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State Auditor

An Audit Report on

Selected Business Opportunity Programs at the Department of Transportation

September 2015

Report No. 16-002



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Overall Conclusion

The Department of Transportation (Department) should improve compliance with key statutory requirements for all four of the selected business opportunity programs audited. Business opportunity programs are designed to help businesses owned by groups that have been historically disadvantaged compete for state-funded and federally funded contracts and other purchases (see text box for description of the four programs audited).

Auditors identified areas in which the Department should strengthen its processes and compliance with requirements for contract monitoring, program oversight, and reporting for the Disadvantaged Business Enterprise Program and the Small Business Enterprise Program. The Department also should improve its processes related to tracking contracts that are qualified for those two programs and reporting complete and accurate results.

While the Department voluntarily complied with certain elements of the State's Historically Underutilized Business (HUB) Program, it minimally complied overall with the HUB rules that it adopted.

While the Department adopted HUB rules, participated in HUB forums, and submitted required reports, it should improve compliance with establishing agency-specific HUB goals, adequately monitoring contractor compliance, and obtaining all required documentation for the HUB Program.

The Department substantially complied, overall, with requirements for the State Use Program. However, it should improve exception reporting for the State Use Program to the Office of the Comptroller of Public Accounts (Comptroller's Office), as required.

Background Information

Auditors selected four business opportunity programs at the Department of Transportation (Department) for this audit. Those four programs were:

- Disadvantaged Business Enterprise Program - A federal program designed to aid small companies and minority- and women-owned companies compete for federal contracts.
- Small Business Enterprise Program - A Department program designed to aid all small businesses participating in state-funded highway construction and maintenance projects.
- Historically Underutilized Business Program - A state program operated by the Office of the Comptroller of Public Accounts to promote full and equal business opportunities for all businesses.
- State Use Program - A state program operated by the Office of the Comptroller of Public Accounts to encourage employment opportunities for Texans with disabilities.

This audit was conducted in accordance with Rider 18, pages I-23 through I-34, the General Appropriations Act (83rd Legislature); Texas Government Code, Sections 2161.123 and 321.0132; and Texas Human Resources Code, Section 122.029.

For more information regarding this report, please contact Cesar Saldivar, Audit Manager, or John Keel, State Auditor, at (512) 936-9500.

Disadvantaged Business Enterprise Program

The Department's Office of Civil Rights is responsible for administering the federal Disadvantaged Business Enterprise Program. The Office of Civil Rights should strengthen its processes for identifying and monitoring contracts that qualify for that program. The Office of Civil Rights should also work with the Department's districts and divisions to better identify those contracts. Auditors identified contracts that qualified for the program but were not included in the program; therefore, those contracts did not have statutorily required language or did not have assigned goals for hiring disadvantaged businesses. In addition, the Department should improve its monitoring of contractor compliance with monthly reporting requirements.

The Department also should improve its processes for reviewing applications to ensure that they are processed in a timely manner. In addition, the Department should ensure that it accurately updates its *Disadvantaged Business Enterprise Program Directory*, which is a tool that contractors can use to identify certified businesses.

Disadvantaged Business Enterprise Program

The federal Disadvantaged Business Enterprise Program was created to provide a level playing field for small companies and minority- and women-owned companies that want to do business with the Department and other state agencies that receive federal funds from the U.S. Department of Transportation.

For fiscal year 2014, the Department set overall goals for applicable contracts with federal funds of:

- 11.70 percent for highway design and construction contracts.
- 11.80 percent for aviation design and construction contracts.

In addition, the Department asserted that it adopted a goal of 3.62 percent for public transportation contracts for fiscal year 2014.

Small Business Enterprise Program

The Department's Office of Civil Rights also is responsible for administering the Department-created Small Business Enterprise Program. During fiscal year 2014, the Office of Civil Rights suspended its monitoring, data collection, and reporting for the Small Business Enterprise Program. According to the Office of Civil Rights, it took that action to implement changes to the program. However, it could not provide any documentation to support how that decision was made or whether appropriate management approved that decision.

Small Business Enterprise Program

The Department created the Small Business Enterprise Program in response to a February 2000 consent decree issued by the United State District Court for the Southern District of Texas, Houston Division. The Small Business Enterprise Program offers a certification process for small businesses so they can participate on an equal footing with historically underutilized businesses for Department highway construction projects that are funded in whole by the State of Texas. The program was created and defined by Title 43, Texas Administrative Code, Chapter 9.

The Office of Civil Rights should strengthen its processes for identifying contracts that qualify for the program and work with the Department districts and divisions to better identify those contracts. In addition, the Department should establish an overall goal for the program and require the Office of Civil Rights to report on the program to the Department's executive management. The Department also should strengthen its certification process for the program and accurately update its *Small Business Enterprise Program Directory*.

HUB Program

The Department voluntarily adopted the State's HUB rules and has incorporated program requirements into its rules in the Texas Administrative Code, strategic plan, and *Purchasing Manual*. While the Department complied with certain elements of its HUB Program, overall, it minimally complied with the HUB rules that it adopted in fiscal year 2014. For fiscal year 2014, the Department reported that it made \$446.4 million in total expenditures through HUB contracts, which is approximately 7.2 percent of the Department's total contract expenditures. Auditors did not independently verify those amounts.

The Department participated in HUB forum sponsorship, submitted quarterly and semi-annual reports to the Comptroller's Office, and included required provisions in contracts. However, the Department should strengthen its processes for identifying and monitoring all applicable HUB contracts. In addition, the Department should work with its districts and divisions to ensure that it obtains all required monthly progress assessment reports. As a result of identified weaknesses in the Department's HUB Program, the HUB numbers the Department reported to the Comptroller's Office for fiscal year 2014 HUB activity were incomplete and inaccurate.

State Use Program

The Department had sufficient controls over purchasing to prevent conflicts of interests and ensure adequate segregation of duties for purchases under the State Use Program. In addition, the Department substantially complied with requirements to give priority to procuring items through the State Use Program. However, the Department should improve exception reporting for purchasing through the State Use Program as required.

Information Technology Controls

The Department should strengthen its access controls over the five key information systems used to store data for the four programs audited.

HUB Program

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting.

The program was created by Texas Government Code, Chapter 2161, and the rules are defined in Title 34, Texas Administrative Code, Chapter 20.

Texas Government Code, Chapter 2161, exempts the Department from the HUB Program under certain conditions. However, the Department has voluntarily adopted the State's HUB Program rules, incorporating the criteria into its rules in the Texas Administrative Code, strategic plan, and *Purchasing Manual*; the Department also participates in the State's HUB Program.

For fiscal year 2014, the Office of the Comptroller of Public Accounts reported that, of the \$16.4 billion the State spent in procurement categories that were eligible for HUB participation, the State paid approximately \$2.1 billion to HUBs.

State Use Program

The State Use program is governed by the Texas Council on Purchasing from People with Disabilities (Council), which receives legal and administrative assistance from the Office of the Comptroller of Public Accounts. The Council encourages employment opportunities for Texans with disabilities through the State Use Program.

Under this program, state agencies and other political subdivisions give purchasing preference to goods and services offered by community rehabilitation facilities that employ persons with disabilities. The program was created by Texas Human Resources Code, Chapter 122, and the rules are defined in Title 40, Texas Administrative Code, Chapter 189.

Auditors communicated other less significant issues related to certification, reporting, and application controls separately in writing to the Department. In addition, to minimize the risks associated with public disclosure, auditors communicated additional details about information technology findings separately to the Department.

Summary of Management's Response

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

Summary of Information Technology Review

Auditors examined the general and application controls over the financial, management, and reporting applications in place during fiscal year 2014 at the Department. Some information the Department provided for the programs audited was sufficiently reliable for purposes of this audit. However, the Department could not provide reasonable assurance that some information provided for the Disadvantaged Business Enterprise Program and the Small Business Program, as well as for reported HUB expenditures, was complete and accurate. As a result, the findings, conclusions, and supplemental information in this report are subject to that limitation. (See Appendix 1 for more information about the reliability of the Department's data.)

Auditors also identified weaknesses in the Department's processes and controls over managing access to key information systems used for certification, tracking, and reporting for the Disadvantaged Business Enterprise, Small Business Enterprise, HUB, and State Use programs. The Department did not perform any user access reviews during fiscal year 2014, and auditors identified employees who had inappropriate access to those systems.

Summary of Objective, Scope, and Methodology

The audit objective was to determine whether the Department complied with statutory requirements and rules for selected business opportunity programs.

The scope of this audit covered the Department's activities for the selected business opportunity programs during fiscal year 2014. The four business opportunity programs selected were: the Disadvantaged Business Enterprise Program, the Small Business Enterprise Program, the HUB Program, and the State Use Program.

