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An Audit Report on  
**Selected Major Agreements Under the  
Texas Economic Development Act**

July 2021  
Report No. 21-027



An Audit Report on

# ***Selected Major Agreements Under the Texas Economic Development Act***

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## **Overall Conclusion**

Under the Texas Economic Development Act (Texas Tax Code, Chapter 313), independent school districts (ISDs) have entered into agreements with businesses for limitations on the appraised values for property (agreements). Those agreements have enabled capital investments and job creation benefiting the local and state economies.

The State Auditor's Office selected and audited agreements at three ISDs (see text box). For those three agreements, auditors reviewed the corresponding applications and the agreements to verify whether they complied with applicable Texas Tax Code, Chapter 313, requirements and requirements of the Office of the Comptroller of Public Accounts (Comptroller's Office). In addition, auditors reviewed the ISDs' processes for:

- Approving the applications.
- Forming and executing the agreements.
- Disclosing conflicts of interest.
- Calculating and receiving payments under the agreements.
- Monitoring and reporting on compliance with the agreements.

For the agreements audited at the three ISDs, auditors determined the following:

- The property valuation limitation amount and minimum qualified investment amount in Edinburg Consolidated Independent School District's (Edinburg CISD) agreement were lower than statutory minimums. As a result, the business's property tax liability was reduced by a greater amount than allowed by statute. Edinburg CISD did ensure that the agreement included other required provisions and processed the application as required.

### **Background**

The Texas Economic Development Act authorizes independent school districts (ISDs) to enter into agreements for limitations on appraised values of qualifying property (agreements). That property valuation limitation allows businesses under those agreements to pay a reduced amount of taxes to the ISD in return for creating jobs and capital improvements that enhance the local and state economies.

As of October 2020, there were 509 active agreements with 222 ISDs. The ISDs audited were:

- Deer Park ISD.
- Edinburg Consolidated ISD.
- McCamey ISD.

Certain provisions of Chapter 313 of the Texas Tax Code will expire on December 31, 2022. As a result, ISDs will no longer have the statutory authority to enter into such tax limitation agreements of the type audited in this report. Any agreements approved prior to December 31, 2022 will continue in effect through the agreements' expiration dates.

See Appendix 3 for more background on the Texas Economic Development Act.

Sources: Texas Tax Code, Chapter 313; and the Office of the Comptroller of Public Accounts.

- McCamey ISD and Deer Park ISD processed applications and developed agreements as required. However, McCamey ISD was unable to provide documentation supporting that the amount of the application fee did not exceed its costs of application processing.
- All three ISDs' conflicts of interest policies complied with statutory requirements, and the ISDs had processes in place for disclosing conflicts of interest. However, McCamey ISD did not comply with its policy regarding obtaining conflicts of interest statements from newly elected or appointed Board members.
- All three ISDs (1) either ensured payments were received by their due dates or followed processes to collect late payments and (2) correctly and accurately calculated payments in accordance with the agreements.
- All three ISDs submitted all required monitoring reports to the Comptroller's Office. However, certain information on reports that McCamey ISD submitted was inaccurate or inconsistent.

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 <sup>a</sup>
1-A	Background on Establishing Property Value Limitation Agreements	Not rated
1-B	Summary of the Agreements Audited	Not Rated
2-A	The Property Valuation Limitation and Minimum Qualified Investment Amounts in Edinburg CISD's Agreement Did Not Comply with Statute	High
2-B	McCamey ISD Complied with Most Requirements for Processing Agreement Applications and Developing Agreements	Medium
2-C	Deer Park ISD Complied with Requirements for Processing Applications for Agreements and Developing Agreements	Low
3-A	Deer Park ISD and Edinburg CISD Complied with Conflicts of Interest Requirements	Low
3-B	McCamey ISD Should Strengthen Its Compliance with Its Conflicts of Interest Policies	Medium
4	Payments to ISDs Under Agreements	Low
5-A	McCamey ISD Submitted All Required Reports; However, It Should Develop a Review Process to Verify the Accuracy of Those Reports	Medium
5-B	Deer Park ISD and Edinburg CISD Submitted Accurate Compliance Monitoring Reports	Low
<sup>a</sup> A chapter/subchapter is rated <b>Priority</b> 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.		

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating <sup>a</sup>
<p>A chapter/subchapter is rated <b>High</b> 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.</p> <p>A chapter/subchapter is rated <b>Medium</b> if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter/subchapter is rated <b>Low</b> if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.</p>		

Auditors communicated other, less significant issues separately in writing to the ISDs’ management.

### ***Summary of Management’s Responses***

At the end of certain chapters in this report, auditors made recommendations to Edinburg CISD and McCamey ISD to address the issues identified during this audit. Auditors did not make any recommendations to Deer Park ISD.

McCamey ISD agreed to implement the recommendations. However, Edinburg CISD did not agree with the findings and recommendation related to the appraisal value limitation and minimum qualified investment amounts. Specifically, Edinburg CISD disagreed that the minimum value limitation and minimum qualified investment amounts should have each been set at \$30 million.

After review and consideration of the management responses, the State Auditor’s Office stands by its conclusions based on the evidence provided during this audit.

### ***Audit Objective and Scope***

The objective of this audit was to determine whether selected major agreements under the Texas Economic Development Act:

- Accomplish the purposes of Texas Tax Code, Section 313.003.
- Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
- Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.

