

Texas Water Development Board



Review of Contract Management Compliance with Senate Bill 20 (84R)

Project #2019.07
October 2020

Executive Summary

We reviewed processes and controls over select contracting activities for fiscal year 2017 and 2018, as well as the first two quarters of fiscal year 2019. The primary objective of the audit was to determine whether the agency complied with the requirements of Senate Bill 20, passed by the 84th Texas Legislature, Regular Session (84R), as well as subsequent legislation passed by the 85th Texas Legislature, Regular Session (85R) which modified certain provisions of Senate Bill 20 (84R)¹.

The audit included an evaluation of the agency's implementation of record retention requirements, restrictions on certain employment by former state officers and employees, requirements for posting and reporting contract information and vendor performance, training requirements for purchasing personnel, and other requirements and restrictions over contract administration and management.

Overall, we found that processes and controls have been established to provide assurance that the agency complies with the requirements of Senate Bill 20 (84R) and subsequent, related legislation. Specifically:

- Written procedures were substantially updated to reflect the amended sections of the Texas Government Code, as they relate to contract administration and management.
- Controls exist to ensure contract, and contract-related, documentation is retained.
- Processes have been established to ensure that purchasing personnel meet training and continuing education requirements, and employees or officials involved in procurement or contract management, disclose actual or potential conflicts of interest.
- Contract information, and applicable documents, are posted to the agency internet website, as required.
- A risk analysis procedure has been developed and implemented to identify high risk contracts that require enhanced monitoring.

However, we also noted that certain processes were not always consistently followed, and identified the following areas in which improvements should be made to ensure:

- Provisions regarding restrictions on certain employment for former state employees are updated in agency policies and procedures.
- The best value standard, and the acknowledgement of compliance with the agency's contract policies and procedures and the Texas Contract and Procurement Management Guide, are documented for all contracts, including information technology commodity agreements.
- Vendor performance reporting is consistently performed, and the agency's contract policies and procedures are updated to provide additional guidance to assist staff with reporting the required information.
- The risk analysis procedure is consistently performed, and includes a documented assessment of risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts.

¹ Senate Bill 533 and Senate Bill 255 (85th Regular Session).

Background

Senate Bill 20, enacted by the 84th Texas Legislature, Regular Session (84R), increased oversight of state agency contracts and strengthened management controls over other aspects of contracting activities.

The bill went into effect on September 1, 2015, and included requirements relating to retention of state contracts and contract documentation, reporting of specific contract information to the Comptroller, ranking and reporting vendor performance, training agency purchasing, as well as additional provisions relating to contract administration and management. The bill also placed restrictions on certain employment for former state employees and barred state agencies from contracting with firms when any member of that agency's leadership or a family member of an agency official has a financial interest in the firm.

Senate Bill 533 and Senate Bill 255 were passed by the 85th Texas Legislature, Regular Session (85R) and resulted in modifications to certain provisions of Senate Bill 20 (84R).

Organizationally, the Contracting and Purchasing Section of the Support Services and Contract Administration Division is responsible for implementing contract-related legislation, including the provisions of Senate Bill 20 (84R), as well as for the agency's continued compliance with the law.

From September 1, 2017 to February 28, 2019, the agency administered 59 contracts for goods and services across five organizational offices – 45 of these were active and 14 were closed.

Contracts	Active	Closed
Finance	7	0
Operations and Administration	11	2
Texas Natural Resources	7	1
Water Science and Conservation	13	10
Water Supply & Infrastructure	7	1
Total	45	14

Active contracts totaled \$14,984,821 and closed contracts totaled \$4,171,243.

Contracts	Active	Closed
Finance	\$7,975,000	\$0.00
Operations and Administration	\$771,464	\$125,084
Texas Natural Resources System	\$1,905,848	\$792,138
Water Science & Conservation	\$3,632,509	\$3,214,021
Water Supply & Infrastructure	\$700,000	\$40,000
Total	14,984,821	4,171,243

We selected a sample of eight contracts from the above time period to perform tests to determine whether Senate Bill 20 (84R) provisions were implemented in accordance with the applicable laws, rules, and regulations. The sample of eight contracts for goods and services were initiated by the following four Offices:

- Four, Water Science Conservation contracts;
- Two, Operations and Administration contracts;
- One, Texas Natural Resources contract;
- One, Finance contract.