The audit methodology included collecting information and documentation, performing selected tests and other procedures, analyzing and evaluating the results of the tests, and interviewing management and staff at the Department.

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Detailed Results

Chapter 1

The Department Should Strengthen Its Processes and Oversight of the Disadvantaged Business Enterprise Program

The Department of Transportation's (Department) Office of Civil Rights administers the federal Disadvantaged Business Enterprise Program. The Office of Civil Rights is responsible for managing the *Disadvantaged Business Enterprise Program Directory*, setting Department practices and guidance for qualified contracts, providing program oversight, and reporting the program results to the U.S. Department of Transportation. The Department's districts and divisions are responsible for monitoring their own individual contracts that are qualified for the Disadvantaged Business Enterprise Program.

The Department should improve the tracking of contracts that are qualified for the Disadvantaged Business Enterprise Program and improve its monitoring for compliance with key program requirements.

Auditors tested a sample of 51 federally funded contracts that were qualified for the Disadvantaged Business Enterprise Program and determined the following:

- **The Department should consistently ensure that contracts contain all required language.** For 12 (26 percent) of 47 contracts tested, the Department did not include statutorily required assurances to prevent discrimination even though the Office of Civil Rights had created a special provision to be included to address that requirement. The Department did not provide any documentation for the remaining four contracts sampled.
- **The Department should ensure that all contracts contain required documents.** Of the 36 contracts tested for which a commitment worksheet or agreement was required, 11 (31 percent) contracts did not have evidence of a commitment worksheet or agreement documenting the prime contractor's commitment to use Disadvantage Business Enterprise Program certified businesses. In addition, the Department did not provide any documentation for five contracts sampled. Without documenting the prime contractor's commitment to use certified businesses, the Department cannot monitor to determine whether the prime contractor is demonstrating a good-faith effort to comply.
- **The Department should improve monitoring of all contracts to ensure that they are reviewed for continued good-faith effort on a monthly basis as required.** For 32 (70 percent) of 46 contracts tested, the Department did not obtain all of the monthly reports that prime contractors are required to submit or have evidence that it reviewed the supporting documentation for the reports it

did obtain. In addition, the Department did not provide any documentation for the remaining five contracts sampled. The required monthly reports contain self-reported information about the participation of any certified businesses the contractors have committed to use or have used. Monthly reporting is a key monitoring component that helps the Department verify that contractors are fulfilling the terms of the contract and making a good-faith effort to use certified businesses throughout the project. Reviewing the support for that information would help the Department verify the self-reported information from contractors to determine compliance with program requirements.

- **The Department should perform onsite reviews as required.** The Department could not provide evidence to support whether it performed required onsite commercially useful function reviews for any of the 44 contracts tested for which the contractor reported using a certified disadvantaged business. Commercially useful function reviews are designed to help the Department monitor contractor compliance on the job site and verify that certified businesses are used in accordance with the prime contractor's commitment worksheet or agreement with the Department.

The Office of Civil Rights should work with the Department's districts and divisions to better identify and administer contracts qualified for the Disadvantaged Business Enterprise Program.

The Office of Civil Rights created forms and templates for the Department's districts and divisions to use when administering contracts. However, the Office of Civil Rights should provide additional guidance to district and division staff, who did not appear to have an adequate understanding of what tasks they were expected to perform to identify and administer contracts qualified for the Disadvantaged Business Enterprise Program.

In addition, the Office of Civil Rights did not monitor the districts and divisions to determine whether they were identifying all contracts qualified for the Disadvantaged Business Enterprise Program. Auditors identified several contracts that were qualified for the program but were not included in the program. Without including all qualified contracts, the Department cannot adequately monitor contracts for compliance with the program. Not identifying a complete population of qualified contracts limits the Department's ability to report accurate results for the Disadvantaged Business Enterprise Program.

The Department does not have a central contract database, and the Office of Civil Rights was not able to provide a comprehensive list of contracts qualified for the Disadvantaged Business Enterprise Program for fiscal year 2014. In addition, auditors could not validate the data that the Department provided related to the lists of applications or trainings (see Appendix 1 for more information).

The Department should maintain source documentation necessary to verify the accuracy of program information it reports to the U.S. Department of Transportation.

The Department is responsible for gathering and reporting statistical data and other information about the Disadvantaged Business Enterprise Program to the U.S. Department of Transportation on an annual basis. However, the Department could not provide documentation to support program information for fiscal year 2014. As a result, auditors were unable to verify the accuracy of the information to be reported to the U.S. Department of Transportation. The State's record retention schedule stipulates that the reporting information on the Disadvantaged Business Enterprise Program, including the percentage of federal contracting funds that were awarded to certified disadvantaged businesses, should be maintained for three years.

Texas Unified Certification Program

The Texas Unified Certification Program comprises six certifying entities. Those six entities are:

- The Department.
- The City of Austin.
- The City of Houston.
- The Corpus Christi Regional Transportation Authority.
- The North Central Texas Certification Agency.
- The South Central Texas Certification Agency.

The Department should improve its monitoring of the Disadvantaged Business Enterprise Program to ensure that all applications are processed in a timely manner and received sufficient management review.

Applications for the Disadvantaged Business Enterprise Program are processed through the Texas Unified Certification Program, which comprises six certifying entities, all of which may certify a business for the program (see text box for a list of those six entities). All certified businesses are supposed to be listed in the *Disadvantaged Business Enterprise Program Directory*, which the Department is responsible for updating.

However, auditors identified areas in which the Department should strengthen its monitoring of applications processed through the Texas Unified Certification Program. Specifically:

- **The Department should ensure that all applications are processed in a timely manner.** The Texas Unified Certification Program requires partners to request additional documentation from an applicant within 30 days of submission and to complete their review in 90 days after receiving a complete application. However, 23 (38 percent) of 60 applications tested did not have documentation to show that the applications were processed within those time lines. Auditors identified applications for which 99 to 422 days had elapsed between the application submission and the certification decision, as of May 2015.
- **The Department should ensure that all applications received sufficient managerial review.** Nineteen (32 percent) of 60 applications reviewed did not have documentation to show that a manager or supervisor reviewed the applications prior to making a certification decision.

The Department should accurately update the *Disadvantaged Business Enterprise Program Directory*.

The Department should improve its processes to ensure that the *Disadvantaged Business Enterprise Program Directory* is complete and up to date. Specifically:

- Ten (17 percent) of 60 application decisions reviewed did not have evidence to show that the Department updated the directory based on the certification decision. Auditors identified both certified businesses not listed in the directory and businesses that were not certified being included in the directory.
- Certified businesses are required to submit an annual update affidavit every year to remain qualified for the program. However, 18 (24 percent) of 74 businesses reviewed did not submit an affidavit; therefore, they should have been removed from the *Disadvantaged Business Enterprise Program Directory*. However, all 18 businesses were still listed in the directory after their certification period. In addition, auditors identified two other businesses in the directory that should have been removed: one business requested voluntary decertification and the other business was decertified for other reasons but still remained in the directory.

Ensuring that the *Disadvantaged Business Enterprise Program Directory* is accurate and complete is a federal requirement. An updated and accurate directory can also be an important resource to help the Department report accurate program participation information to the U.S. Department of Transportation.

The Department should verify that certified businesses that participated in the Technical Assistance Program completed a required needs assessment form.

As a part of the Disadvantaged Business Enterprise Program, the Department offers free training to certified businesses through the Technical Assistance Program. The Technical Assistance Program is designed to enhance business skills necessary to compete for contracts with the Department. To qualify, a business must be certified in a highway-related work category and complete a Disadvantaged Business Enterprise needs assessment prior to receiving any training or technical assistance.

However, for 6 (29 percent) of 21 trainings tested, the Department did not obtain a needs assessment from certified businesses or verify that the certified businesses completed needs assessments before the training was completed. Without ensuring that certified businesses need the training, certified businesses could be taking training that will not enhance their ability to participate in federal contracts at a cost to the Department.

Recommendations

The Department should:

- Include required statutory assurances and commitment documentation related to the Disadvantaged Business Enterprise Program in all qualified contracts.
- Actively monitor all qualified contracts, including obtaining and reviewing monthly reports from contractors to verify good-faith efforts.
- Create a process to review self-reported information from contractors to help ensure compliance with Disadvantaged Business Enterprise Program requirements.
- Perform onsite reviews as required.
- Maintain source documentation necessary to validate reported Disadvantaged Business Enterprise Program participation.
- Implement controls and monitor the certification process to ensure that all applications for the Disadvantaged Business Enterprise Program are appropriately reviewed in a timely manner.
- Update the certified *Disadvantaged Business Enterprise Program Directory* on a regular basis to help ensure that directory includes only certified businesses.
- Ensure that all certified businesses complete needs assessments before participating in training offered by the Technical Assistance Program.

