



An Audit of the Texas Department of Banking

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Executive Summary

Purpose and Scope

The objectives of this audit were to determine whether Texas Department of Banking (Department):

- Procured contracts according to applicable state laws and Comptroller requirements.
- Processed payments according to applicable state laws, Comptroller requirements and statewide automated system guidelines.
- Maintained documentation to support those payments.
- Properly recorded capital and high-risk assets.
- Implemented appropriate security over payments.

This audit was conducted by the Texas Comptroller of Public Accounts (Comptroller's office), and covers the period from March 1, 2019 through Feb. 29, 2020.

Background

The Department's mission is to ensure Texas has a safe, sound and competitive financial services system. The major functions of the Department are to charter, license or register specific entities, which may include regulating and examining. The Department operates under the oversight of the Texas Finance Commission.

Texas Department of Banking
website


<https://www.dob.texas.gov/>

Audit Results

The Department generally complied with the General Appropriations Act (GAA), relevant statutes and Comptroller requirements. Auditors found no issues with fixed assets and security. However, the Department should make improvements to its payroll, travel, purchase, contracts, payment card and internal control processes. Auditors reissued two findings from the last post-payment audit related to purchase and internal control structure. The auditors originally issued these findings in June 2018. An overview of audit results is presented in the following table.




Table Summary

Area	Audit Question	Results	Rating
<u>Payroll Transactions</u>	Did payroll transactions comply with the GAA, pertinent statutes and Comptroller requirements?	Missing verification of prior state employment/incorrect state effective service date and longevity payment.	Compliant, Findings Issued
<u>Purchase, Payment Card and Contract Transactions</u>	Did purchase, payment card and contract transactions comply with the GAA, pertinent statutes and Comptroller requirements?	<ul style="list-style-type: none">• Missing Electronic State Business Daily Solicitation & Notice of Award.• Incorrect procurement method used.• Missing Statewide Procurement Division delegation of purchasing authority.• Missing documentation to support payments for contracted services.•  Missing Centralized Master Bidders List solicitation.• Missing written approval to supplement the Centralized Master Bidders List.• Missing nondisclosure agreements and conflict of interest statements.• Missing written acknowledgement of compliance with Procurement and Contract Management Guide.• Missing required contract clauses.• Missing vendor compliance verifications.• Missing pre-award Vendor Performance Tracking System (VPTS) check and untimely VPTS reporting.	Noncompliant
<u>Travel Transactions</u>	Did travel transactions comply with the GAA, pertinent statutes and Comptroller requirements?	Improper payment of non-overnight meals.	Compliant, Findings Issued
Fixed Assets	Were tested assets in their intended location and properly reported in the State Property Accounting system?	No issues	Fully Compliant



Repeat Finding



Area	Audit Question	Results	Rating
<u>Internal Control Structure</u>	Are duties segregated to the extent possible to help prevent errors or detect them in a timely manner and help prevent fraud?	 Control weakness over expenditure processing.	Control Weakness Issues Exist
Security	Are Department employees who are no longer employed or whose security was revoked properly communicated to the Comptroller's office?	No issues	Fully Compliant



Key Recommendations

Auditors made several recommendations to help mitigate risk arising from control weaknesses. Key recommendations include:

- Ensure the review of employment applications, including research of previous Texas state agency employment listed in the application.
- Ensure relevant procurement information valued at more than \$25,000 is posted to the Electronic State Business Daily (ESBD).
- Maintain documentation justifying the selection of a professional services provider based upon Texas Government Code, Section 2254.003.
- Ensure that purchases are made from set aside programs, statewide term contracts, Department of Information Resources contracts, etc., when available.
- Maintain record in the procurement file of any relevant waiver, exception or Statewide Procurement Division (SPD) approval/certification.
- Obtain a delegation of authority from SPD before purchasing goods or services that fall outside the pre-approved class of procurements delegated to agencies based on procurement type or amount.
- Maintain sufficient documentation to support the legality and fiscal responsibility of each payment.
- Ensure the Centralized Master Bidders List (CMBL) is used, retain a dated copy of the CMBL solicitation results in the contract file, and ensure that an appropriate justification regarding the addition of non-CMBL vendors to the final bid list is documented, approved by the executive director, and maintained in the procurement file.



