



Lisa R. Collier, CPA, CFE, CIDA
First Assistant State Auditor

An Audit Report on
**Selected Contracting Functions
at the Texas Education Agency**

August 2021
Report No. 21-029



An Audit Report on

Selected Contracting Functions at the Texas Education Agency

SAO Report No. 21-029
August 2021

Overall Conclusion

The Texas Education Agency (Agency) has improved its administration of procurement and contract management functions since a prior audit report¹. However, the Agency should continue to strengthen its processes.

Standard contracting process. The Agency generally followed all requirements for the planning, procurement, vendor selection, and formation phases; however, it should strengthen its controls to ensure that it fully complies with all requirements.

For example, the Agency did not always ensure that its practices aligned with its policies and procedures related to the risk assessment prepared during the planning phase, or ensure that there was sufficient evidence that certain controls were working as intended.

Additionally, the Agency followed most management and oversight phase requirements; however, it should strengthen its policies, procedures, and practices related to its monitoring plans.

Disaster-related procurement process. When the COVID-19 pandemic began, the Agency quickly developed a process for disaster-related emergency procurements to provide online education solutions to assist Texas school districts. The Agency should strengthen the new process to ensure that staff follow standard procurement procedures as much as possible when doing so at an accelerated pace.

Other contracting related areas. The Agency should strengthen its processes to ensure that it complies with reporting requirements. Specifically, the Agency did not always timely (1) report contracts to the

Contracting Process

The *State of Texas Procurement and Contract Management Guide*, Version 1.3, organizes the contracting process into five distinct phases as defined below.

- **Planning.** Define the business need and establish the procurement procedures.
- **Procurement.** Identify the appropriate procurement method, and, if applicable, issue a solicitation.
- **Vendor Selection.** Fairly and objectively select the vendor that provides the best value to the State.
- **Formation.** Ensure that the awarded contract complies with applicable procurement laws and contains provisions that achieve the procurement objectives.
- **Management and Oversight.** Administer and enforce the terms of the contract.

Contracts Selected for Testing

Auditors selected a sample of 13 contracts and used those contracts to test contracting functions at the Agency. The selected contracts represented approximately \$951.1 million (53.3 percent) of the Agency's \$1,783.3 million in contracts and emergency procurements with activities between June 2019 and January 2021.

Source: The Agency.

¹ See *An Audit Report on Selected Contracts at the Texas Education Agency* (SAO Report No. 18-044, August 2018).

Legislative Budget Board, (2) report vendor performance to the Office of the Comptroller of Public Accounts, or (3) ensure that it received the *Disclosure of Interested Parties* form from vendors and submitted those forms to the Texas Ethics Commission. The Agency should also ensure that it accurately and completely tracks contract data, and that it reviews controls to verify that they are working as intended.

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 and Related Issue Ratings		
Chapter	Title	Issue Rating ^a
1	The Agency Generally Followed Requirements for the Planning, Procurement, Vendor Selection, and Formation Phases; However, It Should Strengthen Its Controls to Ensure That It Fully Complies With All Requirements	Medium
2	The Agency Followed Most Management and Oversight Phase Requirements	Low
3	The Agency Developed Procedures To Respond To Accelerated Procurement Needs Arising From the Governor's COVID-19 Disaster Declaration	Low
4	The Agency Should Strengthen Its Processes to Ensure That It Complies With Reporting Requirements, Accurately and Completely Tracks Contract Data, and Reviews Controls to Verify That They Are Working as Intended	High

^a A chapter 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 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 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 the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

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

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

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 Agency agreed with the recommendations.

Audit Objective and Scope

The objective of this audit was to determine whether the Agency has administered procurement and other selected contract management functions for selected contracts according to applicable requirements.

The scope of this audit covered the Agency's procurements and contracts awarded from June 2019 through January 2021, and payments made to vendors between September 2019 and January 2021. Specifically:

- For contracts tested for the planning, procurement, vendor selection, and formation phases, contracts awarded between June 2019 and January 2021.
- For contracts tested for the management and oversight phase, contracts with payments made between September 2019 and January 2021.
- For disaster-related emergency procurements, contracts awarded between June 18, 2020, and January 31, 2021.

The scope also included a review of significant internal control components related to the Agency's procurement and contract management processes.