Management's Response

- *The Office of Civil Rights (OCR) will provide technical assistance to each District, Division, and Office (DDO) that receives DOT assisted federal financial assistance. OCR will work with the DDOs to ensure that statutory assurances and commitment documentation related to the DBE program will be included in training materials and contracts. Each DDO will develop its programmatic standard operating procedures (SOP), templates, forms, and checklists, which will include the obligations to include the assurances and commitment documentation in all qualified contracts. Each DDO's programmatic SOP will include processes to review the inclusion of the statutory assurances and commitment documentation. The OCR will perform an annual DBE Program compliance review on districts, divisions, offices, and contractors, and local governments that are recipients of federal funds that have adopted the department's DBE Program or that assist with the administration of*

the DBE Program. The following DBE program components will be reviewed:

- (a) Project contracts for statutory assurances;*
- (b) Commitment documentation;*
- (c) Monthly reporting forms;*
- (d) Final payment form;*
- (e) Termination/substitution requests;*
- (f) Prompt payment;*
- (g) Document retention;*
- (h) CUF reviews; and*
- (i) Good faith efforts to fulfill the DBE goal.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *The OCR will provide technical assistance to each DDO that receives DOT assisted federal financial assistance. The obligation to monitor contracts and review monthly reports will be included in the DBE training material for DDOs. Each DDO will develop a programmatic SOP, to include templates, forms, and checklists. Each DDO's SOP will include the obligations to monitor all qualified contracts, within available resources, to include obtaining and reviewing monthly reporting from contractors to verify good faith efforts. The OCR will perform an annual DBE Program compliance review on districts, divisions, offices, and contractors, and local governments that are recipients of federal funds that have adopted the department's DBE Program or that assist with the administration of the DBE Program. The following DBE program components will be reviewed:*

- (a) Project contracts for statutory assurances;*
- (b) Commitment documentation;*
- (c) Monthly reporting forms;*
- (d) Final payment form;*
- (e) Termination/substitution requests;*
- (f) Prompt payment;*

- (g) Document retention;*
- (h) CUF reviews; and*
- (i) Good faith efforts to fulfill the DBE goal.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *The OCR will provide technical assistance to each DDO that receives DOT assisted federal financial assistance. The obligation to review self-reported information from contractors will be included in the DBE training material. Each DDO will develop a programmatic SOP, to include templates, forms, and checklists. The DDO's SOP will include the obligations to review self-reported information from contractors. Each DDO's programmatic SOP will include processes to ensure that DDO personnel have reviewed self-reported information from contractors for compliance. The OCR will perform an annual DBE Program compliance review on districts, divisions, offices, and contractors, and local governments that are recipients of federal funds that have adopted the department's DBE Program or that assist with the administration of the DBE Program. The following DBE program components will be reviewed:*

- (a) Project contracts for statutory assurances;*
- (b) Commitment documentation;*
- (c) Monthly reporting forms;*
- (d) Final payment form;*
- (e) Termination/substitution requests;*
- (f) Prompt payment;*
- (g) Document retention;*
- (h) CUF reviews; and*
- (i) Good faith efforts to fulfill the DBE goal.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *The OCR will provide technical assistance to each DDO that receives DOT assisted federal financial assistance. The obligation to perform Commercial Useful Function (CUF) reviews will be included in the DBE*

training material. Each DDO will develop a programmatic SOP, which will include the obligation to perform a minimum of one review for each DBE for each Federal-aid project containing a DBE goal. Each DDO will designate a DBE program coordinator who will monitor and ensure the implementation and compliance of CUFs performed. The DDO program coordinator will provide technical support to field staff concerning the proper steps to be utilized when conducting CUF reviews and responding to areas of non-compliance. Each DDO will develop and maintain a tracking system to include data on all CUF reviews performed. Compliance determination findings will also be recorded. The OCR will perform an annual DBE Program compliance review on districts, divisions, offices, and contractors, and local governments that are recipients of federal funds that have adopted the department's DBE Program or that assist with the administration of the DBE Program. The following DBE program components will be reviewed:

- (a) Project contracts for statutory assurances;*
- (b) Commitment documentation;*
- (c) Monthly reporting forms;*
- (d) Final payment form;*
- (e) Termination/substitution requests;*
- (f) Prompt payment;*
- (g) Document retention;*
- (h) CUF reviews; and*
- (i) Good faith efforts to fulfill the DBE goal.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *OCR will work with DDOs to ensure that source documentation is retained in accordance with statutory requirements. The statutory requirements for the retention of documents will be included in training materials and in program SOPs for both OCR and the DDOs. The OCR will perform an annual DBE Program compliance review on districts, divisions, offices, and contractors, and local governments that are recipients of federal funds that have adopted the department's DBE Program or that assist with the administration of the DBE Program. The following DBE program components will be reviewed:*

- (a) Project contracts for statutory assurances;*

- (b) Commitment documentation;*
- (c) Monthly reporting forms;*
- (d) Final payment form;*
- (e) Termination/substitution requests;*
- (f) Prompt payment;*
- (g) Document retention;*
- (h) CUF reviews; and*
- (i) Good faith efforts to fulfill the DBE goal.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *OCR will work with the system vendor to obtain access in Diversity Management System to allow OCR to view, create queries, and generate reports on all applications being processed by all Texas Unified Certification Program (TUCP) Partners. In addition, to be included in the SOP, OCR will obtain a log from each TUCP Partner that lists all paper applications being processed and other relevant data on those applications. Monthly, OCR will review the query/report results and the paper applications log to monitor and ensure timely processing of all applications.*

Responsible party: Director, OCR

Implementation date: December 31, 2015

- *OCR will develop a process that will require regular review and updating of the DBE Directory. Also, OCR will work with the system vendor to develop a query that will compare all firms in the directory with those that are certified. Monthly, OCR will review the query results to ensure that only and all certified DBE Firms are listed on the DBE Directory.*

Responsible party: Director, OCR

Implementation date: December 31, 2015

- *As part of the re-engineering process of its DBE supportive services programs, this program has been discontinued. However, the DBE supportive services program will continue to have a training component through the Texas Business Opportunity Development (TBOD) centers. OCR will include in its policies and procedures a requirement that trainees complete a needs assessment prior to participating in the*

training. OCR will develop a needs assessment form to facilitate this requirement. Prior to any DBE firm beginning training, each TBOD center will submit to OCR the form that documents their needs assessment effort. Each form will be reviewed and approved by an OCR specialist and the Section Director prior to any DBE firm beginning training.

Responsible party: Director, OCR

Implementation date: October 28, 2015

The Department Should Strengthen Its Processes for and Oversight of the Small Business Enterprise Program

Small Business Enterprise Program

The Small Business Enterprise Program was created to offer small businesses another avenue for maximizing their opportunities for doing business with the Department. The program applies to highway construction and maintenance projects that are funded in whole by the State of Texas.

The Department's Office of Civil Rights (Office) is responsible for administering the Small Business Enterprise Program. The Office should improve its identification of qualified contracts by defining what constitutes a highway construction and maintenance contract for the Department's districts and divisions to use. Of the 62 contracts reviewed, auditors identified 38 (61 percent) that should have been included in the program but were not. The primary cause for that was the Department's inability to identify which contracts were qualified to the program. By not ensuring that the Office appropriately defines the scope of the Small Business Enterprise Program and includes all qualified contracts for the program, the Department is potentially limiting the effectiveness of the Small Business Enterprise Program.

In addition, during fiscal year 2014, the Office asserted that it put the Small Business Enterprise Program "on hold." While the Office continued to certify small businesses for the program and monitored some qualified contracts, it did not set an overall goal for the program or report on the use of certified small businesses during fiscal year 2014. The Office could not provide any documentation to support how that decision was made or whether appropriate management approved that decision. Auditors confirmed with the Office that the Department's executive management was not notified of the program's change of status.

While the Department identified some contracts participating in the Small Business Enterprise Program, it should improve its monitoring processes for those contracts. Specifically, in 2 (20 percent) of 10 contract files tested, the Department did not include the following required documentation:

- Documentation showing that the certified small business designated a Small Business Enterprise Program contact person.
- Documentation showing the company or prime contractor submitted a commitment agreement.
- Monthly progress reports that the contractor submitted for the Department to review.

In addition, the Department should strengthen its processes for conducting required onsite visits to the contractors' and subcontractors' project sites and offices. The Department could not provide documentation showing that it conducted any site visits for the 10 contracts tested. By not monitoring the contracts participating in the Small Business Enterprise Program, the

Department is unable to determine whether the program is meeting its stated goals.

