

An Audit Report on

The Texas Facilities Commission's Compliance with Requirements Related to the Historically Underutilized Business and State Use Programs

April 2017Report No. 17-030



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> SAO Report No. 17-030 April 2017

Overall Conclusion

Compliance with Historically Underutilized Business (HUB) Program Requirements

The Texas Facilities Commission (Commission) complied with the statutes, rules, and Office of the Comptroller of Public Accounts' (Comptroller's Office) requirements related to the HUB program.

The Commission complied with HUB requirements to:

- Designate a HUB coordinator.
- Adopt HUB rules.
- Prepare a strategic plan.
- Participate in HUB forums.
- Comply with mentor-protégé requirements.
- Sponsor presentations by HUBs.
- Accurately report information to the Comptroller's Office.

Compliance with State Use Program Requirements

The Commission generally complied with the Purchasing from People with Disabilities (State Use) Program requirements. However, it lacked a documented process to report exceptions.

The Historically Underutilized Business (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 is governed by Texas Government Code, Chapter 2161, and its rules are defined in Title 34, Texas Administrative Code, Chapter 20.

For fiscal year 2016, the Office of the Comptroller of Public Accounts (Comptroller's Office) reported that, of the nearly \$19.0 billion the State spent in procurement categories that were eligible for HUB participation, the State paid approximately \$2.0 billion to HUBs.

The State Use Program

The State Use Program was governed by the Texas Council on Purchasing from People with Disabilities through August 31, 2015. As of September 1, 2015, the oversight of the State Use Program was transferred to the Texas Workforce Commission. Under the State Use 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 program's rules are defined in Title 40, Texas Administrative Code, Chapter 806.

Sources: Texas Government Code, Chapter 2161; Texas Human Resources Code, Chapter 122; Title 34, Texas Administrative Code, Chapter 20; Title 40, Texas Administrative Code, Chapter 806; and the Comptroller's Office

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Information Technology Systems

The Commission also should strengthen certain controls over its information technology systems.

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

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings				
Chapter/ Subchapter	Title	Issue Rating ^a		
1-A	The Commission Complied with HUB Planning, Outreach, and Reporting Requirements	Low		
1-B	The Commission Conducted Its Procurement and Contract Monitoring Program in Compliance with Most HUB-related Statutes and Rules	Low		
2	The Commission Generally Complied with State Use Program Reporting Requirements; However, It Lacked a Documented Process to Report Exceptions	Low		
3	Commission Should Strengthen Certain Controls Over Its Information Technology Systems	High		

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

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

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

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

Auditors communicated other, less significant issues to the Commission's management separately in writing.

Summary of Management's Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Commission generally agreed with most of the recommendations addressed to it. However, the Commission did not fully agree with certain findings related to its compliance with Texas Administrative Code requirements and did not agree to fully implement one recommendation to address information technology weaknesses.

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Audit Objectives and Scope

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

- Complied with statutory requirements and rules established by the Comptroller's Office to implement HUB program requirements.
- Reported complete and accurate data to the Comptroller's Office.
- > Complied with requirements related to the State Use Program.

The scope of this audit covered the Commission's HUB program activities and State Use program activities for fiscal year 2016. Auditors selected the Commission based on a risk assessment and audited for compliance with:

- HUB Program requirements for planning, outreach, subcontracting, and reporting, as defined by Texas Government Code, Chapter 2161, and Title 34, Texas Administrative Code, Chapter 20.
- > State Use Program requirements, as defined by Texas Human Resources Code, Chapter 122, and Title 40, Texas Administrative Code, Chapter 806.

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Detailed Results

Chapter 1

The Commission Complied with Most HUB Program Requirements

The Texas Facilities Commission (Commission) had processes to ensure compliance with Historically Underutilized Business (HUB) Program planning, outreach, and reporting requirements. In addition, the Commission had processes to comply with most HUB-related requirements for procurement and contract monitoring.