Contents

Detailed Results

Chapter 1	
The Agency Generally Followed Requirements for the Planning, Procurement, Vendor Selection, and Formation Phases; However, It Should Strengthen Its Controls to Ensure That It Fully Complies With All Requirements	1
Chapter 2	
The Agency Followed Most Management and Oversight Phase Requirements	5
Chapter 3	
The Agency Developed Procedures to Respond to Accelerated Procurement Needs Arising From the Governor’s COVID-19 Disaster Declaration.	7
Chapter 4	
The Agency Should Strengthen Its Processes to Ensure That It Complies With Reporting Requirements, Accurately and Completely Tracks Contract Data, and Reviews Controls to Verify That They Are Working as Intended.	8

Appendices

Appendix 1	
Objective, Scope, and Methodology	14
Appendix 2	
Issue Rating Classifications and Descriptions.....	19
Appendix 3	
Internal Control Components	20
Appendix 4	
List of Agency Contracts Tested.....	22
Appendix 5	
Related State Auditor’s Office Report	23

Detailed Results

Chapter 1

The Agency Generally Followed Requirements for the Planning, Procurement, Vendor Selection, and Formation Phases; However, It Should Strengthen Its Controls to Ensure That It Fully Complies With All Requirements

**Chapter 1
Rating:
Medium²**

The Texas Education Agency (Agency) had processes in place to ensure that it generally adhered to contract planning, procurement, vendor selection, and formation phase requirements (see Figure 1 for an outline of the contracting process). However, it should strengthen its policies to ensure that it complies with policies related to risk assessments during the planning phase, completes and reviews required forms during the vendor selection phase, and fully implements planned corrective actions for its amendment process in the formation phase.

Figure 1



Source: The Office of the Comptroller of Public Accounts.

² The risk related to the issues discussed in Chapter 1 is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Planning. The Agency generally complied with contract planning phase requirements. For example, the Agency ensured that the selected contracts were procured through appropriate procurement methods, received delegated procurement authority approved by the Office of the Comptroller of Public Accounts (Comptroller’s Office), documented cost estimates based on reasonable information, and included all required scope of work elements. (See text box for additional information on the contracts selected for testing.)

However, the Agency should strengthen its policies related to risk assessments to ensure that it aligns its risk determinations during planning with the appropriate level of monitoring required for contracts. Specifically, 2 (50.0 percent) of 4 contracts tested were assigned a lower risk assessment score based on the Agency’s risk assessment form than was required by the Agency’s *Contract Management Handbook* for assigning risk and determining the appropriate level of monitoring.

While the risk assessment forms for the two contracts were completed correctly, the Agency did not ensure that it designed the forms to assign risk levels in accordance with its policies for monitoring based on risk. As a result, the Agency did not develop an enhanced monitoring plan for those two contracts as required by its policy.

Procurement and Vendor Selection. The Agency implemented policies in accordance with procurement phase requirements, ensuring that its solicitations were advertised in compliance with state laws and rules. Additionally, the Agency mostly complied with vendor selection phase requirements, such as accurately calculating evaluation committee scores. Final vendor scores and rankings supported the Agency’s award decisions. However, the Agency should strengthen its policies related to completing and reviewing required forms (see Chapter 4 for additional information).

Formation. The Agency followed formation phase requirements, including verifying that all required contract terms and conditions were contained in its contracts to protect state interests. However, the Agency did not adequately document its amendment process. Specifically, 6 (75.0 percent) of 8 contract amendments tested did not contain documentation that it prepared a vendor performance evaluation and/or cost-benefit analysis prior to

Contracts Selected For Testing

Auditors selected a sample of four contracts for testing the planning, procurement, vendor selection, and formation phases:

- Cambium Assessment, Inc.
- Certica Solutions, Inc.
- Communities Foundation of Texas.
- Relay Graduate School of Education.

The four contracts, with contract values totaling \$303.4 million, were selected from a population of 276 Agency contracts awarded between June 2019 and January 2021 with total contract values of \$578.1 million. (See Appendix 4 for additional information on the contract populations and samples.)

None of the four contracts listed above were amended. To test the Agency’s amendment process, auditors selected contracts with amendments that were also tested for the management and oversight phase and for emergency procurements. (See text box on next page for additional information.)

amending the selected contracts. (See text box for additional information about the contract amendments tested.)

The Agency did not fully implement its corrective action plan in the manner stated in its management response for one recommendation from a prior audit report³ related to the amendment process. Without appropriately documenting the cost-price considerations of contract changes and vendor performance evaluations for ongoing contracts, the Agency could enter into contractual changes with risks of increased costs and ineffective vendors.

Contracts Selected For Amendment (Formation) Testing

Auditors selected eight amendments to four contracts for testing:

- NCS Pearson, Inc. (two amendments).
- Education Testing Service (three amendments).
- The College Board (one amendment).
- Vianovo LP (two amendments).