The Department should ensure that its policy for the certification period for businesses' participation in the Small Business Enterprise Program is consistent with the time period in the Texas Administrative Code. The Department policy defines the certification period as two years, while the Texas Administrative Code defines the certification period as three years.

In addition, the Department should strengthen its monitoring of the certification period to verify compliance. Specifically:

- Auditors tested 38 certified small businesses (1) whose certification had expired in fiscal year 2014, (2) that had been certified for at least 2 years, and (3) that were listed in the *Small Business Enterprise Program Directory* as of September 3, 2013. Of those 38 businesses, 36 (95 percent) should not have been listed in the directory using the two-year certification period established by Department policy.
- Of the 38 small certified businesses tested, 30 had been certified for at least 3 years. Of those 30 businesses, 26 (87 percent) were correctly listed in the directory using the three-year certification period set in the Texas Administrative Code. The Office was unable to locate files for 2 (50 percent) of the remaining 4 businesses. In addition, for the other 2 (50 percent) businesses, more than 3 years had elapsed from their most recent renewal date, and the businesses had not submitted the documentation required for recertification.

The Department should improve its procedures for updating the *Small Business Enterprise Program Directory*, which prime contractors use to identify potential subcontractors participating in the Small Business Enterprise Program. Specifically, 12 (63 percent) of 19 certified small businesses tested either did not submit required renewal information or did not receive approval for recertification within 2 years required by the Department's policy.

Without having a consistent certification period that is monitored and enforced and without consistently updating the *Small Business Enterprise Program Directory*, the Department is at risk that businesses and contractors that want to hire a certified small businesses will hire one that is no longer qualified for participation in the Small Business Enterprise Program.

The Department does not have a central contract database, and the Office of Civil Rights was not able to provide a comprehensive list of contracts qualified for the Small Business Enterprise Program for fiscal year 2014. In addition, auditors could not validate data the Department provided related to lists of applications or contracts with assigned Small Business Enterprise Program goals (see Appendix 1 for more information about the reliability of the Department's data).

Recommendations

The Department should:

- Develop and document guidance that defines how the Small Business Enterprise Program should be implemented and tracked by the districts and divisions within the Department.
- Ensure that program decisions that affect the administration of the Small Business Enterprise Program are appropriately documented and approved by key management.
- Require reporting of program decisions and use to executive management.
- Improve its monitoring of contractor compliance with Small Business Enterprise Program requirements by:
 - ♦ Ensuring that each contractor designates a contact person; submits a commitment agreement; and submits monthly progress reports, which the Department should review.
 - ♦ Conducting and documenting onsite visits to contractor and subcontractor project sites and offices.
- Ensure that it uses a consistent certification period for the Small Business Enterprise Program.
- Regularly and consistently update the *Small Business Enterprise Program Directory* to help ensure that only certified small businesses are included.

Management's Response

- *The Office of Civil Rights (OCR) will develop programmatic Policies and Procedures and Standard Operating Procedures (SOP) for the SBE program. Standard forms will be developed to facilitate consistency in the reviews conducted by the districts, divisions, and SBE Program Office. Scheduled meetings/trainings will be coordinated by the SBE Program Office with the districts and divisions to ensure implementation of the SBE Program.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *OCR administers a procedure documenting approval by key management pertaining to any changes to internal programs. If necessary, as part of OCR's efforts regarding the SBE Program, additional standard documents will be developed to ensure key management approval. Decisions for the SBE program will be reviewed with management during*

regular manager's meetings to ensure that the documentation is being used.

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *The SBE Program policies and procedures and SOP will incorporate a process to require coordination with executive management regarding reporting of program decisions and utilization. OCR administers a procedure in communicating program decisions to executive management, and uses the procedure developed by executive management for reporting program decisions. These processes will be reviewed with management during regular manager's meetings to ensure that they are being used.*

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *Monitoring of contractor compliance with SBE program requirements will be improved by the following actions:*
 - ♦ *OCR will develop and administer SBE Program Policy and Procedures and Standard Operating Procedures to ensure monitoring of contractor compliance. As part of compliance, the policy and procedures and standard operating procedures will include and ensure the following:*
 - *Designation of SBE Program Office contact person,*
 - *Submission of a subcontracting plan (i.e., commitment agreement),*
 - *Monthly progress reports, and*
 - *Monthly progress compliance form.*

Periodic reviews will be conducted to ensure submission of the subcontracting plan, monthly progress report, and monthly progress compliance form. Standard Department forms are being revised for oversight.

- ♦ *OCR will develop processes for conducting and documenting on-site reviews. Pursuant to the present rules, the SOP for the SBE program will include the obligation, and processes, to perform CUF reviews. The SOP will include the requirement to ensure that district and division personnel perform a minimum of one CUF review for each project with an SBE goal. Each DDO will designate a SBE program coordinator who will monitor and ensure the implementation and compliance of CUFs performed. The DDO SBE program coordinator*

will provide technical support to field staff concerning the proper steps to be utilized when conducting CUF reviews and responding to areas of non-compliance. OCR will work with the Construction Division and Strategic Projects Division to develop and maintain a tracking system that includes data on all CUF reviews performed. Standard forms will be developed to record compliance determination findings. This section of the SBE Program is under review to further develop the compliance effort.

Responsible party: Director, OCR

Implementation date: February 28, 2016

- *The policy and procedures will be updated to ensure that the Department uses a consistent certification period of three years for the SBE Program. OCR will develop a process that will require regular review and updating of the SBE Directory. Also, OCR will work with the system vendor to develop a query that will compare all firms in the directory with those that are certified. Monthly, OCR will monitor existing queries to ensure that the policy is being followed.*

Responsible party: Director, OCR

Implementation date: December 31, 2015

- *The policy and procedures will ensure proper monitoring of the SBE Directory. Also, OCR will develop a process to identify and report on those certifications that are nearing expiration. OCR will work with the system vendor to develop a query that will compare all firms in the directory with those that are certified. Monthly, OCR will review the query results to ensure that only TxDOT certified SBE Firms are listed on the SBE Directory.*

Responsible party: Director, OCR

Implementation date: November 30, 2015

The Department Minimally Complied, Overall, with HUB Rules It Adopted

The Department voluntarily adopted the State's Historically Underutilized Business (HUB) Program rules. While the Department complied with certain elements of its HUB Program, it minimally complied, overall, with the HUB rules it adopted in fiscal year 2014. Texas Government Code, Chapter 2161, exempts the Department from the State's HUB Program under certain conditions. However, the Department has adopted HUB rules in its Texas Administrative Code, strategic plan, and *Purchasing Manual*, and it participates in the State's HUB Program.

For fiscal year 2014, the Department reported that it made \$446.4 million in total expenditures through HUB contracts, which is approximately 7.2 percent of the Department's total contract expenditures. Auditors did not independently verify those amounts.

The HUB rules tested with the highest levels of compliance included rules related to adoption of the Office of the Comptroller of Public Accounts' (Comptroller Office) HUB rules, HUB forum sponsorship and participation, submission of a semi-annual report to the Comptroller's Office, and including required HUB subcontracting provisions in contracts.

The HUB rules tested with the lowest levels of compliance included rules related to establishment of annual procurement HUB utilization goals, obtaining required documentation related to HUB subcontracting requirements, auditing contractor compliance with HUB subcontracting requirements, and monitoring contractor compliance with HUB subcontracting requirements.

Auditors assessed the completeness and accuracy of the HUB-related information the Department provided. The Department's Office of Civil Rights could not provide a centralized list of all contracts that would qualify for the HUB Program. Therefore, auditors used data that the Department's Finance Division provided to create a list of contracts from which to sample for testing. The findings discussed in this chapter are based on those samples (see Appendix 1 for more information about the reliability of the Department's data).

Auditors tested 19 applicable HUB rules that the Department adopted; the Department achieved an overall compliance level of 58 percent. Table 1 summarizes the Department's compliance with the HUB rules tested.