Of the eight contracts selected for testing, six were in an active status and two were closed.

The State of Texas Procurement and Contract Management Guide (TPCMG), released by the Comptroller’s Statewide Procurement Division, provides the framework for implementing statutory procurement and contracting requirements. Additionally, TWDB Contract Policies and Procedures outline internal policies, procedures, and processes used to administer contracts.

Information systems and applications used to administer and manage state-funded grant agreements and contracts included:

Systems	Description
Contract Administration System (CAS)	System is used for administering and tracking agency contracts, including those using state grant funds.
Micro Information Product (MIP)	System is the internal accounting application used for processing all grant agreement and contract payments.

Objectives, Scope, and Methodology

Objectives

The primary objective of the audit was to determine whether the agency has processes in place to ensure compliance with the provisions of Senate Bill 20 (84R). The audit included an evaluation of requirements relating to records retention standards, restrictions on certain employment by former state officers and employees, requirements for posting and reporting contract information and vendor performance to the appropriate oversight entities, training requirements for the agency’s purchasing personnel, as well as other provisions of the bill relating to contract administration.

Scope and Methodology

The scope of the audit covered fiscal year 2017 and 2018, as well as the two quarters of fiscal year 2019 and any other related time periods. The audit was limited to contracting activities subject to Senate Bill 20 (84R) provisions and subsequent legislation passed by the 85th Texas Legislature, Regular Session (85R) which modified certain provisions of Senate Bill 20 (84R).

The methodology for the audit consisted of a review of the following information:

- State of Texas Procurement & Contract Management Guide (Version 1.1), August 2018.
- Texas Government Code, all related Chapters.
- Texas Senate Bills 20 (84R), 533(85R), and 255(85R).
- General Appropriations Act (84th and 85th Legislature).
- TWDB Contract Policies and Procedures, October 2017.
- TWDB Employee Handbook, February 2019.
- TWDB Ethics Policy, training, and training acknowledgment forms.
- Contracts and contract-related documentation, including risk analyses and vendor performance reporting information.
- Contract data and related queries and reports from CAS and MIP.

Tests and procedures included the following:

- Conducted interviews and walk-throughs with management and staff.
- Reviewed applicable statutes, rules, and reporting requirements.
- Reviewed state contract guidance, agency policies and procedures, contracts, and contract-related documentation.
- Tested a sample of contracts and validated compliance with all applicable laws, rules, and requirements.
- Reviewed contract information from CAS and MIP and validated data integrity.
- Inspected documentation and observed tasks to determine whether controls were operating as designed.

This engagement was conducted in accordance with *Generally Accepted Government Auditing Standards* and the *International Standards for the Professional Practice of Internal Auditing*. These 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 observations and conclusions based on our audit objectives.

The audit team consisted of:

Michelle Cooper, CFE, CGAP, CICA
Nicky Carter, CICA
Nicole Campbell, CIA, CISA

Detailed Results

1. **The agency's contract policies and procedures and Ethics policy did not include updated language regarding the restrictions over certain employment for a former state officer or employee of the agency, as required by Texas Government Code, Section 572.069, in all relevant sections of the documents.**

Senate Bill 533 was passed by the 85th Texas Legislature, Regular Session (85R) and resulted in modifications to certain provisions of Senate Bill 20 (84R). As a result, effective September 1, 2017, language in Section 572.069 of the Texas Government Code, was revised to "prohibit a former state officer or employee of a state agency, who during the period of state service or employment, participated on behalf of a state agency in a procurement or contract negotiation involving a person, from accepting employment from that person, before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn," rather than the date the officer's or employee's service or employment with the state agency ceased.

The revised language resulting from Senate Bill 533 (85R), Section 562.069 was updated in Section 2.1 (General Contract Principles) of the agency's contract policies and procedures, but was not updated under "The First Revolving Door Rule" in Section 2.2 (Contracting with Former Staff).