The 4 contracts totaled \$576.2 million. The net contract value of all 8 executed amendments tested totals (\$24.9 million). The negative total contract value for the 8 tested amendments is a result of 2 amendments to the Educational Testing Service contract that reduced that contract's total value by \$32.2 million because of a reduction in student testing services that resulted from the COVID-19 pandemic. (See Appendix 4 for additional information on the contract populations and samples.)

Recommendations

The Agency should:

- Ensure that its practices related to assessing risk during planning align with its enhanced monitoring requirements.
- Implement any corrective action plans it submits, or document any changes to those corrective action plans if the Agency later determines that actions are not necessary.
- Update its policies and procedures to ensure the performance of tasks that the Agency determines to be necessary to support decisions related to contract amendments.

Management's Response

Management agrees with the recommendations, while noting that the Agency did not fully implement its corrective action plan for one recommendation from a prior audit report related to the amendment process because the Agency determined that a cost-price analysis was not necessary for most amendments. The following actions are underway to respond to the recommendations and will be completed no later than February 28, 2022:

³ See *An Audit Report on Selected Contracts at the Texas Education Agency* (SAO Report No. 18-044, August 2018).

- *TEA will update its risk assessment forms and process to ensure the Agency assigns risk levels in accordance with its policies for monitoring based on risk.*
- *The agency will develop a written process for performance of tasks related to handling contract amendments.*

Responsible Party: Director of Contracts and Purchasing

The Agency Followed Most Management and Oversight Phase Requirements

**Chapter 2
Rating:**

Low ⁴

The Agency ensured that it issued contract payments in compliance with applicable rules and adequately monitored and enforced the terms of its contracts. However, it did not always comply with its requirement to have a documented enhanced monitoring plan. Figure 2 shows the management and oversight phase of the contracting process.

Figure 2



Source: The Office of the Comptroller of Public Accounts.

⁴ The risk related to the issues discussed in Chapter 2 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 did not present significant risks or results that would affect to the audited entity's ability to effectively administer the program(s)/function(s) audited.

Payments. The Agency verified that it made payments to vendors pursuant to contract terms and applicable rules. For all 30 payments related to the 5 contracts tested for management and oversight, the Agency obtained required approvals for payments, ensured that the payments were allowable, and issued payments in a timely manner. (See text box for additional information on the payments tested.)

Monitoring. The Agency established policies and procedures for monitoring its contracts to ensure that contractors performed according to the terms of the contracts. For example, the Agency ensured that contract managers were qualified to oversee the selected contracts tested, and that subcontractors appropriately complied with Historically Underutilized Business subcontracting plans.

The Agency also adequately monitored contractor performance; however, it did not always follow its policies and procedures related to documenting its plan for enhanced monitoring for high-risk contracts. Specifically, for the one contract tested for management and oversight that required a documented enhanced monitoring plan, the Agency could not provide support that it had such a monitoring plan in place as required by the Agency's policies and procedures (see Chapter 1 for additional information).

Contracts Selected For Testing

Auditors selected a sample of 5 contracts for testing monitoring activities in the management and oversight phase:

- The College Board.
- Educational Testing Service.
- Kleo, Inc., doing business as ClassWallet.
- NCS Pearson, Inc.
- Relay Graduate School of Education.

The 5 contracts, with 30 payments totaling \$140.5 million, were selected from a population of 317 contracts that had payments totaling \$297.2 million made between September 2019 and January 2021. (See Appendix 4 for additional information on the contract populations and samples.)

Source: The Agency.

The Agency Developed Procedures to Respond to Accelerated Procurement Needs Arising From the Governor’s COVID-19 Disaster Declaration

**Chapter 3
Rating:
Low⁵**

On March 13, 2020, the governor declared a disaster for the state of Texas related to the COVID-19 pandemic. The Agency immediately began planning to procure contracts to address Texas school districts’ need for online education solutions. The disaster declaration suspended all state procurement requirements, and as a result, the Agency had to develop an accelerated procurement process.

The Agency initiated all six procurements tested prior to the effective date⁶ of the Agency’s first version of its disaster-related emergency procurement process. Auditors evaluated the procurements against the disaster-related emergency procurement process the Agency eventually implemented. (See text box for details of the emergency procurements tested.)

Disaster-related Emergency Procurements

Between June 18, 2020, and January 31, 2021, the Agency had 29 disaster-related emergency procurements, totaling \$115.2 million. Auditors selected a sample of 6 of those procurements, totaling \$71.9 million, with the following contractors:

- Amplify Education, Inc.
- Ampliospeech, Inc.
- Fueled Schools, Inc.
- Kleo, Inc., doing business as ClassWallet.
- Schoology.
- Vianovo LP.