Table 1

The Department's Compliance with the HUB Rules That It Adopted ^a			
	HUB Rule	Compliance/Achievement	Additional Information for Less Than Full Compliance
Goal Attainment			
1	Establishment of annual procurement utilization goals (Title 43, Texas Administrative Code, Section 9.354(a)).	Noncompliant	The Department did not approve, communicate, or establish agency-specific annual HUB utilization goals in fiscal year 2014. The Department asserted that it would use the statewide HUB goals in fiscal year 2014. However, the statewide HUB goals do not consider the Department's anticipated contract-related expenditures. In addition, the Department did not have documented policies and procedures for the development and approved of agency-specific annual HUB utilization goals.
2	Comparison of Department's adopted statewide goals to reported performance.		
	Heavy construction contract utilization goal.	Minimally Achieved	For fiscal year 2014, the Department's goal for heavy construction contracts was 11.20 percent; its reported HUB performance was 5.51 percent.
	Building construction contract utilization goal.	Fully Achieved	
	Special trade construction contract utilization goal.	Fully Achieved	
	Professional services contract utilization goal.	Minimally Achieved	For fiscal year 2014, the Department's goal for professional services contracts was 23.60 percent; its reported HUB performance was 12.03 percent.
	Other services contract utilization goal.	Substantially Achieved	For fiscal year 2014, the Department's goal for other services contracts was 24.60 percent; its reported HUB performance was 19.58 percent.
	Commodities contract utilization goal.	Substantially Achieved	For fiscal year 2014, the Department's goal for commodities contracts was 21.00 percent; its reported HUB performance was 14.92 percent.

The Department's Compliance with the HUB Rules That It Adopted ^a

	HUB Rule	Compliance/ Achievement	Additional Information for Less Than Full Compliance
Planning			
1	Adoption of HUB rules.	Fully Compliant	
2	Strategic plan requirements.	Substantially Compliant	The Department developed a section in its strategic plan for increasing its use of HUBs in purchasing and public works contracting. However the Department's strategic plan did not include a specific program to encourage contractors to use HUBs as partners and subcontractors. In addition, the strategic plan reported inaccurate information for professional services contracts regarding fiscal year 2013 goals and setting agency-specific goals for fiscal year 2014.
3	Estimation of expected contract awards.	Noncompliant	The Department did not estimate the total value of contract awards it expected to make to HUBs for fiscal year 2014.
Outreach			
1	Mentor-protégé program requirements.	Noncompliant	The Department did not have a mentor-protégé program in fiscal year 2014. The Department abated its mentor-protégé program in fiscal year 2014; as a result, the Department did not have any mentor-protégé agreements approved by the Comptroller's Office in fiscal year 2014. Additionally, the Department's policies and procedures related to administering the mentor-protégé program did not consider (1) mentor eligibility and selection criteria, (2) protégé eligibility and selection criteria, (3) procedures for monitoring the mentor-protégé relationship, and (4) procedures for reporting to the Comptroller's Office the completion of signed mentor-protégé agreements within 21 calendar days after the agreement has been signed by both parties.
2	HUB forum sponsorship and participation requirements.	Fully Compliant	
Reporting			
1	Submission of HUB semi-annual reports.	Fully Compliant	
2	Progress assessment reporting requirements.	Minimally Compliant	The Department documented its progress under its plan for increasing the use of HUBs for fiscal year 2014 and presented the report to the Office of the Governor. However, the Department did not submit its HUB progress report to the Lieutenant Governor or the Speaker of the House as required.
3	<i>Legislative Appropriations Request</i> reporting requirements.	Minimally Compliant	The Department submitted a detailed report in its most recent <i>Legislative Appropriations Request</i> . However, that detailed report contained inaccurate information regarding the Department's fiscal year 2012 and 2013 goal percentages. Specifically, the Department reported the goal, and not goal attainment, based on expenditures.
4	Comply with reporting requirements in Riders 17 and 18, pages I-23 and I-24, the General Appropriations Act (83rd Legislature).	Fully Compliant	

The Department's Compliance with the HUB Rules That It Adopted ^a

	HUB Rule	Compliance/ Achievement	Additional Information for Less Than Full Compliance
Subcontracting			
1	Planning of HUB subcontracting requirements.	Substantially Compliant	For 9 (22 percent) of 41 applicable contracts tested, the Department did not have documentation showing whether subcontracting opportunities were probable. In addition, the Department should have a consistent method of documenting the determination of subcontracting probabilities across its districts, divisions, and offices. The current procedures do not require the Department to conduct and document the research that it should perform, such as researching the Centralized Master Bidders List, the HUB directory, the Internet, and other directories identified by the Comptroller's Office for eligible HUBs to perform the work.
2	Including required HUB subcontracting contract provisions (Title 43, Texas Administrative Code, Sections 9.355(a), 9.356(a), 9.360(a), and 9.361(b)).	Fully Compliant	
3	Obtaining required documentation related to HUB subcontracting requirements (Title 43, Texas Administrative Code, Sections 9.356(b), 9.360(b), and 9.361(b)).	Minimally Compliant	<p>Thirty-four (97 percent) of 35 applicable contracts tested had the required HUB subcontracting plan. However, the Department did not consistently obtain all required progress assessment reports. Auditors tested applicable contracts for documentation related to required progress assessment reports in fiscal year 2014 and determined the following:</p> <ul style="list-style-type: none"> ▪ For 15 (47 percent) of 32 contracts tested, the Department did not obtain all required monthly progress assessment reports. ▪ For 17 (53 percent) of 32 contracts tested, the Department did not obtain progress assessment reports prior to payment as required. ▪ For 21 (91 percent) of the 23 contracts that contained a goal and had subcontracting work performed, the Department did not obtain any progress assessment reports or did not accurately enter data from the progress assessment reports into the respective systems of record. <p>The Department also did not obtain or have documentation of an executed HUB agreement for 3 (10 percent) of the 31 contracts tested that had an assigned contract goal.</p>

The Department's Compliance with the HUB Rules That It Adopted ^a

	HUB Rule	Compliance/ Achievement	Additional Information for Less Than Full Compliance
4	Monitoring HUB subcontracting requirements (Title 43, Texas Administrative Code, Sections 9.357, 9.359, 9.361(b), and 9.363; and Office of the Comptroller of Public Accounts 2014 HUB Reporting Procedures).	Noncompliant	<p>Nine (26 percent) of the 34 contracts tested had documentation showing that the prime contractors developed a HUB subcontracting plan in good faith and attempted to obtain HUB participation.</p> <p>Auditors reviewed subcontractor payment data to determine whether the Department reviewed subcontractor monthly progress assessment reports prior to making payment to the prime contractor and found the following:</p> <ul style="list-style-type: none"> ▪ For 29 (94 percent) of the 31 contracts under which a subcontractor was performing work for a prime contractor tested, the Department did not obtain and review subcontractor monthly progress assessment reports prior to making payment. As a result, the Department is primarily relying on data self-reported by the prime contractors, which may be inaccurate. ▪ For 26 (81 percent) of the 32 contracts for which there were identified subcontracting opportunities, the Department did not monitor the prime contractors' compliance with HUB subcontracting plans as required. <p>In addition, the Department did not always approve changes to the HUB subcontracting plans when the project scope changed. Specifically:</p> <ul style="list-style-type: none"> ▪ For 3 (38 percent) of 8 contracts tested, the Department did not approve changes to the HUB subcontracting plans when a change in scope was identified. ▪ For all three contracts tested that involved a scope change requiring a supplemental agreement for a significant change in services, the Department did not determine whether additional opportunities existed for HUB participation and did not require a resubmission of a revised HUB subcontracting plan.
5	Auditing contractor compliance with HUB subcontracting requirements.	Noncompliant	The Department did not audit contractor compliance with HUB subcontracting plans in fiscal year 2014.
Good-faith Effort			
1	Making a good-faith effort to assist HUB in receiving a portion of the total contract value of all contracts that the entity expects to award (Title 43, Texas Administrative Code, Section 9.354(b)).	Substantially Compliant	The Department's policies and procedures do not discuss providing potential bidders with a referenced list of certified HUBs for subcontracting. In addition, the Department does not have a written methodology for determining whether any Department-specific HUB goals are appropriate.

The Department's Compliance with the HUB Rules That It Adopted ^a

	HUB Rule	Compliance/Achievement	Additional Information for Less Than Full Compliance
2	Making a good-faith effort in adopting rules, utilizing the Comptroller's Office's <i>HUB Directory</i> , making timely efforts to contact HUBs regarding contracting opportunities, conducting a procurement program in accordance with Comptroller's Office rules, and establishing contracting goals in each procurement category.	Substantially Compliant	<p>The Department substantially complied with the requirement to use the Comptroller's Office's <i>HUB Directory</i> and other resources to identify HUBs that are able and available to contract with the Department.</p> <p>In addition, the Department substantially complied with the requirement to conduct its procurement program in accordance with the good-faith effort methodology established in the Comptroller's Office's rules.</p> <p>However, the Department did not comply with requirements to establish goals for contracting with HUBs in each procurement category based on scheduled fiscal year expenditures.</p>
3	Submission of supplemental good-faith letter.	Fully Compliant	
^a The Department adopted the HUB requirements in Texas Government Code, Chapter 2161, through its 2013-2017 strategic plan.			