The scope of the audit covered the processes and activities associated with selected agreements under the Texas Economic Development Act through April 2021. The agreements selected were:

- Agreement 1139 between Deer Park ISD (Harris County) and Equistar Chemicals, LP.
- Agreement 1003 between Edinburg Consolidated ISD (Hidalgo County) and Hidalgo Wind Farm, LLC.
- Agreement 1073 between McCamey ISD (Upton County) and SPD Solar Texas 2, LLC.

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# Detailed Results

Chapter 1

## **Background of Agreement Formation and Summary of the Agreements Audited**

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A property value limitation agreement (agreement) allows a business to pay a reduced amount of taxes to an Independent School District (ISD) in return for creating jobs and capital investment that enhances the local and state economies. Chapter 1-A provides information on the process for establishing such agreements, and Chapter 1-B provides background information on the three agreements audited.

Chapter 1-A

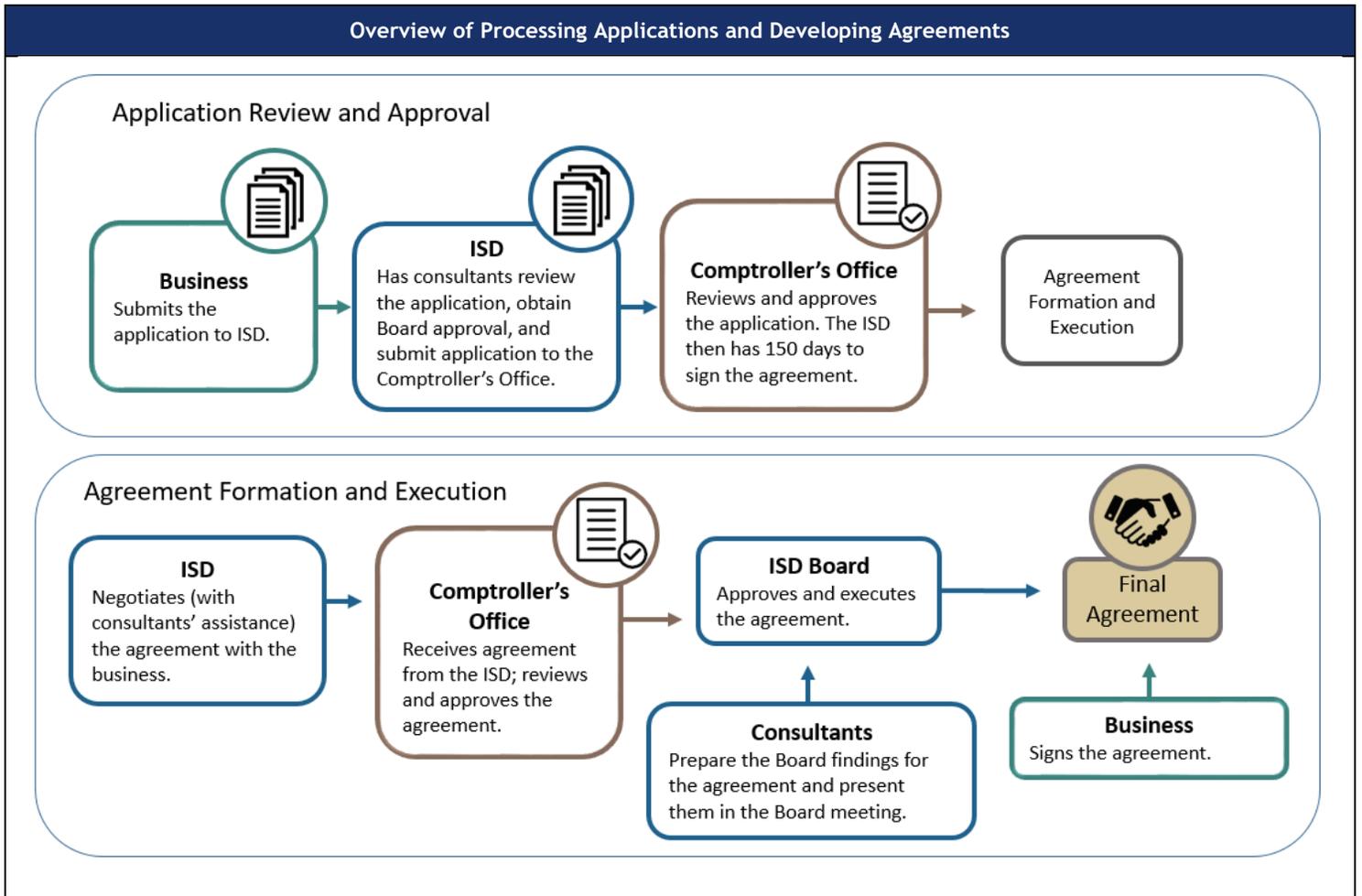
### **Background on Establishing Property Value Limitation Agreements**

To start the process for entering an agreement, a business submits an application to an ISD. The ISD retains consultants to (1) help review the application and (2) provide input on whether a potential agreement would benefit the ISD.

As part of the application review and agreement formation processes, the ISD's board meets to vote on (1) accepting the application and proceeding to review the application and (2) approving and executing the final agreement between the ISD and the business. See Appendix 3 for further information on how agreements are formed, including the application process.

Figure 1 on the next page outlines steps for processing applications and developing agreements.