We also noted that the agency's Ethics policy had not been updated to reflect the revised language. The agency's Ethics policy provides an overview of Chapter 572, Subchapter C and prescribes standards of conduct for all employees. However, the Ethics policy did not include a reference or discussion of Section 572.069. Mandatory annual training on the Ethics policy is required by every employee, contractor and intern. After the training, each attendee is required to submit a signed acknowledgement form to recognize their ongoing responsibility for complying with the Ethics policy, and all referenced statutes.

Recommendations

Management should:

- a) Ensure that updated language regarding the restrictions over certain employment for a former state officer or employee, as required by the Texas Government Code, Section 572.069 is included in all relevant sections of the agency's contract policies and procedures and Ethics policy.

Management Response: *Operations & Administration (O&A) Management agrees. Section 2.2 of the TWDB Contracting Policies and Procedures document will be updated to include Senate Bill 533 (85R), Section 562.069 resulting language, similar to language currently included in Section 2.1.*

Responsible Party: *Procurement and Contract Services Manager*

Implementation Date: *05/31/2021*

Management Response: *Office of General Counsel Management agrees. The TWDB Ethics Policy attachment has been updated to include Texas Government Code § 572.069.*

Responsible Party: Assistant General Counsel
Implementation Date: 10/15/2020

- 2. A process exists to ensure that the information required by Texas Government Code, Section 2155.0755(a) is documented; however, the process should be strengthened to ensure that procurements of information technology commodity items fully align with all parts of the statute.**

Section 2155.0755(a) of the Texas Government Code requires the contract manager or procurement director of each state agency to:

- 1) Approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;
- 2) Ensure that, for each contract, the agency documents the best value standard used for the contract; and,
- 3) Acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide in the purchase.

The best value standard references which procurement method to use in order to obtain the best value for the purchase. The agency's process used a purchase order form to document the best value standard when contracting for purchases.

Our review evaluated a sample of eight contracts to determine whether these requirements were documented. We found that three of the eight (38%) contracts reviewed did not document either the:

- Best value standard, or
- Acknowledgement of compliance with the agency's policies and procedures and the comptroller's contract management guide in the purchase.

All three contracts were for the procurement of IT commodity items and were processed as purchases; one as a request for offer, another included an exemption status, and the final as a Department of Information Resources (DIR) contract.

The current procedure states that the contract initiation form will indicate the procurement method used and will document and verify the best value standard utilized. Also, in instances where a contract may require a purchase order or expenditure request, the best value standard will be documented on the purchase order. However, the procedures do not indicate that the DIR number will serve as the best value standard on the purchase order.

Additionally, the assertion of compliance with agency policy & the State of Texas Contract Management Guide was not documented for all three procurements.

Recommendations

Management should:

- a) Ensure that contract policies and procedures document a process for the best value standard in instances where DIR services are solicited.
- b) Implement and document a process to ensure a statement of compliance with Texas Government Code, Section 2155.0755(a)(3) is included when a contract requires a purchase order.
- c) Update contract policies and procedures with the written requirement of Section 2155.0755(a)(3) of the Texas Government Code.

Management Response: *O&A Management agrees. Steps will be taken to ensure contract policies and procedures and other relevant documents outline procedures for the best value standard for DIR solicitations, as well as the written requirement of Section 2155.0755(a)(3) of the Texas Government Code. The Division will also ensure inclusion of a statement of compliance in the contract file.*

Responsible Party: *Procurement and Contract Services Manager*

Implementation Date: *05/31/2021*

3. A procedure to report vendor performance on closed contracts through the Comptroller's vendor tracking system has been developed and implemented; however, processes should be strengthened to ensure the procedure is clarified and vendor performance reporting is consistently performed.

Section 2155.089 of the Texas Government Code requires state agencies to review the vendor's performance under a contract, after the contract has been completed or terminated. The results of this review must be reported to the Comptroller using their vendor tracking system.

Of the sample of eight contracts, two had been closed-out and were therefore, subject to the vendor reporting requirement. However, our evaluation found that vendor performance reporting had not been performed for one of the two contracts.