Recommendations

The Department should:

- Develop policies and procedures for developing, approving, and communicating Department-specific HUB goals at the beginning of each fiscal year.
- Estimate the value of contracts to assist in the development of HUB goals.
- Develop and document a consistent methodology for determining whether subcontracting opportunities exist for each contract across the Department's districts, divisions, and offices.
- Develop and implement an approved mentor-protégé program that includes all required elements.
- Submit required progress reporting documentation as required.
- Accurately submit goals and attainment in its *Legislative Appropriations Requests*.
- Develop and implement a process to verify that contractors submit all required progress assessment reports prior to payment.
- Implement a process to monitor contractor compliance with the HUB subcontracting plans.

Management's Response

- *TxDOT has developed policies and procedures that address the development, approval, and communication of agency-specific HUBs. For FY15, agency internal HUB goals were developed, approved by Executive Administration, and communicated Department wide throughout TxDOT. In this process, the HUB Program Office will utilize the standard template provided by the Texas Comptroller of Public Accounts to assist in developing the annual internal HUB goals. When the goals have been defined, a standard memo form will be submitted to Administration for approval. When an approval has been received by Administration, a memo will be sent to the DDOs updating the new annual internal HUB goals.*

Responsible party: Director, OCR

Implementation date: Completed

- *TxDOT has developed a process for estimating the value of contracts, and has included the process in its SOP. During FY15, a meeting was coordinated with the Finance Division to begin estimating the value of contracts HUBs would receive during FY15. A standard form is being used to document the estimated value of contracts HUBs will receive.*

Responsible party: Director, OCR

Implementation date: Completed

- *TxDOT has developed and documented a consistent methodology for determining whether contracting opportunities exist for each contract. During FY15, TxDOT developed standard forms to facilitate providing a consistent documented methodology to determine the probability of subcontracting for each contract across the Department's districts, divisions, and offices (DDO). OCR has offered training to TxDOT DDOs on the methodology. This will also be an ongoing topic in scheduled meetings with the TxDOT DDOs.*

Responsible party: Director, OCR

Implementation date: Completed

- *During FY15, policy and procedures and standard operating procedures, including standard forms, were developed to implement the Mentor Protégé Program. In FY15, TxDOT established its first two mentor-protégé relationships between prime contractors and HUBs. Since then, other relationships have been established. The TxDOT's Office of Civil Rights (OCR) will communicate the program to TxDOT DDOs through scheduled meetings. In addition, OCR has contacted current TxDOT*

DDOs to discuss the program and identify potential mentors. OCR will conduct regular reviews to ensure the use of all elements of the program.

Responsible party: Director, OCR

Implementation date: Completed

- *OCR will coordinate with finance to ensure the HUB data included in the TxDOT Progress Report is submitted to the Governor, Lt. Governor, and Speaker of the House, as required.*

Responsible party: Director, OCR

Implementation date: October 15, 2015

- *During FY15, the Department developed a standard template, following LAR requirements, and included it in the HUB program's policies and procedures and standard operating procedures to ensure accuracy when submitting goals and attainment. OCR will develop a process of peer review to ensure the accuracy of goals and attainment that are submitted.*

Responsible party: Director, OCR

Implementation date: December 31, 2015

- *During FY15, the Department developed a process and included it in the HUB program policies and procedures and standard operating procedures to ensure contractors submit all required progress assessment reports prior to payment. OCR will coordinate monthly meetings with TxDOT DDOs to ensure reports are being received, reviewed, and that OCR has access to provide oversight. OCR will conduct regular reviews to ensure compliance with this policy. This will be an ongoing topic in scheduled meetings between the OCR and TxDOT DDOs.*

Responsible party: Director, OCR

Implementation date: Completed

- *During FY15, the Department developed an HSP Progress Compliance Form to be completed and submitted by the contractor with the monthly Progress Assessment Report. This will be used to monitor contractor compliance with the HUB Subcontracting Plan (HSP). This process is included in the HUB Program policies and procedures and standard operating procedures. This will be an ongoing topic in scheduled meetings between OCR and TxDOT DDOs. This will also be included in HUB trainings offered to TxDOT DDOs and the vendor community.*

Responsible party: Director, OCR

Implementation date: Completed

The Department Substantially Complied with the State Use Program Requirements

The Department substantially complied overall¹ with the Purchasing from People with Disabilities (State Use) Program requirements for fiscal year 2014 (see Table 2 on the next page).

While the Department has a process in place to report exceptions to the Office of the Comptroller of Public Accounts (Comptroller's Office), it should improve its process to ensure that it (1) gives priority to purchasing items from the State Use Program and (2) properly identifies and reports all exceptions. Specifically, 2 (12 percent) of 17 purchase orders tested were for goods and services that TIBH Industries provides and met all criteria for purchase.² However, the Department did not make the purchases through the State Use Program and did not provide reasonable justification for not doing so.

In addition, the Department did not properly identify and report to the Comptroller's Office any of the 17 purchase orders tested for items available through the State Use Program but that the Department purchased from outside vendors. The Department's exception reporting practices, as stated to auditors, allow the Department's four field branches to self-report exceptions to the central Procurement Division, which does not always receive information from those branches. In addition, the Procurement Division did not verify whether those field branches reported all exceptions that occurred.

The Department had sufficient controls over purchasing to prevent conflicts of interest and a lack of segregation of duties. Auditors tested 79 purchases and determined that each purchaser had signed a conflict of interest statement and that there were no instances in which the purchaser both requested and approved a purchase order.

¹ Auditors calculated the 63 percent overall compliance level based on the Department's compliance with selected audit tests associated with the 3 State Use Program requirements.

² Criteria for purchase are quantity, quality, delivery, life-cycle costs, and testing and inspection.

Table 2

The Department's Compliance with State Use Program Requirements			
	Requirement	Compliance	Additional Information for Less Than Full Compliance
1	Entity designation of a State Use coordinator (Texas Human Resources Code, Section 122.0095(a)(1)).	Fully Compliant	
2	Purchase of goods and services from community rehabilitation program requirements (Texas Human Resources Code, Section Code 122.008).	Substantially Compliant	The Department did not always prioritize purchasing items from the State Use Program.
3	Exception reporting requirements (Texas Human Resources Code, Sections 122.0095(a)(2), 122.0095(c), and 122.016(c), and Title 40, Texas Administrative Code, Section 189.2(9)).	Noncompliant	The Department did not appropriately report all items not purchased through the State Use Program.

Recommendations

The Department should:

- Give the State Use Program preference when procuring items available through that program.
- Develop and implement a process to ensure that it reports all exceptions to the State Use Program to the Comptroller's Office as required.

Management's Response

- *We concur with the recommendation to give State Use Program preference when procuring items available through the program. The Procurement Division (PRO) will revise its Purchasing Manual to provide additional guidance to purchasers on state use program preference requirements. Changes will be reinforced through an article on State Use Program preference requirements in PRO's BuyWays newsletter, and training through PRO's professional development meetings.*

Responsible party: Procurement Division Director

Implementation date: December 31, 2015

- *We concur with the recommendation develop and implement a process to ensure that all exceptions to the State Use Program are reported to the Comptroller's Office as required. PRO will develop and implement an automated process for reporting and tracking exceptions through the Enterprise Resource System (ERP). PRO will implement a business process for purchasers to check a "state use exception" field on the header screen of the PO when applicable. PRO will pursue a customization to the ERP program to advise the purchaser when an item*

solicited matches the class/item offered by a set aside entity. PRO will develop a query to report exceptions monthly to the Comptroller of Public Accounts.

Responsible party: Procurement Division Director

Implementation date: October 15, 2015

The Department Should Strengthen Access Controls Over the Information Systems Used for the Four Business Opportunity Programs Audited

Key Application Systems Tested

Subcontract Monitoring System - A mainframe-based system used to keep track of Small Business Enterprise Program and Disadvantaged Business Enterprise Program applications and denials and HUB construction expenditure data.

Outreach Manager System - Contains progress assessment reports and participation on building contracts for the HUB Program.

Professional Services-Contract Administration Management System - Contains professional services data such as payments and progress assessment reports for HUB and Disadvantaged Business Enterprise Program projects.

Purchase Order-Contract Administration Management System - Contains purchase order data and related progress assessment reports for HUB Program and Disadvantaged Business Enterprise Program projects.

TxSmartBuy - A portal that the Comptroller's Office maintains in which purchases related to TIBH Industries and the Texas Correctional Industries are made.

The Department developed information technology policies over the five key systems used to house information for the four business opportunity programs audited. However, it should strengthen its user access controls by implementing a user access review process. Auditors reviewed user access to the Subcontract Monitoring System, the Outreach Manager System, the Professional Services-Contract Administration Management System (PS-CAMS), the Purchase Order-Contract Administration Management System (PO-CAMS), and the TxSmartBuy System (see text box for a description of each system).