Figure 1



Sources: Based on information provided by the ISDs and the Comptroller's Office.

Chapter 1-B

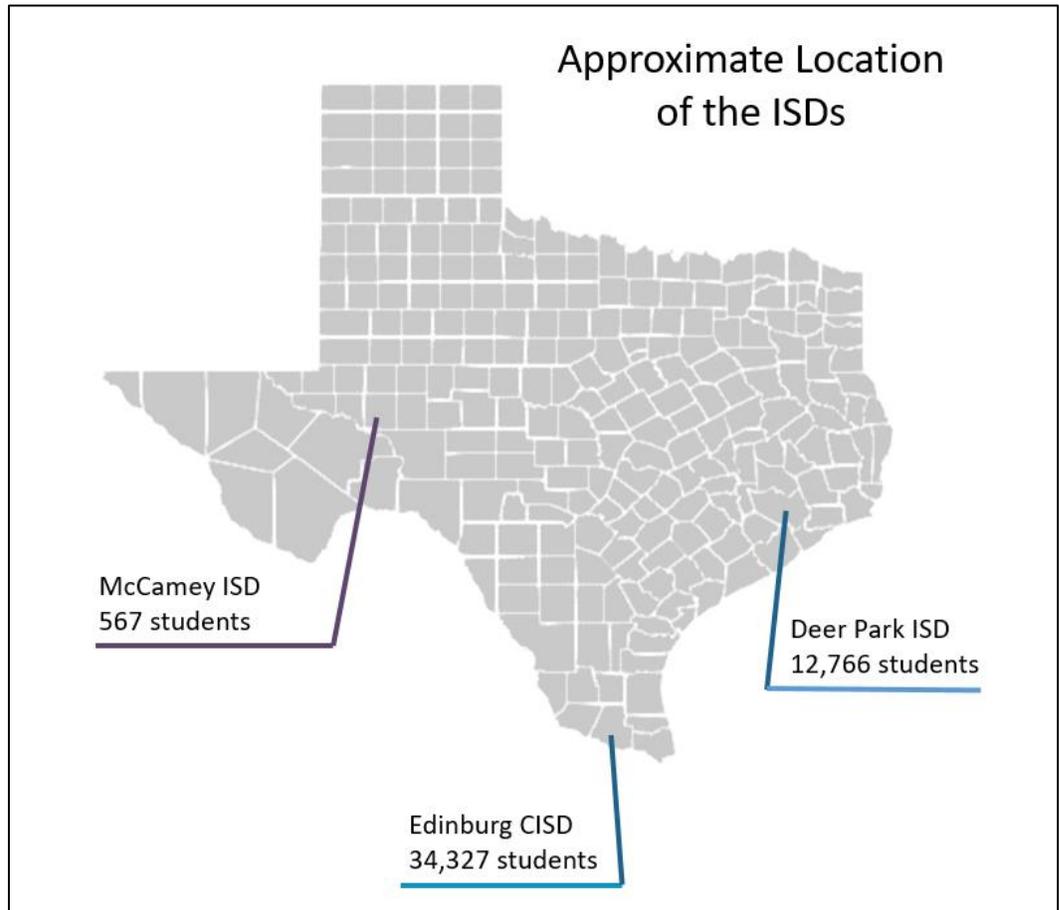
## Summary of the Agreements Audited

The three agreements audited included:

- Deer Park ISD's agreement with Equistar Chemicals, LP (Application No. 1139).
- Edinburg Consolidated Independent School District's (CISD) agreement with Hidalgo Wind Farm, LLC (Application No. 1003).
- McCamey ISD's agreement with SPD Solar Texas 2, LLC (Application No. 1073).

Figure 2 shows the approximate location of those ISDs within the state.

Figure 2



Source: Texas Education Agency.

Each ISD hired a consultant to assist in the administration of the agreements selected, including (1) addressing reporting requirements and (2) performing annual calculations of revenue protection payments and supplemental payments.

Table 2 on the next page summarizes key information from the agreements audited.

Table 2

Summary of Agreements Audited			
ISD Name	Deer Park	Edinburg	McCamey
Agreement Number	1139	1003	1073
Agreement Holder	Equistar Chemicals, LP	Hidalgo Wind Farm, LLC	SPD Solar Texas 2, LLC
Eligibility Category	Manufacturing	[Wind] Renewable Energy Electric Generation	[Non-Wind] Renewable Energy Electric Generation
County	Harris County	Hidalgo County	Upton County
Estimated Investment Amount <sup>a</sup>	\$652,500,000	\$310,849,057	\$229,597,569
Qualified Jobs Created as of December 31, 2019 <sup>a b</sup>	32	2 <sup>c</sup>	3 <sup>c</sup>
Estimated Appraised Value as of December 31, 2019	\$195,735,700	\$205,290,400	\$228,388,100
Limitation Per Agreement	\$80,000,000	\$25,000,000	\$25,000,000
Agreement Date	November 14, 2016	December 9, 2014	June 12, 2015
Limitation Period Start Date	January 1, 2019	January 1, 2017	January 1, 2017
Limitation Period End Date	December 31, 2028	December 31, 2026	December 31, 2026
Final Termination Date	December 31, 2033	December 31, 2031	December 31, 2031
Projected Total Taxes for Agreement Period <sup>a</sup>	\$75,991,809	\$23,985,438	\$18,835,104
Tax to Be Paid (Estimated) <sup>a</sup>	\$42,774,564	\$8,579,807	\$8,564,808
Lifetime Tax Savings (Estimated) <sup>a</sup>	\$33,217,245	\$15,405,631	\$10,270,296
Revenue Protection Payments Received Through March 31, 2021	\$2,945,115	\$3,678,870	\$1,424,178
Supplemental Payments Received Through March 31, 2021	\$879,180	\$1,260,000	\$330,059

<sup>a</sup> Certain information in this table is based on estimates from information reported by the businesses that was not verified by auditors.