- Ensure all agency employees or officers involved in procurement or contract management sign nondisclosure agreements and complete conflict of interest statements. These items should be maintained in agency files.
- Ensure the contract manager or procurement director acknowledges in writing that the Department (at the time of purchase) complied with its contract management guide and with the [*State of Texas Procurement and Contract Management Guide*](#).
- Ensure that all required clauses from the *State of Texas Procurement and Contract Management Guide* are included in the Department's contracts and solicitations; omitted required clauses or substantially altered text should include written justification in the contract file.
- Ensure all required vendor compliance verifications are conducted prior to any purchase and contract award, extension, or renewal; maintain evidence to support these were performed.
- Ensure that the Vendor Performance Tracking System (VPTS) is used prior to determining whether to award a contract to a vendor, and that a vendor's performance is assessed and reported to VPTS at required intervals or once a contract is completed or otherwise terminated.
- Include procurement process instructions and related documentation in staff training to ensure all requirements are met.
- Increase training for staff that reviews travel vouchers to ensure only eligible expenses are reimbursed.
- Segregate expenditure processing tasks to the maximum extent possible to ensure no individual can process payments without oversight.



Detailed Findings

Payroll Transactions

Auditors developed a sample totaling \$429,907.28 from a group of 21 employees and 78 payroll transactions to ensure the Department complied with the GAA, [Texas Payroll/Personnel Resource \(FPP F.027\)](#) and pertinent statutes. Audit tests revealed the following exception in this group of transactions.

Additionally, auditors reviewed a limited sample of 12 voluntary contribution transactions; no exceptions were identified.

Missing Verification of Prior State Employment/Incorrect State Effective Service Date and Longevity Payment

Auditors identified one instance in the sample where the Department did not verify prior state employment. Specifically, the employee disclosed prior employment with another agency on the job application. However, during the hiring and onboarding process, the Department did not contact the other agency to verify the reported employment.

The Department stated that prior service verification is performed as part of new employee orientation. A Verification of Prior State Employment form is given to the new employee, who is expected to complete and sign the top section of the form to indicate and "claim" prior state service. The form is then sent to the indicated agency, who completes and signs the remainder of the form, including the hire and termination dates. In this case, the employee did not return the verification form to the personnel office.

According to [Texas Payroll/Personnel Resource, Non-Salary Payments - Longevity Pay \(FPP F.027\)](#), when an agency hires an employee, the agency must research if the employee has previous state employment. If there is prior state employment, the agency must:

- Confirm the amount of lifetime service credit, and
- Compute the correct amount of longevity pay entitlement.

If the agency fails to do this, the lifetime service credit for longevity will be based on the employment date at the new agency and the eligible employee may be underpaid longevity pay. It is the hiring agency's responsibility to research prior state service when the new employee discloses the prior state service on the employment application. The fact that the employee failed to fill out a verification form does not relieve the hiring agency of this responsibility.



Once informed of this provision, the Department contacted the agency listed on the employment application and verified prior state service. In a report generated outside the sample, auditors noted that the Department paid this employee \$600 total in longevity since his Sept. 1, 2015 hire date. However, based on the confirmed prior service, auditors calculated that this employee should have received \$1000 in longevity pay. The Department underpaid by \$400.

In a separate report used to perform targeted analysis on prior state service, auditors also noted an additional employee who had prior state service reported by another state agency through the Human Resource Information System (HRIS). Auditors requested that Department staff contact the state agency and verify the prior state service. That agency confirmed prior service, which had not been accounted for at the time of hire. However, even with this prior service, the employee in question did not have at least two years of state service at the time of audit. Therefore, there was no under-payment or over-payment of longevity pay in this instance.

Recommendation/Requirement

The Department should modify its policies and procedures to ensure the review of employment applications, including researching and contacting previous state agencies listed in the application to obtain the necessary information.

The Department should also ensure staff verify prior state service even if the newly hired employee does not complete another required verification form. As part of its research, the Department should also review the Comptroller's State of Texas Employment History online application; see [Texas Payroll/Personnel Resource, State of Texas Employment History Application](#). In addition, the Department should make an additional payment to the affected employee for the underpaid longevity.

Department Response

The Department revised its procedures as part of the on-boarding process to ensure Human Resources appropriately verifies state service for new employees.

For the one employee in question for whom funds were owed, the Department made all required payments related to the underpaid longevity.