While the Department had documented policies and procedures for conducting user access reviews on an annual basis, it did not perform reviews of user access in fiscal year 2014 for any of the five systems. As a result, the Department did not appropriately limit access to those five systems. Specifically:

- For the Subcontract Monitoring System, 80 (14 percent) of 574 users did not have access that aligned with current job functions.
- For the Outreach Manager System, 2 (15 percent) of 13 users did not have access that aligned with current job functions.
- For PS-CAMS, 63 (17 percent) of 376 users did not have access that aligned with current job functions.
- For PO-CAMS, 11 (65 percent) of 17 users did not have access that aligned with current job functions.
- For TxSmartBuy, 44 (33 percent) of 132 users did not have access that aligned with current job functions.

Not reviewing and appropriately restricting access to key information systems increases the risk of unauthorized changes to the Department's key business opportunity program data.

Recommendation

The Department should perform user access reviews in accordance with its policy and limit user access privileges to current employees based on their job duties.

Management's Response

The Information Technology Division will take the below actions for all applications, including the 5 systems identified in this audit:

- 1) TxDOT IT will work with the TxDOT Business Unit that is the office of primary responsibility for each application to implement a standard, recurring user access review process in compliance with IT policy. This process will be documented in the Service Management Manual. The report indicating completion of the user access review will be included in the Report Management Log.*
- 2) TxDOT IT implemented a new process in March 2015 to flag terminations and update system accesses.*
- 3) TxDOT IT will implement a new process to flag position transfers and update system accesses.*

Responsible party: Senior IT Service Manager

Implementation date: October 15, 2015, except for item #2 that is complete

The Procurement Division (PRO) concurs with the recommendation and will work with the Comptroller of Public Accounts to develop a process and schedule for system security reconciliations.

Responsible party: Procurement Division Director

Implementation date: December 15, 2015

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Department of Transportation (Department) complied with statutory requirements and rules for selected business opportunities programs.

Scope

The scope of this audit covered the Department's activities for the selected business opportunity programs during fiscal year 2014. Those four business opportunity programs selected were:

- Disadvantaged Business Enterprise Program.
- Small Business Enterprise Program.
- Historically Underutilized Business (HUB) Program.
- Purchasing from People with Disabilities (State Use) Program.

Methodology

The audit methodology included collecting information and documentation, performing selected tests and other procedures, analyzing and evaluating the results of the tests, and interviewing management and staff at the Department.

For the purposes of this audit, compliance with HUB and State Use program requirements was determined at the attribute level, rather than the transaction level (see Table 3 on the next page for the specific compliance scale that auditors used). For example, if 30 items were tested for a specific attribute and auditors identified 1 transaction that did not comply, then the compliance rate would be 29 out of 30, or 96.7 percent, which would represent full compliance with that attribute.

Table 3

Level of Compliance and Goal Achievement Determination	
Level of Compliance/Achievement	Percentage of Requirements With Which Entity Complied/Percentage of Goal Achieved
Noncompliant/Not Achieved	0 to 30 percent
Minimally Compliant/Minimally Achieved	31 to 60 percent
Substantially Compliant/Substantially Achieved	61 to 90 percent
Fully Compliant/Fully Achieved	91 to 100 percent

Sampling Methodology

To test compliance with Disadvantaged Business Enterprise Program requirements and *Disadvantaged Business Enterprise Program Directory* updates, auditors selected nonstatistical samples through random selection. To test compliance with Small Business Enterprise Program requirements and certification and directory updates, auditors selected nonstatistical samples through random selection. To test compliance with HUB subcontracting plan requirements, auditors selected a nonstatistical, random sample of contracts exceeding \$100,000. However, the Department could not provide reasonable assurance that the data for the Disadvantaged Business Enterprise Program, Small Business Enterprise Program, and HUB Program expenditures from which the samples were selected was complete; therefore, it would not be appropriate to extrapolate those test results to the population.

To test compliance with State Use Program approval requirements, auditors selected a nonstatistical random sample of purchase orders. To test compliance with exception identification and reporting for the State Use Program, auditors selected a nonstatistical, random sample of non-State Use Program purchase orders. Results may be extrapolated to the population, but the accuracy of the extrapolation cannot be measured.

Data Reliability and Completeness

Auditors tested selected general controls and application controls, when applicable, over the five systems that the Department uses to administer the four programs audited. Those systems were: the Outreach Manager System, the Professional Services-Contract Administration Management System, the Purchase Order-Contract Administration Management System, the Subcontract Monitoring System, and TxSmartBuy. The Outreach Manager System, TxSmartBuy, and selections of the Subcontract Monitoring System were sufficiently reliable for the purposes of this audit.

The Department's Office of Civil Rights was unable to provide auditors with a full list of expenditures or contracts applicable to the HUB, Disadvantaged Business Enterprise, or Small Business Enterprise programs for fiscal year 2014. Auditors used contract information from the Department's Financial Information Management System and reviewed the parameters used to select contracts exceeding \$100,000; that received federal funds, and that received state and local funds. Auditors reviewed query language and procedures used to select information to determine that the compiled population was the most complete population available and, therefore, auditors determined it was sufficient to sample for compliance with HUB Program, Disadvantaged Business Enterprise Program, and Small Business Enterprise Program requirements.

In addition, the Office of Civil Rights could not provide assurances that it provided a complete list of applications and contracts with assigned goals related to the Small Business Enterprise Program for fiscal year 2014. While auditors were not assured completeness of the population of applications and contracts with assigned goals selected from the Subcontract Monitoring System, auditors determined it was sufficient to sample for compliance for purposes of this audit.

The Office of Civil Rights could not provide assurances that it provided a complete list of applications related to the Disadvantaged Business Enterprise Program from the various Texas Unified Certification Program entities for fiscal year 2014. While auditors determined the data was not reliable, the population was the most complete population available and, therefore, auditors determined it was sufficient to sample for compliance for purposes of this audit.

The Office of Civil Rights could not provide assurances that it provided a complete list of payments made to Disadvantaged Business Enterprise Program participants for training for fiscal year 2014. While auditors determined the data was not reliable, the population was the most complete population available and, therefore, auditors determined it was sufficient to sample for compliance with training requirements for purposes of this audit.

Information collected and reviewed included the following:

- HUB Program reports.
- State Use Program exception reports.
- Strategic plans, written plans, and *Legislative Appropriations Requests*.
- Monthly progress assessment reports for the HUB Program, Small Business Enterprise Program, and the Disadvantaged Business Enterprise Program.

- Department organizational charts.
- Certification applications for the Disadvantaged Business Enterprise and Small Business Enterprise programs and supporting documentation.
- Annual affidavits for the Disadvantaged Businesses Enterprise Program.
- Contracts between the Department and prime contractors.
- Department policies and procedures.
- Functional job description for State Use Program coordinator positions.
- HUB Program subcontracting plans, centralized master bidders lists, and certification information.
- HUB Program forum and marketing advertisements and agendas.
- Purchase orders, invoices, and other supporting documentation for expenditures.
- *Small Business Enterprise Program Directory* and *Disadvantaged Businesses Enterprise Program Directory* updates.
- Prior Department internal audit reports.
- Prior State Auditor's Office reports.
- Reports and information associated with the implementation of Riders 17 and 18, page I-23, the General Appropriations Act (83rd Legislature) and Texas Government Code, Section 2161.002(d).

Procedures and tests conducted included the following:

- Reviewed HUB Program utilization goals, *Legislative Appropriations Requests*, and rules.
- Interviewed HUB Program coordinators, State Use Program coordinators, and procurement management and staff.
- Reviewed HUB Program subcontracting plans.
- Reviewed various monthly HUB Program, Disadvantaged Business Enterprise Program, and Small Business Enterprise Program monthly progress reports.
- Tested State Use Program expenditures.

- Reviewed the Department’s status of implementation of requirements in Riders 17 and 18, page I-23, the General Appropriations Act (83rd Legislature), and Texas Government Code, Section 2161.002(d).
- Reviewed Disadvantaged Business Enterprise Program and Small Business Enterprise Program applications for required documentation and evidence of review.
- Reviewed the *Small Business Enterprise Program Directory* and the *Disadvantaged Businesses Enterprise Program Directory* to determine whether they were appropriately updated.
- Reviewed Disadvantaged Business Enterprise Program training payments for required supporting documentation and compliance with requirements.
- Reviewed Disadvantaged Business Enterprise Program and Small Business Enterprise Program contracts for compliance with requirements.