<sup>b</sup> Texas Tax Code, Section 313.025(f-1), allows ISDs to waive the jobs requirement if the governing body determines that the requirement exceeds the industry standard to operate a facility described in the application.

<sup>c</sup> Agreements 1003 and 1073 received waivers for the qualifying jobs requirement from the Office of the Comptroller of Public Accounts (Comptroller's Office).

Sources: The Comptroller's Office's website information on Texas Tax Code, Section 313; Deer Park ISD; Edinburg CISD; and McCamey ISD.

Table 3 provides information on the appraised value and the appraisal limitation value of the properties in the audited agreements through tax year 2020.

Table 3

Property Appraisal Values Compared to Appraisal Limitation Values January 2017 through December 2020									
Agreement Year <sup>a</sup>	Deer Park ISD Agreement No. 1139			Edinburg CISD Agreement No. 1003			McCamey ISD Agreement No. 1073		
	Tax Year	Appraised Value	Appraisal Limitation Value	Tax Year	Appraised Value	Appraisal Limitation Value	Tax Year	Appraised Value	Appraisal Limitation Value
3	2019	\$195,735,700	\$80,000,000	2017	\$234,782,400	\$25,000,000	2018	\$89,124,290	\$25,000,000
4	2020	\$351,341,900	\$80,000,000	2018	\$223,315,830	\$25,000,000	2019	\$228,388,100	\$25,000,000
5	-	-	-	2019	\$205,290,400	\$25,000,000	2020	\$177,206,330	\$25,000,000
6	-	-	-	2020	\$190,972,650	\$25,000,000	-	-	-

<sup>a</sup> All agreements have a stipulated qualifying time period to make the qualified investment. The qualifying time period generally begins on the date the application is approved by the ISD and ends on the last day of the second complete tax year following the start date.

Sources: Deer Park ISD, Edinburg CISD, and McCamey ISD.

## Applications and Agreements

The agreement for one of the ISDs audited did not comply with the statutory minimums for the property valuation limitation and minimum qualified investment amounts. That ISD did verify that all other required provisions were included in the agreement.

The other two ISDs audited verified that their agreements included all required provisions and met statutory minimums.

All three ISDs also verified that (1) the applicants were eligible, (2) information about the applicants and proposed projects was true and correct, and (3) the applications were in the best interest of the ISDs, as required by Texas Tax Code, Chapter 313.

Table 4 summarizes the results of testing of the ISDs' processing of applications and agreement development.

Table 4

Testing Results - Applications for Agreements and Developing Agreements			
Attribute	Deer Park ISD (No. 1139)	Edinburg CISD (No. 1003)	McCamey ISD (No. 1073)
Did the submitted application contain information sufficient to show that the property identified in the application as qualified property met the applicable criteria established by Texas Tax Code, Section 313.021(2), and was the applicable application fee included?	Yes	Yes	Yes
Before approving the application, did the ISD verify that the information in the application was true and correct, that the applicant was eligible for the limitation, and that granting the application was in the best interest of the ISD and the State?	Yes	Yes	Yes
Did the qualified property described in the application meet the criteria from Texas Tax Code, Section 313.021(2)?	Yes	Yes	Yes
Was the application fee reasonable and within the limit of the estimated cost to the ISD for processing and acting on the application?	Yes	Yes	No <sup>a</sup>
Did the ISD verify that construction did not start prior to the Chapter 313 application date?	Yes	Yes	Yes
Does the agreement between the ISD and the business contain all provisions required by statute at the time of the agreement?	Yes	No <sup>b</sup>	Yes
<sup>a</sup> McCamey ISD was unable to provide evidence supporting that the application fee charged did not exceed the costs of processing the application. <sup>b</sup> The property value limitation amount and the minimum qualified investment amount for Edinburg CISD's agreement did not meet the minimums required by Texas Tax Code, Sections 313.053 and 313.054, respectively.			

## The Property Valuation Limitation and Minimum Qualified Investment Amounts in Edinburg CISD's Agreement Did Not Comply with Statute

Chapter 2-A  
Rating:  
High <sup>1</sup>

The property valuation limitation (limitation) amount and the minimum qualified investment (investment) amount in Edinburg Consolidated Independent School District's (Edinburg CISD) agreement were lower than the statutory minimums.

The agreement was executed in 2014, when Edinburg CISD was classified as a Category I district as defined by Texas Tax Code, Section 313.052 (see text box for more information about how ISDs are categorized). Edinburg CISD relied on information from the Comptroller's Office that concluded it was a Category II district based on tax year 2012 property values. However, Texas Tax Code, Section 313.052, requires that an ISD's category be based on the taxable property values from the preceding tax year. Additionally, when the agreement was approved, the information provided to the Edinburg CISD's Board of Trustees concluded that the district's classification was Category I based on its 2013 taxable property values.