Chapter 1-A

The Commission Complied with HUB Planning, Outreach, and Reporting Requirements



For fiscal year 2016, the Commission had processes to ensure compliance with all three planning requirements tested. Specifically, the Commission:

- Established annual procurement utilization goals. (See Appendix 4 for the Commission's annual procurement goals and actual performance.)
- Adopted HUB rules.
- Complied with strategic plan requirements.

For fiscal year 2016, the Commission had processes to ensure compliance with all four outreach requirements tested. Specifically, the Commission:

- Complied with HUB coordinator requirements.
- Participated in a HUB forum.
- Received in-house marketing presentations from HUBs.
- Established a mentor-protégé program.

For fiscal year 2016, the Commission complied with the three <u>reporting</u> requirements tested and reported accurate information to the Office of the Comptroller of Public Accounts (Comptroller's Office) in a timely manner.

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

Specifically, the Commission had processes to help ensure that it maintained and compiled accurate data in compliance with HUB reporting requirements. That data included:

- HUB expenditures (see text box for more information).
- Number of bids received from HUBs.
- Number of contracts awarded.

HUB Expenditures

The Commission reports HUB subcontracting and procurement card expenditures to the Comptroller's Office.

Those subcontracting expenditures include expenditures related to the **Commission's projects and** expenditures related to contracts that the Commission manages but are contracted with another state agency.

Source: Commission.

Chapter 1-B

The Commission Conducted Its Procurement and Contract Monitoring Program in Compliance with Most HUB-related Statutes and Rules

Chapter 1-B Rating: Low ²

The Commission requires contractors to submit a HUB subcontracting plan for all procurements with an expected value that exceeds \$100,000.

For the 13 contracts tested, the Commission consistently documented its justification when choosing a non-HUB vendor instead of a HUB vendor. For

10 of the 13 contracts tested, the Commission selected a non-HUB vendor. The Commission selected subcontractors based on the scoring criteria and awarded contracts to the vendors with the highest score.

The Commission complied with most HUB contractor and subcontractor reporting requirements.³ The Commission did not ensure that contractors submitted monthly *Progress Assessment Reports*, as required (see text box for more information about *Progress Assessment Reports*). However, the Commission required a completed *Progress Assessment Report* to be submitted with all requests for payment, and it did not process payments until after it had reviewed the *Progress Assessment Report*. For 9 of the 13

contracts tested, the contractors submitted a *Progress Assessment Report* as part of the request for payment. For those nine contracts,

the Commission ensured that it received and reviewed the Progress

Progress Assessment Reports

A Progress Assessment Report should be submitted monthly to the Commission. Those reports should include contractor and subcontractor information and the amounts that the prime contractor paid its HUB and non-HUB subcontractors for the reporting period. Prime contractors are required to maintain business records documenting compliance with the HUB subcontracting plan and must submit a compliance report to the contracting agency monthly, in the format required by the Comptroller's Office.

Source: Title 34, Texas Administrative Code, Section 20.285.

² The risk related to the issues discussed in Chapter 1-B is rated low because the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risk or effects that would negatively affect the program(s)/function(s) audited.

³ For fiscal year 2016, the subcontracting monitoring requirements were in Title 34, Texas Administrative Code, Section 20.14(g). The subcontracting requirements moved to Title 34, Texas Administrative Code, Section 20.285, effective January 24, 2017.

Assessment Report before processing the payments. For 4 of the 13 contracts tested, there were no payments made during fiscal year 2016.

Recommendation

The Commission should develop and implement a process to help ensure that contractors submit monthly *Progress Assessment Reports* as required by the Texas Administrative Code.

Management's Response

TFC generally complies with the requirements of Title 34, Texas

Administrative Code, Section 20.285(b). TFC consistently requires a vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a Hub Subcontracting Plan (HSP) Progress Assessment Report (PAR) as a condition for payment.