Source: The Agency.

⁵ The risk related to the issues discussed in Chapter 3 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.

⁶ Projects initiated prior to June 18, 2020, the effective date of the disaster-related emergency procurement process, were not subject to that process. Although all six disaster-related emergency procurements were awarded after the implementation of the process, all six were initiated prior to June 18, 2020.

The Agency Should Strengthen Its Processes to Ensure That It Complies With Reporting Requirements, Accurately and Completely Tracks Contract Data, and Reviews Controls to Verify That They Are Working as Intended

**Chapter 4
Rating:
High ⁷**

The Agency should improve its processes for contracting functions that affect more than one phase of its contracting process, including (1) overall contract administration and (2) non-emergency and disaster-related emergency procurements. The Agency did not always ensure that contract reporting requirements were met or that contract data was accurately tracked. Additionally, the Agency did not always have documentation to show that required controls were working as intended.

The Agency did ensure that procurement staff, contract managers, and other staff involved in the non-disaster-related procurement process attended required training and obtained required certifications. All 32 Agency employees tested had attended Agency-required training courses timely. All 23 Agency employees who were required to obtain either the Certified Texas Contract Developer or Certified Texas Procurement Manager certification issued by the Comptroller's Office had done so within required timeframes.

The Agency did not always ensure that reporting requirements were met.

Reporting contracts to the Legislative Budget Board (LBB). The Agency provided auditors with a partial list of contracts from Smartsheet, its cloud-based project management tool, based on auditors' requested scope. In performing data reliability procedures, auditors noted the list was incomplete and compiled a list using additional sources⁸. In compiling a list of contracts at the Agency, which included only contracts executed during the planned scope of the audit, auditors identified contracts that the Agency had not reported to the LBB. In performing data analysis on a complete listing of contracts from Smartsheet, later provided by the Agency, that included contracts both in and out of the planned scope, auditors identified additional contracts that the Agency had not reported to the LBB. In total, auditors identified 8 contracts that the Agency had not reported to the LBB, as well as 1 contract extension that it had not reported within 30 days of the extension, as required.

⁷ The risk related to the issues discussed in Chapter 4 is rated as High because they present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

⁸ Auditors used a list of contracts reported to the LBB and contract information obtained from the Agency's financial management system, the Centralized Accounting and Payroll/Personnel System.

In addition to reviewing the complete list of contracts to determine whether the Agency had reported them to the LBB, auditors also tested 10 procurements⁹ to determine whether they were reported within the required timeframe. Four (40.0 percent) of 10 procurements tested were reported to the LBB more than 30 days after the execution of the procurement. Auditors noted in a previous audit report¹⁰ that the Agency did not report contract information to the LBB within the required timeframe, and this continues to be an issue.

Article IX, Section 7.04, of the General Appropriations Act (86th Legislature) requires state agencies to report all contracts, amendments, modifications, renewals, and extensions with a total combined value of more than \$50,000 before the 30th calendar day after the award is made.

By not reporting contract activity as required, the Agency creates the risk that other users of this information might not have sufficient information to make decisions on contracts.

Reporting vendor performance. The Agency did not report vendor performance to the Comptroller's Office's Vendor Performance Tracking System as required for 2 (67.0 percent) of 3 contracts tested that required it¹¹. Specifically, the Agency did not:

- Report any vendor performance for one of those two contracts that was awarded in August 2015, and
- Did not timely report vendor performance for the other.

The requirement for annual vendor reporting was effective September 2019. The Agency last reported on the vendor performance for the one contract not reported timely in May 2019. As that contract is ongoing, the Agency should have reported vendor performance at least once during fiscal year 2020.

⁹ Auditors tested 13 total contracts (see Table 2 in Appendix 1 for the sample and population for each area and Table 5 in Appendix 4 for the specific areas tested for each contract). The four contracts tested for the formation phase and the six contracts tested for disaster-related emergency procurements were tested for the timeliness of reporting those contracts to the LBB. The remaining three contracts were tested only for the management and oversight phase and because they were awarded prior to June 2019, the reporting of those three contracts was not tested because it was outside the scope of the audit.

¹⁰ See *An Audit Report on Selected Contracts at the Texas Education Agency* (SAO Report No. 18-044, August 2018).