Criteria used included the following:

- Texas Government Code, Chapter 2161.
- Texas Human Resources Code, Chapters 122.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 40, Texas Administrative Code, Chapter 189.
- Title 43, Texas Administrative Code, Chapter 9.
- Title 43, Texas Administrative Code, Chapters 201 and 209.
- Title 49, Code of Federal Regulation, Chapter 26.
- General Appropriations Act (83rd Legislature).
- Office of the Comptroller of Public Accounts’ *Fiscal Year 2014 Annual Statewide Historically Underutilized Business (HUB) Reporting Procedures*.
- *State of Texas Contract Management Guide*, version 1.12.
- Various Department policies and procedures related to the Disadvantaged Business Enterprise, Small Business Enterprise, HUB, and State Use programs.

Project Information

Audit fieldwork was conducted from January 2015 through June 2015. 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:

- Thomas Andrew Mahoney, CGAP (Project Manager)
- Isaac Barajas (Assistant Project Manager)
- Ryan Marshall Belcik, MBA
- Jeffrey D. Criminger
- Tessa Mlynar, CFE
- Fred Ramirez
- Cameron A. Scanlon
- Sarah Vela
- Richard Wyrick
- Dana Musgrave, MBA (Quality Control Reviewer)
- Cesar Saldivar, CGAP (Audit Manager)

The Department's Structure

The Department of Transportation (Department) has a highly decentralized organizational structure that consists of:

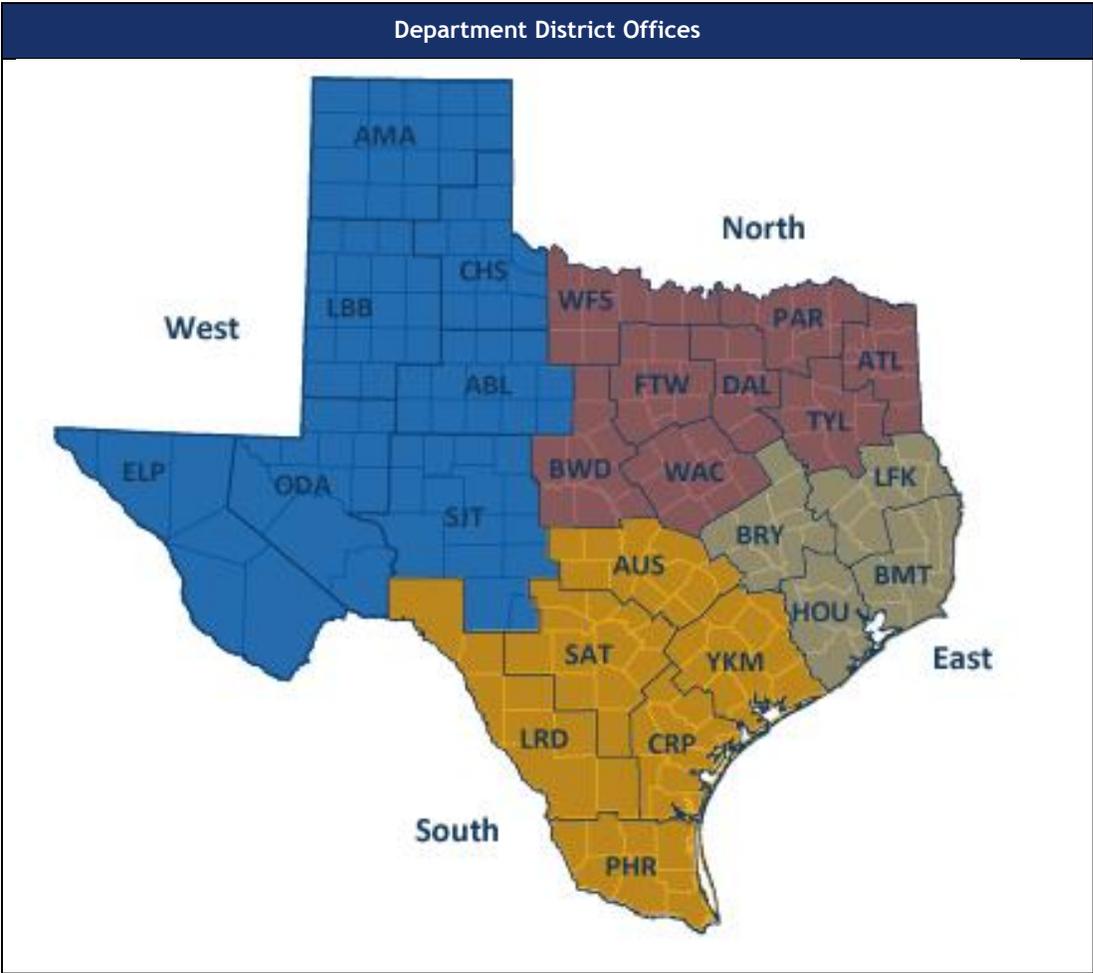
- A five-member Texas Transportation Commission appointed by the Governor.
- An executive director hired by the Texas Transportation Commission.
- Twenty-five district offices located across the state that are under the deputy executive director/chief engineer (see Figure 1 on the next page for a map of the regions).
- Twenty-six divisions that oversee and handle a diverse range of services for the Department.
- Thirteen offices that handle specific functions for the Department, including legal and compliance issues, governmental relations, and civil rights compliance.

The Office of Civil Rights is responsible for affirmative action and Title VI/equal employment opportunity contract compliance. It also is primarily responsible for administering the Historically Underutilized Business (HUB), Disadvantaged Business Enterprise, and Small Business Enterprise programs. While the HUB Program coordinator position had been in the Department's Procurement Office, that coordinator asserted that the control of the HUB Program subsequently was transferred to the Department's Office of Civil Rights. The Office of Civil Rights reports to the Department's executive director and receives information from various divisions and districts in compiling data for the business opportunity programs.

The Procurement Division is responsible for administering the State Use Program, which handles giving priority to purchasing of select items through TIBH Industries and the Texas Correctional Industries, and is the central purchasing office for procuring goods and non-professional services under the State Purchasing Act. In addition, the Procurement Division provides outreach activities for the Department's HUB Program.

Figure 1 shows the Department's 25 district offices that oversee the maintenance and construction of the State's highway system.

Figure 1



Source: The Department's Web site.

The Department's 26 divisions handle a diverse range of services. Table 4 lists those divisions.

Table 4

Department Divisions	
<ul style="list-style-type: none"> ▪ Aviation ▪ Bridge ▪ Communications ▪ Construction ▪ Design ▪ Environmental Affairs ▪ Finance ▪ Fleet Operations ▪ General Services ▪ Human Resources ▪ Information Technology ▪ Maintenance ▪ Maritime 	<ul style="list-style-type: none"> ▪ Occupational Safety ▪ Procurement ▪ Professional Engineering Procurement Services ▪ Public Transportation ▪ Rail ▪ Real Estate Management and Development ▪ Right of Way ▪ Strategic Projects ▪ Support Services ▪ Toll Operations ▪ Traffic Operations ▪ Transportation Planning and Programming ▪ Travel Information

Source: The Department's Web site.

The Department has 13 offices that handle specific functions for the agency. Table 5 lists those offices.

Table 5

Department Offices	
<ul style="list-style-type: none"> ▪ Civil Rights ▪ Compliance ▪ Federal Affairs ▪ General Counsel ▪ Innovative Financing/Debt Management ▪ Internal Audit 	<ul style="list-style-type: none"> ▪ Local Government Projects ▪ Operational Excellence ▪ Project Management ▪ Public Involvement ▪ Research and Technology Implementation ▪ State Legislative Affairs ▪ Strategic Planning

Source: The Department's Web site.

Related State Auditor's Office Work

Related State Auditor's Office Work		
Number	Product Name	Release Date
15-036	An Audit Report on Selected State Entities' Compliance with Requirements Related to the Historically Underutilized Business Program and the State Use Program	July 2015
15-006	An Audit Report on Selected State Entities' Compliance with Requirements Related to the Historically Underutilized Business Program and the State Use Program	October 2014
13-026	An Audit Report on Selected State Entities' Compliance with Requirements Related to the Historically Underutilized Business Program and the State Use Program	March 2013
11-027	An Audit Report on Selected State Entities' Compliance with Requirements Related to the Historically Underutilized Business Program and the State Use Program	March 2011

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The Honorable Robert Nichols, Member, Texas Senate
The Honorable John Otto, House Appropriations Committee
The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Department of Transportation

Members of the Texas Transportation Commission

Mr. Tryon D. Lewis, Chair

Mr. Jeff Austin, III

Mr. J. Bruce Bugg, Jr.

Mr. Jeff Moseley

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