However, TFC has entered into a number of work order/umbrella contracts which, due to the nature of the services provided, are not invoiced monthly.

TFC will seek an exception (or rule change) from the Comptroller of Public Accounts' Statewide HUB Program to allow PAR submission to match a non-monthly contract's invoicing schedule.

Person Responsible: HUB Coordinator

Target Implementation Date: August 31, 2017

Auditor Follow-up Comment

After review and consideration of management's response regarding its compliance with Texas Administrative Code requirements, the State Auditor's Office stands by its conclusions based on the evidence presented and compiled during this audit.

Chapter 2

The Commission Generally Complied with State Use Program Reporting Requirements; However It Lacked a Documented Process to Report Exceptions

Chapter 2 Rating: Low ⁴ The Commission had a process to ensure that it complied with State Use Program requirements. That process included (1) maintaining product-specific policies for procuring certain goods exclusively from TIBH Industries through the State Use Program, (2) requiring annual procurement training for its purchasers, and (3) tracking and monitoring compliance with procurement statutory requirements. However, the Commission lacked a documented process to ensure that its purchasers checked the TIBH Industries catalog for availability of an item before purchasing the item from a non-TIBH Industries vendor.

Auditors tested a sample of 60 non-TIBH expenditures to determine whether the purchases complied with State Use Program requirements. Fifty-seven (95 percent) of the 60 purchases tested complied with the State Use Program

requirements, and the products or services purchased were not available through TIBH Industries. Three of 60 products or services purchased were available from TIBH Industries; however, the Commission provided support for the reason it selected another vendor when the products or services were available through TIBH Industries.

The Commission did not have a documented process to ensure that it reported all purchasing exceptions to the Comptroller's Office and the Texas Workforce Commission as required (see text box for more information about exception reporting). The Commission did not report any of the three purchase exceptions identified during testing, totaling \$652.79, to the Comptroller's Office and the Texas Workforce Commission. However, the Commission reported 8 other exceptions totaling \$5,529,723 in fiscal year 2016. Having a documented process could help the

Commission ensure that it reports all exceptions, as required.

Exception Reporting

State statute requires state agencies and public higher education institutions to purchase from the State Use Program unless the needed products or services meet certain exceptions. Agencies and higher education institutions are also required to report all procurements made outside the State Use Program, including the cost paid and reasons for not purchasing from the State Use Program.

Classifications of acceptable exceptions include:

- The product or service available does not meet the reasonable requirements. This may include an inability to meet product specifications or to deliver the needed product within a certain period of time.
- The inability to provide temporary services within certain regions of the state.

Sources: **The Comptroller's Office** and the Texas Workforce Commission.

⁴ The risks related to Chapter 2 are rated low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Recommendations

The Commission should:

- Develop and implement a documented process to help ensure that its purchasers check the TIBH Industries catalog for all purchases and procurements prior to purchasing from a non-TIBH Industries vendor.
- Develop and implement a process to report all exceptions to purchasing from TIBH Industries to the Comptroller's Office and the Texas Workforce Commission, as required.

Management's Response

The Commission agrees to develop a more defined process of researching and documenting exception reporting.

Person Responsible: Director of Procurement

Target Implementation Date: June 30, 2017

Chapter 3

The Commission Should Strengthen Certain Controls Over Its Information Technology Systems

Chapter 3 Rating: High ⁵ Auditors identified weaknesses in the Commission's controls over the change management processes for two systems. Although those control weaknesses did not directly affect the Commission's compliance with HUB requirements, they increased the risk to the Commission financial and contracting data.

The Commission's process for making changes to its financial accounting system and legal contracts database did not ensure proper segregation of duties. The same person who programs a change could also move the change into production. That increases the risk that unauthorized changes could occur without detection.

In addition, auditors determined that the data in the Commission's legal contracts database was unreliable because it was incomplete and inaccurate. The legal contracts database was the centralized contracting database that the Commission used. The Commission did not have a process to review the data entered for completeness and accuracy.