### Categorization of ISDs

ISDs are categorized based on the taxable value of industrial property within the ISD for the preceding tax year. That category determines the required minimum property valuation limitation and minimum qualified investment amounts for any new agreements.

Source: Texas Tax Code, Section 313.052.

**Property Valuation Limitation.** The property valuation limitation amount caps the property value for the business's maintenance and operations property taxes owed to the ISD. Edinburg CISD's agreement did not set the correct limitation amount of at least \$30 million as required by Texas Tax Code, Section 313.054. Instead, the agreement set the limitation amount at \$25 million. As a result, the business's property tax liability was reduced by a greater amount than allowed by statute.

Specifically, for tax years 2017 through 2020, the business paid approximately \$223,000 less in property taxes than it would have been required to pay if the agreement had set the limitation at the required minimum. This reduction in tax revenue from the business would also impact the calculation of revenue protection payments the business made to the ISD during that time period.

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

**Minimum Qualified Investment.** A minimum qualified investment amount is the amount that the applicant must invest within the agreement’s qualified time period. Edinburg CISD did not ensure that the agreement established an investment amount of at least \$30 million, as required by Texas Tax Code, Section 313.053. Instead, the agreement set the investment amount at \$25 million.

The business self-reported the actual qualified investment for the agreement as \$310.8 million, which exceeded the statutory minimum. However, not setting the correct investment amount increases the risk that the State may not receive the full economic benefit of an agreement.

**Application Processing and Agreement Provisions.** Edinburg CISD verified that the agreement included other required provisions. For example, the agreement included a provision requiring the property owner to maintain a viable presence for at least five years after the end of the property valuation limitation. Additionally, Edinburg CISD obtained its Board’s approval of the agreement and verified that (1) the applicant was eligible, (2) information about the applicant and proposed project was true and correct, and (3) granting the application was in the best interest of the ISD, as required by Texas Tax Code, Chapter 313.

## Recommendation

Edinburg CISD should review the provisions of its agreements for compliance with all statutory minimums.

## Management’s Response

*During the SAO review of the application, the District provided to the Auditor the Certificate issued by the Texas Comptroller’s establishing that \$25 million value limitation complied with the limitations set forth in statute. However, the District did not have any additional documents supporting this conclusion as the historical versions of the Comptroller website were unavailable to us. However, the District now has confirmation that at the time the application was submitted and certificate was issued, the minimum qualified investment value published for Edinburg CISD was \$20 million. The minimum value set forth in the Agreement was appropriate.*

*On its face, the Certificate binds the District to approve the Application and adopt an Agreement that conforms to the Application within a year from the date of Certification. “This certificate is no longer valid if . . . **the limitation agreement does not conform to the application.**” (emphasis added). Under a strict interpretation of the rules adopted by the Comptroller implement*

*Chapter 313 of the Texas Tax Code, the District could not approve a limitation different from what was set forth in the application (\$25 million) and what had been certified by the Comptroller. The District maintains the amount of limitation set forth in the Agreement is appropriate and is in the amount required by the rules adopted by the Comptroller.*

#### **Auditor Follow-up Comment**

Edinburg CISD received the Comptroller's Office's certificate for a limitation of appraised value in July 2014. That certificate authorized the CISD to move forward with negotiating and entering the agreement and was based on information self-reported by the applicant. The certificate states it is no longer valid if "... the information presented in the application changes ..." and the Comptroller's Office's rules allows a school district to submit an amended or supplemental application.

The Texas Tax Code requires that an ISD's category be based on the taxable property values from the preceding tax year. For the agreement audited, the preceding tax year is 2013. In addition, based on the information submitted to the ISD's board, it was aware of its 2013 property values and of its status as a Category I district.

The Texas Tax Code requires that Category I districts set minimum qualified investment and minimum limitation amounts of \$30 million.

After review and consideration of the management responses, the State Auditor's Office stands by its conclusions based on the evidence provided during this audit.

## **McCamey ISD Complied with Most Requirements for Processing Agreement Applications and Developing Agreements**

**Chapter 2-B  
Rating:**  
Medium <sup>2</sup>

McCamey ISD obtained its Board's approval of the agreement and verified that (1) the applicant was eligible, (2) information about the applicant and proposed project was true and correct, and (3) granting the application was in the best interest of the district, as required by Texas Tax Code, Chapter 313. Additionally, McCamey ISD's agreement contained all required provisions, such as requiring the property owner to maintain a viable presence.

However, McCamey ISD was unable to provide documentation supporting that the amount of the application fee did not exceed its costs of application processing, as required by Texas Tax Code, Section 313.031(b).

### **Recommendation**

McCamey ISD should maintain documentation associated with its agreements.

### **Management's Response**

*McCamey ISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. McCamey will continue to work with their consultants to ensure all documents associated with the district's Tax Code Chapter 313 agreements are maintained as required. Procedures and processes have been implemented to prevent the loss of any critical documents, and the consultants providing support to the district related to 313 agreements currently maintain a duplicate set of all documents associated with the agreements and required reporting.*

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

Chapter 2-C

## **Deer Park ISD Complied with Requirements for Processing Applications for Agreements and Developing Agreements**

**Chapter 2-C  
Rating:**

Low<sup>3</sup>

Deer Park ISD obtained its Board's approval of the agreement and verified that (1) the applicant was eligible, (2) information about the applicant and proposed project was true and correct, and (3) granting the application was in the best interest of the district, as required by Texas Tax Code, Chapter 313. Additionally, it verified that its agreement contained all required provisions, such as requiring the property owner to maintain a viable presence.