Additionally, Section 2155.0755(b) of the Texas Government Code requires each agency to include in the vendor performance tracking system information on whether the vendor satisfied the best value standard. Section 3.19 (Contract Close Out Procedures) of the agency's contract policies and procedures addressed documenting vendor performance; however, it did not include sufficient detail to direct employees to the appropriate location on the Comptroller's website to complete this step, as required.

Recommendations

Management should:

- a) Strengthen controls to ensure that vendor performance reporting is completed for all closed contracts.

- b) Improve written procedures by providing additional detail for reporting vendor performance to ensure that staff has the information needed to carry out the proper steps for continued compliance.

Management Response: *O&A Management agrees. Actions will be taken to strengthen controls on vendor performance reporting for closed contracts. In addition, written procedures will be updated to reflect proper steps for compliance.*

Responsible Party: *Procurement and Contract Services Manager*

Implementation Date: *05/31/2021*

- 4. A risk analysis procedure has been developed and implemented to identify contracts that require enhanced monitoring, as required by Section 2261.253(c) and Section 2261.256(a)(2); however, controls should be strengthened to ensure the procedure is consistently performed and includes all the specific components required by Section 2261.256(a)(1).**

Section 2261.253(c), Texas Government Code requires that each state agency, by rule, establish a procedure to identify contracts that require enhanced contract or performance monitoring and submit information on these contracts to the agency's governing body.

Section 2261.256(a) requires state agencies to develop and comply with a purchasing accountability and risk procedure that provides for:

- 1) Assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- 2) Identifying contracts that require enhanced contract monitoring or the immediate attention of contract management staff; and
- 3) Establishing clear levels of purchasing accountability and staff responsibilities.

The Texas Procurement and Contract Management Guide, issued by the Comptroller, provides additional guidance to assist state entities in the implementation of these provisions.

Our review found that the agency has developed and implemented a risk analysis procedure to identify contracts that require enhanced contract monitoring, as required by Section 2261.253(c) and Section 2261.256(a)(2). The agency has also established clear levels of purchasing accountability and staff responsibilities related to purchasing, as required by Section 2261.256(a)(3). However, the agency had not posted staff responsibilities related to purchasing to its internet website as required by Section 2261.256 (a)(3).

We also noted that the risk analysis procedure was not consistently performed. Of the sample of eight contracts reviewed, one contract did not have a completed risk analysis. Without this information, the agency does not have documentation of whether the contractor should have received enhanced monitoring.

Additionally, the risk analysis procedure did not provide for assessing the risk of fraud, waste or abuse throughout the contract processes specified by Section 2261.256(a)(1).

Although the risk analysis procedure included a fraud, waste, and abuse attribute, the attribute was general in nature, and did not demonstrate how the agency assessed fraud risk in the contract selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts.

To further note, the risk analysis procedure and the agency's related contract monitoring activities were evaluated as part of the Review of State-Funded Grant Agreements and Contracts (#2018.06). The report was released in November 2019 and included additional recommendations to improve the related processes.

Recommendations

Management should:

- a) Ensure staff responsibilities related to purchasing are included on the agency's internet website, as required by Section 2261.256 (a)(3).
- b) Strengthen controls to ensure risk analyses are consistently completed and supporting documentation is retained.
- c) Ensure the risk analysis procedure includes a documented assessment of risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts, as specified by Section 2261.256(a)(1).
- d) Update contract policies and procedures to reflect improvements made to the risk analysis procedure and related processes.

Management Response: *O&A Management agrees. The Division currently posts contracting policies and procedures on the agency's internet website and will ensure this document includes staff responsibilities related to purchasing as required by Section 2261.256 (a)(3). The Division will also strengthen controls to ensure risk analyses are consistently completed and supporting documentation is retained. Contracting policies and procedures will be updated to ensure the risk analysis procedure includes a documented assessment of risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts. Policies and procedures will additionally be updated to reflect any improvements made to the risk analysis procedure and related processes.*

Responsible Party: *Procurement and Contract Services Manager*

Implementation Date: *08/31/2021*

Closing

We would like to express our appreciation to all of the management and personnel for their cooperation and assistance provided to the internal audit staff during this review. For questions or additional information concerning this report, please contact Nicole Campbell at (512) 463-7978.

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