Recommendations

The Commission should:

- Develop and document a comprehensive change management process that ensures appropriate segregation of duties for its financial accounting system and legal contracts database.
- Implement a process to review the data entered in its legal contracts database for completeness and accuracy.

Management's Response

The Commission agrees to develop and document a comprehensive application change management process for all in-house development (e.g. contracts database).

Person Responsible: Chief Information Officer

Target Implementation Date: September 30, 2017

⁵ The risks related to the issues discussed in Chapter 3 are rated as High because they present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.

TFC agrees there is a risk however, TFC management has determined that it accepts the risk. The financial accounting system is a very mature application with a very stable code base. TFC has a proprietary contract with a third party vendor to provide minor maintenance and support. Anything other than minor maintenance to the financial accounting system would require the Commission to enter into a new contract. TFC has adequate and effective controls in place to mitigate the risk that unauthorized transactions could occur without detection.

TFC agrees and considers the integrity and accuracy of the data within the legal contracts database to be important and will perform a cost/benefit analysis of implementing a review process or electronic edit checks within the system. Management expects to have the cost/benefit analysis completed and implemented by August 31, 2018.

People Responsible: General Counsel and Chief Information officer

Target Implementation Date: August 31, 2018

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

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

- Complied with statutory requirements and rules established by the Office of the Comptroller of Public Accounts (Comptroller's Office) to implement Historically Underutilized Business (HUB) Program requirements.
- Reported complete and accurate data to the Comptroller's Office.
- Complied with requirements related to the Purchasing from People with Disabilities Program (State Use Program).

Scope

The scope of this audit covered the Commission's HUB program activities and State Use program activities for fiscal year 2016. Auditors selected the Commission based on a risk assessment and audited for compliance with:

- HUB Program requirements for planning, outreach, subcontracting, and reporting, as defined by Texas Government Code, Chapter 2161, and Title 34, Texas Administrative Code, Chapter 20.
- State Use Program requirements, as defined by Texas Human Resources
 Code, Chapter 122, and Title 40, Texas Administrative Code, Chapter 806.

Methodology

The audit methodology included reviewing statutes, rules, Comptroller's Office requirements, and the Commission's policies and procedures; 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 Commission.

Data Reliability and Completeness

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) to select a sample of expenditures to test for compliance with State Use Program requirements. Auditors determined that data was sufficiently reliable for the purposes of this audit.

Auditors determined the data in the Commission's legal contracts database, which it uses to store contract information and documentation, was unreliable; however, it provided the most complete population of contracts applicable to test HUB compliance requirements. Auditors used the legal contracts database to select a sample of contracts to test for compliance with HUB compliance requirements.

The finding and conclusion about the Commission's compliance with HUB requirements are subject to the limitation discussed above.

Auditors determined that the supplemental information obtained from the Commission's automated procurement system was sufficiently reliable for purposes of this audit. Auditors extracted data from that system to verify the accuracy of the HUB data that the Commission reported to the Comptroller's Office.

Sampling Methodology

To test compliance with HUB requirements, auditors selected a nonstatistical sample of Commission contracts with effective dates in fiscal year 2016.

To test compliance with exception identification and reporting for the State Use Program, auditors selected a nonstatistical stratified, random sample of non-State Use Program purchases the Commission made from appropriated funds. The sample items were not generally representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- HUB and State Use Program reports and supporting schedules.
- The Commission's strategic plan for fiscal years 2015-2019.
- The Commission's policies and procedures.
- The Commission's HUB forum and marketing advertisements and comprehensive list of HUB contractors.
- The Commission's contracts, invoices, Progress Assessment Reports, and other supporting contracts documentation.