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<sup>3</sup> The risk related to the issues discussed in Chapter 2-C is rated as Low 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.

## Disclosing Conflicts of Interest

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All three ISDs' conflicts of interest policies included all requirements in the Texas Local Government Code. However, McCamey ISD did not comply with its conflicts of interest policies related to newly elected or appointed Board members.

Chapter 3-A

### Deer Park ISD and Edinburg CISD Complied with Conflicts of Interest Requirements

Chapter 3-A  
Rating:  
Low <sup>4</sup>

Deer Park ISD's and Edinburg CISD's conflicts of interest policies included all requirements in Texas Local Government Code, Chapters 171 and 176, and all Board members confirmed that they did not have any conflicts during Board meetings prior to approving the agreements.

In addition, since the agreements were approved, both ISDs' policies required that Board members and district employees submit conflicts of interest statements for agreements confirming or denying the existence of a conflict. This exceeds the requirements of Texas Local Government Code, Chapters 171 and 176, which require a disclosure only if a conflict exists.

Chapter 3-B

### McCamey ISD Should Strengthen Its Compliance with Its Conflicts of Interest Policies

Chapter 3-B  
Rating:  
Medium <sup>5</sup>

When McCamey ISD's agreement was approved, no Board members disclosed that they had a conflict related to the agreement. Statute requires that local officials and officers disclose only if a conflict exists.

In addition, since the agreement was approved, McCamey ISD implemented a conflicts of interest policy that included all Local Government Code requirements and required all Board members to complete conflicts of interest statements whether they had a conflict or not. All Board members confirmed they did not have conflicts of interest prior to approving the most recent amendment to the agreement.

However, McCamey ISD did not comply with its policy requiring newly elected or appointed members of its Board to submit conflicts of interest statements for agreements in place or under consideration. Specifically, two

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<sup>4</sup> The risk related to the issues discussed in Chapter 3-A is rated as Low 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.

<sup>5</sup> The risk related to the issues discussed in Chapter 3-B is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

Board members elected in 2020, after the agreement audited was in place, did not complete conflicts of interest statements. As of March 2021, the Board had not taken any action on the agreement since the new members were elected. Not completing those statements increases the risk that conflicts of interest may not be identified and mitigated.

### **Recommendation**

McCamey ISD should follow its policy requiring newly elected or appointed Board members to complete conflicts of interest statements for agreements in place or under consideration.

### **Management's Response**

*McCamey ISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. The McCamey ISD Board of Trustees is in the process of developing Board Operating Procedures (BOPs) and will ensure a procedure is included for new board members, related to conflict of interest. The BOPs will be completed prior to the end of 2021.*

## Payments to ISDs Under Agreements

**Chapter 4  
Rating:**  
Low <sup>6</sup>

All three ISDs (1) either ensured that payments were received by their due dates or followed processes to collect late payments and (2) accurately calculated payments in accordance with the agreements.

Table 5 summarizes the results of testing of the payments made to the three ISDs (see text box for information about payment types).

### Selected Payment Types Under the Audited Agreements

- **Revenue Protection Payment** - The payment from the business to protect an ISD against losses in maintenance and operations revenue throughout the duration of the agreement.
- **Supplemental Payment** - An amount paid by the business to an ISD for the execution of an agreement. The annual supplemental payment amount may not exceed the greater of either \$50,000 or \$100 per student per year multiplied by average daily attendance.

Sources: The Comptroller’s Office and Texas Tax Code, Chapter 313.

Table 5

Testing Results - Payments Received by the ISDs			
Attribute	Deer Park ISD (No. 1139)	Edinburg CISD (No. 1003)	McCamey ISD (No. 1073)
Were the revenue protection payments and supplemental payments (payment in lieu of taxes) paid by the applicant by the due date?	Yes <sup>a</sup>	Yes	Yes <sup>a</sup>
Were the calculations of the revenue protection payment and supplemental payment (payment in lieu of taxes) amounts performed correctly/accurately and in accordance with the agreement?	Yes	Yes	Yes
<sup>a</sup> Deer Park ISD and McCamey ISD each followed processes to collect one late payment. All of their other payments were made by the due dates.			

<sup>6</sup> The risk related to the issues discussed in Chapter 4 is rated as Low because the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

## Compliance Monitoring and Reporting

All three ISDs submitted all required monitoring reports to the Comptroller's Office. However, one ISD had inaccuracies and inconsistencies on several of those reports.

Table 6 summarizes the results of the testing of compliance reports.

Table 6

Testing Results - Compliance Reporting			
Requirement Tested	Deer Park ISD (No. 1139)	Edinburg CISD (No. 1003)	McCamey ISD (No. 1073)
Did the ISD monitor the business's compliance with the limitation agreement, including submitting the required monitoring reports showing that capital investments and job creation were performed as agreed?	Yes	Yes	No <sup>a</sup>
Did the ISD's website contain a link to the page on the Comptroller's Office's website with all Chapter 313 limitation agreement information?	Yes	No <sup>b</sup>	Yes
<sup>a</sup> Certain information on some of the reports that McCamey ISD submitted was inaccurate or inconsistent. <sup>b</sup> Edinburg CISD did not maintain a link to the Comptroller's Office's website on agreements, as required. However, Edinburg CISD added a link after auditors brought this issue to its attention.			