¹¹ Auditors tested five contracts for management and oversight (see Table 5 in Appendix 4), but only three of those contracts required vendor performance reporting during the scope of the audit. Of the two remaining contracts, one was executed in December 2020 and the other was executed in July 2020; therefore, no performance reporting was due for those two contracts during the scope of the audit.

Texas Government Code, Section 2155.089, requires state agencies to review vendor performance after a contract is terminated, and if the contract exceeds \$5 million, at least once each year during the term of the contract and at each key milestone identified for the contract. The statute further requires state agencies to report to the Comptroller's Office, using the Vendor Performance Tracking System, the results of each review conducted.

By not reporting vendor performance in a timely manner, the Agency creates the risk that other users of this information might not have sufficient information to make decisions on contracts.

Timely filing of *Disclosure of Interested Parties* form. The Agency did not always ensure that contractors filed a Form 1295, *Disclosure of Interested Parties*, or that the Agency submitted those forms to the Texas Ethics Commission as required.

For contracts valued at \$1 million or more, Texas Government Code, Section 2252.908, requires business entities to submit a disclosure of interested parties to state agencies at the time the business entity submits the signed contract to the Agency. The statute also requires the state agency to submit a copy of the disclosure to the Texas Ethics Commission not later than the 30th day after the date the agency receives the disclosure.

For 2 (50.0 percent) of the 4 contracts tested, the disclosures were not filed with the Texas Ethics Commission within 30 days as required. Specifically, the forms were filed between 114 days and 251 days after the contracts were signed.

By not ensuring that contractors submit, and the Agency files, disclosures within the required timeframes, the Agency creates the risk that other users of this information might not have sufficient information to make decisions on contracts.

The contract data that the Agency tracks in Smartsheet contained incorrect and missing information.

The contract data that the Agency's Contracts and Purchasing Division (Division) relies on to track contracts in Smartsheet contained incorrect and missing information in key fields, was missing at least one contract from the data set, and had 17 contracts listed more than once. Specifically, auditors identified contract records that:

- Did not have the correct contract start date, contract number, or contract amount. For example, one contract had a start date of September 1, 2019, rather than the actual contract start date of May 3, 2018. Another contract listed a contract value amount of \$80,000, when it was one of

multiple contracts awarded for a solicitation with a total value of \$80,000; the actual value of that individual contract was \$1,500.

- Were missing information in several key fields, such as contract number, vendor name, contract start date, and contract amount.
- Had data that did not match the format expected of data in a particular field. For example, one contract had a contract value of "\$300,00.00." Any analysis on amounts would exclude this contract due to the missing zero. Another contract had a date of "0/24/20," which would exclude that contract from any data review based on date due to entry of zero for the month.

The Department of Information Resources' *Security Control Standards Catalog* states that organizations should be able to ensure the quality, utility, objectivity, and integrity of disseminated information. The data entry errors and omissions were due to user error, which may be attributed to weaknesses in the Division's processes, including a lack of reviews of data entry or a review of all contract data. As a result, users of the data do not always have complete or accurate data to accomplish their needs for tracking, monitoring, or analyzing contract data.

The Agency did not always have documentation supporting tasks or approvals required by its policies and procedures.

The Agency had policies and procedures to perform certain tasks or obtain approvals prior to proceeding with the procurement process, but it did not have any documentation or other support to show that the tasks were done or the approvals were obtained. Specifically:

- The Agency did not have documented evidence that program staff reviewed goods or services provided for one contract tested. Agency policies and procedures required staff to inspect and approve that the products and/or services were provided by submitting a written document accepting the deliverables.
- The Division is required to review conflict of interest, nondisclosure agreement, and the nepotism disclosure forms; but the Division did not always document that review, including the disposition of any potential conflicts.

Texas Government Code, Section 2262.004, requires state agency employees to disclose any potential conflict of interest known to the employee with respect to any contract on a specified form. In addition, Texas Government Code, Section 2261.252, requires state agency employees involved in procurement or in contract management for a state agency to disclose any

potential conflict of interest that is known to the employee with respect to any contract. The Agency's policies and procedures require members of the evaluation committee who evaluate vendor proposals to complete a nondisclosure agreement and a conflict of interest form, and state that Division staff will attempt to identify and address any actual or potential conflicts of interest with respondents. Although there is no statutory requirement to document these actions, documenting this process would provide Agency management with support that Agency staff followed required control activities by appropriately evaluating all potential conflicts during the procurement process.