Purchase/Procurement, Payment Card and Contract Transactions

Auditors developed a sample of 25 purchase/procurement transactions totaling \$151,258.21 and 15 payment card transactions totaling \$8,782. Two contracts with values of \$280,000 and \$172,200 were also selected along with a sample of 13 payment transactions totaling \$38,070. All of these items were audited to ensure the Department



complied with the GAA, [eXpendit \(FPP I.005\)](#), [State of Texas Procurement and Contract Management Guide](#), and pertinent statutes. Audit tests revealed the following exceptions for these groups of transactions.

Contract	Amount	Type of Service	Procurement Cycle				
			Planning	Procurement Method Determination	Vendor Selection	Contract Formation/Award	Contract Management
Contract A	\$280,000	Investigative Services	No exceptions	<ul style="list-style-type: none"> Missing ESDB solicitation and notice of award. 	<ul style="list-style-type: none"> Missing nondisclosure agreements and conflict of interest statements. Missing pre-award VPTS check & untimely VPTS reporting. 	<ul style="list-style-type: none"> Missing required contract clauses. Missing vendor compliance verifications. 	Missing documentation to support payments for contracted services.
Contract B	\$172,200	Training Services	No exceptions	<ul style="list-style-type: none"> Missing Statewide Procurement Division delegation of purchasing authority. Missing written approval to supplement the Centralized Master Bidders List. 	<ul style="list-style-type: none"> Missing nondisclosure agreements and conflict of interest statements. Missing pre-award VPTS check and untimely VPTS reporting. 	<ul style="list-style-type: none"> Missing written acknowledgement of compliance with the State of Texas Procurement and Contract Management Guide. Missing required contract clauses. Missing vendor compliance verifications. 	No exceptions

Missing Electronic State Business Daily Solicitation and Notice of Award

Auditors identified one transaction in the purchase sample where the Department did not publicly post the solicitation and award on ESDB for the related procurement valued at \$98,400. According to the Department, this error was due to internal miscommunication and oversight.

In one of the contracts reviewed, auditors found that the Department awarded a professional services contract valued at \$280,000 to the same provider after a previous contract for the same services expired. The Department failed to publicly post this procurement opportunity and information related to awarding the contract on ESDB.

The Department stated that provisions in [Texas Government Code, Section 2254.003](#) allowed it to award a new contract directly to the service provider without posting the solicitation publicly. In addition, there was no documentation in the procurement file



showing the chosen service provider's price was fair and reasonable. In this instance, the Department has executed a contract with the same provider for the same services for several consecutive contracts (with terms and options of 10+ years) without re-soliciting to other eligible providers. While Texas Government Code, Section 2254.003 does allow selecting a vendor based on factors other than competitive bidding, it does not waive the requirement to publicly post the procurement opportunity. Section 2254.003(a) further states that an agency may not select a service provider or award a contract on the basis of competitive bids, but rather make the selection or award on the basis of demonstrated competence, qualifications, and for a fair and reasonable price.

See [Texas Government Code, Section 2155.083](#) for additional information regarding ESDB posting requirements and procurements exceeding \$25,000 in value.

Specific provisions pertinent to ESBD postings include:

- [Section 2155.083\(g\)](#) addressing minimum time frames for an agency to post an entire bid or proposal solicitation package or a notice that includes relevant information to make a contract bid.
- [Section 2155.083\(m\)](#) clarification that this section does not affect whether an agency is required to award a procurement contract through competitive bidding, competitive sealed proposals, or another method.

According to the Procurement Method-Professional Services section of the [State of Texas Procurement and Contract Management Guide](#), procurement of services is subject to ESBD posting requirements and these procurements are usually advertised as either a Request for Qualifications or Request for Proposals.

When agencies do not follow the correct procurement process, the resulting contract may not provide the best value to the state. In addition, there may be an appearance of unfairness in vendor selection and the contract ultimately may be void.

Recommendation/Requirement

The Department must ensure it posts on ESBD all procurements exceeding \$25,000, including those for professional services. The posting must remain at least for the minimum timeframe to allow interested providers to participate. In addition, a notification of award must be posted to ESBD after the contract is awarded, or a notice of non-award in the event no contract is awarded.

For professional services contracts where a provider is selected based on Texas Government Code, Section 2254.003, the Department must obtain and maintain evidence that the chosen provider's fees are fair and reasonable and do not exceed the maximum provided by law.