## McCamey ISD Submitted All Required Reports; However, It Should Develop a Review Process to Verify the Accuracy of Those Reports

Chapter 5-A  
Rating:

Medium <sup>7</sup>

McCamey ISD submitted all required reports to the Comptroller's Office (see text box for required monitoring reports). However, certain information in some of the reports it submitted was inaccurate or inconsistent. Specifically:

- The project market value was incorrectly reported as \$89 million instead of \$228 million on the tax year 2019 Annual Eligibility Report. The value that McCamey ISD reported was the project market value for a prior tax year.
- The job creation totals reported in the Annual Eligibility Reports for tax years 2017 through 2019 were inconsistent from year to year and when compared to the Biennial Progress Reports and Biennial School District Cost Data Requests. The jobs required to be created ranged between 0 and 3 on the various reports.
- Job and wage information on the 2018 Biennial Progress Report was inconsistent. Specifically:
  - ♦ The total wages for qualifying jobs were reported as \$86,667 and the median wages for qualifying jobs as \$90,278. The total wages should be higher than the median wages.
  - ♦ The total wages for non-qualifying jobs was reported as \$7,226,325 while the number of non-qualifying jobs was reported as 0.

### Required Monitoring (Eligibility and Progress) Reports

The ISDs are required to submit monitoring reports for their agreements to the Comptroller's Office. Specifically, they must submit the following reports:

- **Annual Eligibility Report (Form 50-772A)** - The form filled out annually by businesses in agreements and submitted to the ISDs by June 15 to report continued eligibility under Texas Tax Code, Chapter 313. The ISDs must submit the form to the Comptroller's Office by August 15.
- **Biennial Progress Report (Forms 50-773A and 50-773B)** - The form filled out by businesses in agreements and submitted to the ISDs by June 15 of each even-numbered year to report business project status. The ISDs must submit the form to the Comptroller's Office by August 15.
- **Biennial School District Cost Data Request (Forms 50-827A and 50-827B)** - The form completed by the ISDs and submitted to the Comptroller's Office by August 15 of each even-numbered year to report payment activity and projected costs over the life of the agreement.

Source: The Comptroller's Office.

Providing inaccurate information about the agreement to state oversight entities reduces transparency and increases the risk that noncompliance would not be detected.

<sup>7</sup> The risk related to the issues discussed in Chapter 5-A is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

## Recommendation

McCamey ISD should develop and implement a review process to verify that reports submitted to the Comptroller's Office are accurate and consistent.

## Management's Response

*McCamey ISD management agrees that the recommendation made by the SAO can be beneficial to both the school district and the State of Texas. McCamey ISD will work with their consultants to develop a joint procedure to verify the accuracy of key reporting data and will implement the procedure as a part of the current (Tax Year 2021) reporting cycle.*

Chapter 5-B

## Deer Park ISD and Edinburg CISD Submitted Accurate Compliance Monitoring Reports

Chapter 5-B  
Rating:

Low<sup>8</sup>

Deer Park ISD and Edinburg CISD submitted all required monitoring reports for their agreements to the Comptroller's Office. In addition, the information in those reports was accurate and consistent (see text box in Chapter 5-A for more information about the required reports). Specifically, the information in the following reports submitted was accurate and consistent:

- Annual Eligibility Report (Form 50-772A).
- Biennial Progress Report (Forms 50-773A and 50-773B).
- Biennial School District Cost Data Request (Forms 50-827A and 50-827B).

Edinburg CISD did not maintain a link to the Comptroller's Office's website on 313 agreements, as required by Texas Tax Code, Section 313.0265(c). However, it added a link after auditors brought this issue to its attention.

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<sup>8</sup> The risk related to the issues discussed in Chapter 5-B is rated as Low 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.

# Appendices

Appendix 1

## **Objective, Scope, and Methodology**

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### **Objective**

The objective of this audit was to determine whether selected major agreements under the Texas Economic Development Act:

- Accomplish the purposes of Texas Tax Code, Section 313.003.
- Comply with the intent of the Legislature in enacting Texas Tax Code, Section 313.004.
- Were executed in compliance with the provisions of Texas Tax Code, Chapter 313.

### **Scope**

The scope of the audit covered the processes and activities associated with selected appraisal value limitation agreements (agreements) under the Texas Economic Development Act through April 2021. The agreements selected were:

- Agreement 1139 between Deer Park ISD (Harris County) and Equistar Chemicals, LP.
- Agreement 1003 between Edinburg CISD<sup>9</sup> (Hidalgo County) and Hidalgo Wind Farm, LLC.
- Agreement 1073 between McCamey ISD (Upton County) and SPD Solar Texas 2, LLC.

### **Methodology**

The audit methodology included selecting three agreements to audit from the Office of the Comptroller of Public Accounts' (Comptroller's Office's) listing of agreements. In selecting the agreements, auditors considered risk factors such as total gross tax savings for the businesses as a result of the appraisal limitation and total revenue payments. Additionally, auditors considered factors such as eligibility category, geographic location, and ISD size when selecting agreements.

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<sup>9</sup> Consolidated independent school district.

Auditors did not use a sampling methodology on this audit but instead collected, reviewed, and analyzed information related to selected agreements to perform selected tests and other procedures. Therefore, it was not necessary for auditors to project testing results to the populations.