For the 4 contracts tested for the procurement and vendor selection phases, 5 (17.9 percent) of 28 nepotism disclosure forms, and 1 (3.6 percent) of 28 conflict of interest forms were not completed before the contracts were executed as required. Additionally, although there was no requirement to complete these forms for disaster-related emergency procurements, 12 (18.8 percent) of the 64 forms (32 conflict of interest and 32 nondisclosure agreement forms) completed for the 6 procurements tested had missing responses, missing signatures, late signatures, or disclosed potential conflicts without indicating that the conflicts had been reviewed and resolved. This increased the risk that any actual conflicts of interest could have resulted in an evaluator showing preferential treatment to certain vendors.

Recommendations

The Agency should develop processes or procedures to ensure that:

- All contracts required to be reported to the LBB are reported timely.
- Vendor performance is reported to the Comptroller's Office as required.
- Contractors submit the Disclosure of Interested Parties form timely and the Agency submits those forms to the Texas Ethics Commission timely.
- Data is entered into its contract tracking document accurately and completely.
- The Agency should strengthen its policies and procedures to include documenting:
 - Required reviews of the receipt of goods or services.
 - Reviews of all required forms (conflict of interest, nondisclosure agreement, and nepotism disclosure) to include the disposition of any potential conflicts disclosed.

Management's Response

Management agrees with the recommendations. The following actions are underway to respond to the recommendations and will be completed no later than February 28, 2022:

- *TEA will strengthen its processes to include guidance around data integrity, access controls for information, and expectations for tracking and reporting vendor and contract information timely.*
- *The Agency will strengthen its policies and procedures to ensure staff maintain appropriate documentation of required reviews of the receipt of goods or services.*
- *TEA will revise its conflict-of-interest form and process to include a mechanism to document disposition of any potential conflicts disclosed.*

Responsible Party: Director of Contracts and Purchasing

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas Education Agency (Agency) has administered procurement and other selected contract management functions for selected contracts according to applicable requirements.

Scope

The scope of this audit covered the Agency's procurements and contracts awarded from June 2019 through January 2021 and payments made to vendors between September 2019 and January 2021. Specifically:

- For contracts tested for the planning, procurement, vendor selection and formation phases, contracts awarded between June 2019 and January 2021.
- For contracts tested for the management and oversight phase, contracts with payments made between September 2019 and January 2021.
- For disaster-related emergency procurements, contracts awarded between June 18, 2020, and January 31, 2021.

The scope also included a review of significant internal control components related to the Agency's procurement and contract management processes (see Appendix 3 for more information about internal control components).

Methodology

The audit methodology included conducting interviews with Agency management and staff; collecting and reviewing procurement and contract files; reviewing applicable statutes and Agency policies and procedures; and performing selected tests and procedures.

Data Reliability and Completeness

Auditors reviewed multiple data sets to assess the reliability of the Agency's contract and expenditure data for June 1, 2019, through January 31, 2021. Data sets included contract lists, contract data, and expenditure data. Data

sets were obtained from Smartsheet¹², the Agency's version of the Centralized Accounting and Payroll/Personnel System Financials (TCAPPS), and the Uniform Statewide Accounting System (USAS). Auditors reconciled Smartsheet with TCAPPS contract lists and performed procedures to assess the reliability of those data sets. Auditors also performed procedures to assess the reliability of the TCAPPS and USAS expenditure data including (1) observing data extracts, (2) reviewing query parameters used to extract the data, and (3) reconciling data extracts to other data extracts.

Auditors determined the data was sufficiently reliable for the purposes of this audit.

Auditors performed general controls testing for Smartsheet and the Agency Contracts and Procurement Division's (Division) shared drive by reviewing information security policies and procedures and controls for user access. Auditors relied on the information technology work performed by other State Auditor's Office auditors for TCAPPS and USAS.

Sampling Methodology

Auditors selected a nonstatistical sample of 13 contracts from the population of 449 contracts. Four contracts were selected for testing the planning, procurement, vendor selection, and formation contract phases; five contracts were selected for testing the management and oversight contract phase; and six contracts were selected for testing disaster-related emergency procurements. Six contracts were tested in more than one testing area. See Table 5 in Appendix 4 for a list of the contracts sampled and Table 2 on the next page for the population and sample information.

Auditors selected the sample contracts for testing based on specific characteristics to address risk factors identified in the population, such as contract value and procurement type. The sample items were generally not representative of the population; therefore, it would not be appropriate to project those test results to the population.

¹² Smartsheet is a cloud-based project management tool used by the Agency.