<u>Procedures and tests conducted</u> included the following:

- Reviewed the Commission's HUB utilization goals and rules.
- Interviewed the Commission's HUB coordinator, State Use Program coordinator, and other Commission staff.
- Reviewed the job description and associated responsibilities for the Commission's HUB coordinator.
- Tested the Commission's HUB supplemental report information.
- Tested the Commission's non-State Use Program expenditures.
- Tested the Commission's contracts with an effective date during fiscal year 2016.

Criteria used included the following:

- Texas Government Code, Chapter 2161.
- Texas Human Resources Code, Chapter 122.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 40, Texas Administrative Code, Chapter 806.
- Title 1, Texas Administrative Code, Chapter 202.
- General Appropriations Acts (83rd and 84th Legislatures).

Project Information

Audit fieldwork was conducted from September 2016 through January 2017. 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:

- Kathy Aven, CFE, CIA (Project Manager)
- Scott Labbe, CPA (Assistant Project Manager)
- Adam Berry
- Nick Hoganson
- Minhaz Khan, CIA, CISA
- Richard E. Kukucka, CFE
- Dana Musgrave, MBA (Quality Control Reviewer)
- Anca Pinchas, CPA, CIDA, CISA (Quality Control Reviewer)
- Cesar Saldivar, CGAP (Audit Manager)

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

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

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

Table 2

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

The Commission's Appropriated Funds for Capital Projects for the 2014-2015 and 2016-2017 Bienniums

As Table 3 shows, the Texas Facilities Commission's (Commission) appropriated funds for capital projects increased significantly in the 2016-2017 biennium. Most of the increase was due to funds appropriated for the planned Capitol Complex and the North Austin Complex. The Commission's capital budget for the 2016-2017 biennium included \$253,087,172 for the repair and rehabilitation of buildings and facilities and \$767,670,000 for construction of buildings and facilities.

Table 3

The Commission's Appropriated Funds for Capital Projects for the 2014-2015 and 2016-2017 Bienniums			
Fiscal Year	Appropriated Funds for Capital Projects		
2014	\$39,211,465		
2015	\$2,277,480		
2016	\$1,022,214,514		
2017	\$724,874		

Sources: The General Appropriations Act (83rd Legislature) for the 2014-2015 biennium and the General Appropriations Act (84th Legislature) for the 2016-2017 biennium.

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The Commission's Fiscal Year 2016 HUB Goals and Performance

Table 4 shows the Texas Facilities Commission's (Commission) projected fiscal year 2016 goals and actual performance for its Historically Underutilized Business (HUB) program for each procurement category. The Commission adopted the statewide HUB goals as their projected HUB goals.

Table 4

The Commission's HUB Goals and Performance Fiscal Year 2016					
HUB Category	The Commission's Projected HUB Goals	The Commission's Actual HUB Performance			
Heavy construction contract utilization goal	11.2%	0.0%			
Building construction contract utilization goal	21.1%	26.7%			
Special trade construction contract utilization goal	32.9%	11.5%			
Professional services contract utilization goal	23.7%	37.7%			
Other services contract utilization goal	26.0%	15.3%			
Commodities contract utilization goal	21.1%	14.9%			

Source: The Texas Comptroller of Public Accounts HUB Annual Report, Fiscal Year 2016. Auditors did not perform procedures to validate the information presented in this table.

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Appendix 5 Related State Auditor's Office Work

Related State Auditor's Office Work			
Number	Product Name	Release Date	
17-028	An Audit Report on the University of Texas Medical Branch at Galveston's Compliance with Requirements Related to the Historically Underutilized Business and State Use Programs	March 2017	
17-008	An Audit Report on the Department of Public Safety's Compliance with Requirements Related to the Historically Underutilized Business and State Use Programs	October 2016	
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	
15-001	An Audit Report on Selected Contracts at the Texas Facilities Commission	September 2014	

Copies of this report have been distributed to the following:

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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 John Zerwas, House Appropriations Committee
The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

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Mr. Robert D. Thomas, Chair

Mr. Mike Novak, Vice Chair

Mr. William Darby

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Mr. Jack W. Perry

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