The audit methodology also included (1) testing applications, agreements, conflicts of interest policies and procedures, and required annual and biennial reports and (2) conducting interviews with ISD personnel and consultants, as well as management at the Comptroller's Office.

Information collected and reviewed included the following:

- Agreements between the ISDs and the businesses.
- Application documentation, including certificates for limitations on appraised value and economic impact analyses issued by the Comptroller's Office; facilities impact evaluations from the Texas Education Agency; ISDs' financial projections; ISD board application review results; and correspondence from the Comptroller's Office to the ISDs.
- Minutes from the ISDs' board of trustees (board) meetings.
- Eligibility and compliance monitoring reports including Annual Eligibility Reports; Biennial Progress Reports; and Biennial School District Cost Data Requests.
- ISD policies and procedures.
- Conflicts of interest statements signed by selected ISD board members and management.
- Supporting documentation for calculations and receipts of revenue protection and supplemental payments.

Procedures and tests conducted included the following:

- Interviewed ISD management, staff, and consultants.
- Performed analysis on the populations of agreements from the Comptroller's Office.
- Tested selected applications and associated agreements for compliance with applicable requirements.
- Reviewed calculations and tested receipts of revenue protection and supplemental payments.

Criteria used included the following:

- Texas Tax Code, Chapter 313.
- Texas Local Government Code, Chapters 171 and 176.
- Title 34, Texas Administrative Code, Chapter 9.
- ISD policies and procedures.
- Agreements between the ISDs and the businesses.

### **Project Information**

Audit fieldwork was conducted from February 2021 through May 2021. 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:

- Scott Armstrong, CISA, CGAP (Project Manager)
- Aaron Daigle, CPA (Assistant Project Manager)
- Elizabeth Gallegos, MAcc
- Benjamin Hikida, Macy
- Ryan Walther
- Robert G. Kiker, CGAP (Quality Control Reviewer)
- Lauren Godfrey, CIA, CGAP (Audit Manager)

## Issue Rating Classifications and Descriptions

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

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

Table 7 provides a description of the issue ratings presented in this report.

Table 7

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

## ***Background Information on the Texas Economic Development Act***

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In 2001, the 77th Legislature enacted the Texas Economic Development Act, Texas Tax Code, Chapter 313 (Act), which permitted independent school districts (ISDs) to offer eight-year limitations on the appraised values of property for the maintenance and operations portion of the ISDs' property taxes. Under the Act, ISDs also were entitled to receive additional state aid each tax year from the Texas Education Agency for tax credits that are associated with the agreements for limitations on the appraised values of property (agreements).

The purpose of the Act was to enhance economic development in Texas by permitting ISDs to offer incentives to attract large capital investments and new jobs. Additionally, the Act sought to attract new businesses or production to improve the Texas economy and expand the property tax base.

In 2013, the 83rd Legislature passed House Bill 3390 (HB 3390), which both reauthorized the economic development program for nine years, through December 31, 2022, and made several substantive changes. Those changes included repealing the tax credit provisions; adjusting the definitions of qualified jobs and properties; requiring that all agreements be in a form approved by the Office of the Comptroller of Public Accounts (Comptroller's Office); and requiring that the State Auditor's Office conduct a yearly audit of selected agreements under the Act.

In addition, the Legislature expressed in HB 3390 its intent that economic development decisions involving ISD property taxes should occur locally with oversight by the State and should be consistent with identifiable statewide economic development goals. Under the Act, Texas ISDs are authorized to offer limitation agreements to applicants that invest in the local community. The Act offers applicants a 10-year limitation on appraised value for a portion of the ISD property tax (*ad valorem* tax). In exchange for that limitation, the applicants agree to invest in new property, create jobs in the ISD, and maintain a presence in the community for a specified number of years. Local tax revenues that the ISDs forego during the limitation period are replaced with state funding, plus direct incentives from the applicant based on tax savings and school attendance as described in individual agreements developed after the applicant is approved by the ISD and the Comptroller's Office.

Further, the Act describes situations in which property owners may not receive *ad valorem* tax benefits under the Texas Tax Code, including prohibiting property owners from pooling investments to qualify for *ad valorem* tax benefits and prohibiting benefits to entities that are not subject

to Texas franchise tax. The Texas Tax Code also does not allow an applicant to assert that jobs will be eliminated if certain investments are not made, if that assertion is not true.

The Act also includes specific guidance to the ISDs and the Comptroller's Office. The ISDs are directed to approve only applications for agreements that enhance the local community, improve the local public education system, and create high-paying jobs. The Comptroller's Office is directed to certify limitations on appraised values only for applications for agreements that create high-paying jobs and provide a net long-term benefit to the State. Both the ISDs and the Comptroller's Office are directed to strictly interpret the criteria and selection guidelines of the Act and to select and certify only applications that advance the economic development goals of the State.

## Related State Auditor's Office Reports

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Table 8

Related State Auditor's Office Reports		
Number	Report Name	Release Date
20-038	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	August 2020
19-046	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	July 2019
18-037	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	July 2018
17-043	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	July 2017
17-009	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	October 2016
16-021	<i>A Report on the Implementation Status of Prior State Auditor's Office Recommendations</i>	April 2016
15-042	<i>An Audit Report on Selected Major Agreements Under the Texas Economic Development Act</i>	August 2015

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