Table 2

Agency Contracts Population and Sample Selected For Contracts Awarded or Payments Made During the Scope of the Audit ^a						
Description	Population Count	Population Amount	Sample Count	Sample Amount	Sample Count Percent of Population	Sample Amount Percent of Population
Total Contract Population ^b	449	\$1,783,310,632	13	\$951,126,761	2.9 percent	53.3 percent
Planning through Formation ^c	276	\$578,053,645	4	\$303,375,845	1.4 percent	52.5 percent
Management and Oversight	317	\$1,240,350,913	5	\$619,865,916	1.6 percent	50.0 percent
Emergency Procurements	29	\$115,210,043	6	\$71,885,000	20.7 percent	62.4 percent
Amendments/Change Management ^{d e}	Not Applicable	Not Applicable	4	\$576,165,916	Not Applicable	Not Applicable

^a The audit scope for each of the samples were: *Planning through Formation*: Contracts awarded between June 2019 and January 2021; *Management and Oversight*: Contracts with payments made between September 2019 and January 2021; *Emergency Procurements*: Disaster-related emergency procurements awarded between June 18, 2020, and January 31, 2021; and *Amendments/Change Management*: Contracts from *Management and Oversight* and *Emergency Procurements* samples with amendments executed between June 2019 and January 2021 (see footnotes d and e for additional information for the *Amendments/Change Management* sample).

^b Some contracts within the *Planning through Formation* and *Emergency Procurements* populations also overlapped within the *Management and Oversight* population (see Table 5 in Appendix 4). As a result, the combined counts of each subpopulation do not equal the Total Contract Population totals that consist of all Agency contracts within the audit scope.

^c The *Planning through Formation* sample consists of contracts tested for the Planning, Procurement, Vendor Selection, and Formation contract phases.

^d Agency contract data did not have a field to designate contracts with amendments. As a result, there was not a specific population of amendments from which to select for testing; therefore, the amendment population count, amount, and percent of population were not calculated. None of the contracts tested for *Planning through Formation* had amendments. For the *Amendment/Change Management* sample, auditors selected contracts from the *Management and Oversight* and *Emergency Procurements* samples with amendments executed during the scope of the audit. Auditors tested the eight amendments for four of the contracts.

^e The total contract value for the four contracts with amendments tested is \$576.2 million. The net total contract value with all eight amendments tested is (\$24.9 million). The negative total contract value for the 8 tested amendments is a result of 2 amendments to the Educational Testing Service contract that reduced that contract's value by \$32.2 million because of a reduction in student testing services that resulted from the COVID-19 pandemic.

Auditors also selected a nonstatistical sample of 38 Division Smartsheet documents for general controls testing of the Smartsheet application primarily through random selection. In some cases, auditors selected additional Smartsheet documents for testing based on risk. This sampling design was chosen to ensure that the sample would include a cross section of Division Smartsheet documents and/or address specific risk factors identified in the population. The test results as reported do not identify which items were randomly selected or selected using professional judgment; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Statutes, rules, policies, procedures, and other guidance relevant to the Agency's procurement and contract management functions.
- Agency contracts, including change orders and amendments.
- Agency contract documentation, including solicitations, procurement files, contract checklists, and monitoring tools.
- Contract payments, including invoices and approvals.
- Agency personnel training records, conflict of interest forms, nepotism disclosure statements, and nondisclosure agreements.

Procedures and tests conducted included the following:

- Interviewed Agency management and staff.
- Tested procurements for compliance with contract planning, procurement, vendor selection, formation, and management and oversight requirements.
- Evaluated disaster-related emergency procurements using the Agency's disaster-related emergency procurement process.
- Tested contract payments for accuracy, required approvals, and compliance with applicable requirements.
- Tested contract change orders (amendments) for supporting documentation and required approvals.

Criteria used included the following:

- Texas Government Code, Chapters 2054, 2155, 2156, 2252, 2254, 2261, and 2262.
- Title 1, Texas Administrative Code, Chapter 202, and Title 34, Texas Administrative Code, Chapter 20.
- United States Code, Title 20, Section 1232.
- The General Appropriations Acts (85th and 86th Legislatures).
- *State of Texas Procurement and Contract Management Guide* (Version 1.1, August 2018; Version 1.2, September 2019; and Version 1.3, December 2019).

- Department of Information Resources *Security Control Standards Catalog*, Version 1.3.
- The Agency's *Contract Management Handbook*, November 2018.
- The Agency's policies, procedures, templates, forms, and checklists.
- The Agency's solicitations and contracts.
- *An Audit Report on Selected Contracts at the Texas Education Agency* (State Auditor's Office Report No. 18-044, August 2018).

