department contracted with Gordon-Darby, Inc. to implement and manage the License Sales System.

According to its Web site, Gordon-Darby, Inc. is a privately held Kentucky-based corporation, founded in 1982 and currently provides services for the New Hampshire Department of Safety, Division of Motor Vehicles; the Texas Commission on Environmental Quality; the Arizona Department of Environmental Quality; and the District of Columbia, Department of Motor Vehicles. It has also provided services to the states of Florida, Indiana, Kentucky, Louisiana, Ohio, and Tennessee. Figure 2 shows the home page of the Gordon-Darby, Inc. Web site.

Figure 2



Source: Gordon-Darby, Inc.'s Web site at <http://www.gordon-darby.com/>.

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The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Jane Nelson, Senate Finance Committee
The Honorable Robert Nichols, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Harvey Hilderbran, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Parks and Wildlife Department

Members of the Parks and Wildlife Commission

Mr. Dan Allen Hughes, Jr., Chair
Mr. Ralph H. Duggins, Vice-Chairman
Mr. Lee Marshall Bass, Chairman-Emeritus
Mr. T. Dan Friedkin, Chairman-Emeritus
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