In addition, staff training programs and related documentation should include information on ESBG requirements. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

Two instances were identified. In one of those, the Department respectfully disagrees as the vendor is a CPA, a previous FBI agent, and has unique expertise and experience in financial and white-collar crime investigations. Furthermore, the vendor provides a very specialized level of expertise and skill that is unique to the financial services industry. A memorandum from the Department's General Counsel has been provided to audit staff and offers more details related to this vendor's work with the Department.

Going forward, the Department will publish this solicitation in the ESBG and determine which vendor offers the best value to the Department and state.

In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Comptroller Response

While Texas Government Code, Section 2254.003 allows vendor selection based on factors other than competitive bidding, such as demonstrated competence, qualifications, and for a fair and reasonable price, it does not waive the requirement to publicly post the procurement opportunity. The Comptroller's office appreciates that in the future, the Department intends to publish solicitations for this work in the ESBG and determine which vendor offers the best value to the Department and state.

Incorrect Procurement Method Used

Auditors identified two purchase transactions where the Department failed to select the correct procurement method when purchasing goods and did not provide proper justification or waivers/exceptions for the purchases. According to the Department, this was due to internal oversight and miscommunication.

- For one purchase, the Department procured office supplies (printer ink/toner) from a vendor outside the state's set aside program. These types of products are available from WorkQuest (formerly TIBH Industries) and through various applicable statewide contracts. The procurement file did not contain documentation to justify not using WorkQuest or a statewide contract. In addition, there is a Department of Information Resources (DIR) contract with the chosen vendor, but the DIR contract was not used. The Department stated that the procurement was based on best value.



- For another purchase, the Department procured office equipment (a standing desk and mat) from a vendor. The purchase order stated "Item not available through state sources;" however, auditors did not find documentation to support this statement.

According to the [*State of Texas Procurement and Contract Management Guide*](#) – Procurement Method Identification Process, selecting an incorrect procurement method results in a purchase that does not provide the best value to the state and is likely to be more expensive and less efficient than the correct method. In a worst case scenario, the incorrect method may result in a voided contract.

Set aside programs do not require competitive procurement and are comprised of:

- Prison Made Goods governed by [*Texas Government Code, Chapter 497*](#).
- The State Use Program authorized by [*Texas Human Resources Code, Chapter 122*](#).

The Prison Made Goods Act requires that agencies purchase goods and services from Texas Correctional Industries (TCI). An agency may decline to procure goods or services from TCI if:

- TCI grants a waiver.
- SPD determines that the good or service produced by TCI does not meet the requirements of the agency.
- SPD certifies that the good or service can be purchased elsewhere at a lower price after the agency gives TCI final opportunity to negotiate on price.

The Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program, commonly referred to as the State Use Program. TWC contracts with WorkQuest to administer the program. Agencies must purchase products and services offered through WorkQuest that meet the applicable specifications of the agency and that are available within the time specified. If a WorkQuest-offered product or service is obtained from another source, the agency must document which of the four authorized exceptions is applicable and report the reason through SPD's State Use Program exception reporting tool each month.

SPD establishes term contracts for the purchase or lease of goods and services used in large quantities. SPD term contracts establish best value; therefore, competitive bidding is not required for items purchased from term contracts. All agencies are encouraged to use term contracts whenever possible. Agencies are not allowed to use delegated authority to purchase goods or services that are available through a statewide term contract unless the quantity required is less than the minimum order quantity specified in the relevant term contract.



DIR establishes and maintains a catalog of active contracts on its website that contain IT commodity items available for purchase by state agencies. The DIR Cooperative Contracts Program leverages the volume buying power of the state to negotiate competitive pricing, which translates into savings for agencies.

See [State of Texas Procurement and Contract Management Guide](#) – Procurement Method Determination section.

Recommendation/Requirement

The Department must ensure that purchases are made according to SPD and DIR designated procurement methods and consider offerings from set aside programs, statewide term contracts, DIR contracts, etc. before procuring items from other sources. If the Department uses a different method to purchase goods or services, it must retain appropriate documentation in the procurement file to justify the purchase.

In addition, staff training programs and related documentation must include instructions to determine the most appropriate procurement method. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure existing state contracts and set aside programs are used for such procurements.