Project Information

Audit fieldwork was conducted from December 2020 through July 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:

- Krista L. Steele, MBA, CPA, CFE, CECFE, CIA, CGAP (Project Manager)
- Cody Bogan, CFE (Assistant Project Manager)
- Pamela A. Bradley, CPA, CFE
- James Collins
- Douglas Jarnagan, MAcc
- Matthew J. Montgomery
- Robert G. Kiker, CGAP (Quality Control Reviewer)
- Cesar Saldivar, CFE, 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 3 provides a description of the issue ratings presented in this report.

Table 3

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.

Internal Control Components

Internal control is a process used by management to help an entity achieve its objectives. The U.S. Government Accountability Office's *Government Auditing Standards* require auditors to assess internal control when internal control is significant to the audit objectives. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) established a framework for 5 integrated components and 17 principles of internal control, which are listed in Table 4.

Table 4

Internal Control Components and Principles		
Component	Component Description	Principles
Control Environment	The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.	<ul style="list-style-type: none"> ▪ The organization demonstrates a commitment to integrity and ethical values. ▪ The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control. ▪ Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives. ▪ The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives. ▪ The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.
Risk Assessment	Risk assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.	<ul style="list-style-type: none"> ▪ The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives. ▪ The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed. ▪ The organization considers the potential for fraud in assessing risks to the achievement of objectives. ▪ The organization identifies and assesses changes that could significantly impact the system of internal control.
Control Activities	Control activities are the policies and procedures that help ensure that management's directives are carried out.	<ul style="list-style-type: none"> ▪ The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels. ▪ The organization selects and develops general control activities over technology to support the achievement of objectives. ▪ The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

Internal Control Components and Principles		
Component	Component Description	Principles
Information and Communication	Information and communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.	<ul style="list-style-type: none"> ▪ The organization obtains or generates and uses relevant, quality information to support the functioning of internal control. ▪ The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control. ▪ The organization communicates with external parties regarding matters affecting the functioning of internal control.
Monitoring Activities	Monitoring is a process that assesses the quality of internal control performance over time.	<ul style="list-style-type: none"> ▪ The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning. ▪ The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.

Source: Internal Control - Integrated Framework, Committee of Sponsoring Organizations of the Treadway Commission, May 2013.

List of Agency Contracts Tested

Table 5 presents the Texas Education Agency (Agency) contracts and areas tested. The audit scopes for each of the samples were as follows:

- *Planning through Formation* – contracts awarded between June 2019 and January 2021.
- *Management and Oversight* – contracts with payments made between September 2019 and January 2021.
- *Emergency Procurements* – disaster-related emergency procurements awarded between June 18, 2020, and January 31, 2021.
- *Amendments/Change Management* – contracts from *Management and Oversight* and *Emergency Procurements* samples with amendments executed between June 2019 and January 2021.

Table 5

Agency Contracts and Areas Tested For Contracts Awarded or Payments Made During the Scope of the Audit				
Contractor	Planning Through Formation ^a	Management and Oversight	Emergency Procurements	Amendments/Change Management ^b
Amplify Education, Inc.			✓	
Ampliospeech, Inc.			✓	
Cambium Assessment, Inc.	✓			
Certica Solutions, Inc.	✓			
The College Board		✓		✓
Communities Foundation of Texas	✓			
Educational Testing Service		✓		✓
Fueled Schools, Inc.			✓	
Kleo, Inc., doing business as ClassWallet		✓	✓	
NCS Pearson, Inc.		✓		✓
Relay Graduate School of Education	✓	✓		
Schoology			✓	
Vianovo LP			✓	✓
^a The <i>Planning through Formation</i> sample consists of contracts tested for the Planning, Procurement, Vendor Selection, and Formation contract phases.				
^b Because none of the contracts tested for <i>Planning through Formation</i> had amendments, contracts from the <i>Management and Oversight</i> and <i>Emergency Procurements</i> samples with amendments executed during the scope of the audit were tested for the <i>Amendments/Change Management</i> process. Auditors tested eight amendments for four contracts.				

Related State Auditor's Office Report

Table 6

Related State Auditor's Office Report		
Number	Report Name	Release Date
18-044	<i>An Audit Report on Selected Contracts at the Texas Education Agency</i>	August 2018

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas Education Agency

Mr. Mike Morath, Commissioner of Education



This document is not copyrighted. Readers may make additional copies of this report as needed. In addition, most State Auditor's Office reports may be downloaded from our Web site: www.sao.texas.gov.

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9500 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

The State Auditor's Office is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government visit <https://sao.fraud.texas.gov>.