Missing Statewide Procurement Division Delegation of Purchasing Authority

Auditors identified one contract for non-delegated services where the Department did not obtain a delegation letter from SPD. According to the Department, this was due to internal oversight and miscommunication. Agencies that do not obtain applicable delegation of purchasing authority from SPD run the risk of operating outside of the authority granted to them by the state.

The purchasing functions for certain types of goods or services are delegated to state agencies, one being the purchase of services when the estimated cost does not exceed \$100,000. However, for purchases of services with an estimated value of more than \$100,000, the agency must request a delegation of purchase authority by submitting a procurement specific delegation request to SPD through the Procurement Oversight & Delegation portal. Once an agency has submitted a solicitation for review, the procurement is analyzed from a contract management and business perspective. If the delegation request is denied, SPD will procure the services on behalf of the agency. See [State of Texas Procurement and Contract Management Guide](#) – Delegation Request for Services Exceeding \$100,000.



Recommendation/Requirement

The Department must ensure its staff obtains SPD delegation of authority prior to purchasing goods or services that fall outside of the pre-approved class of procurements delegated to agencies based on procurement type or amount. Contract values include the estimated dollar amount that the agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract.

In addition, staff training programs and related documentation should include instructions to request SPD delegation of authority. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure delegation of purchasing authority requests are submitted for relevant contracts. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Missing Documentation to Support Payments for Contracted Services

For one of the contracts reviewed, auditors determined the seven payments included adequate approval from Department staff to pay the contractor for services performed; however, there was no written documentation where the Department authorized the contractor to perform specific services. The contract was for a provider to perform services on an as-needed basis throughout the contract term. Contracts of this type must include terms explaining the process to initiate work. The contract did contain language requiring specific written authorization (work orders). These work orders describe the scope of services, set a time schedule, and request applicable reports or deliverables.

Without written work orders authorizing the contractor to perform services, auditors could not compare anything to the invoices and confirm whether the payments were appropriate and related to specific services authorized in advance by the Department.

To support the legality and fiscal responsibility of payments for purchased goods and services, agencies must keep and provide sufficient documentation so that auditors can determine what was purchased, the price agreed upon before purchase, that the goods and services were received, and whether the coding for the expenditure was correct. Examples of required documentation include requisitions, contracts, purchase orders, contracts, invoices, receiving reports and receipts. Documentation must support a three-way match among the purchase agreement, invoice and receiving report to ensure information on them matches. See [34 Texas Administrative Code Section 5.51](#).



Contracts for services performed on an as-need basis without defined deliverables include additional terms for how work is to be requested; these terms are necessary to ensure contractors only perform services authorized by the agency, services are delivered as expected and in a timely manner, and that the financial interests of the agency are protected.

Recommendation/Requirement

The Department must ensure sufficient documentation is maintained to support the legality and fiscal responsibility of each payment that results from a purchase document if the payment is made from the agency's funds. At a minimum, evidence is needed to perform a three-way match among the purchase agreement/work orders, invoice/receipt, and receiving report.

Department Response

This is related to the investigative services contract. The Department again respectfully disagrees with this finding. The focus was on the need for "work orders" as stated in the contract before work is performed. The Legal division, which is responsible for work related to this contract, initiates communication before any work is performed. The nature of this work is complex and requires detailed and in-depth communication so that the work to be performed is understood. Therefore, communication as stated above is the "work order" for the purposes of this contract.

In order to eliminate any future confusion, we will amend the future contract, after ESBD solicitation posting and award, to include clear verbiage.

Comptroller Response

The contract correctly included language requiring specific written authorizations ("work orders") that include a scope of services, a time schedule, and applicable reports/deliverables. Although the contract specifically mentions "work orders", other documented communications from the Department to the contractor which authorized the services and included necessary details would have been acceptable in lieu of official "work orders." However, written documentation of these communications where the Department described and authorized the performance of specific services was not provided for the transactions tested. Documentation of these details is necessary to ensure payments are appropriate and only made for goods or services that were authorized in advance by the Department. The Comptroller's office appreciates that the Department intends to include clear verbiage in future contracts. Communications used to describe and authorize the initiation of work should be documented and maintained in agency records.



Missing Centralized Master Bidders List Solicitation

Auditors identified two purchases valued at \$98,400.00 and \$6,000.16 where the Department failed to perform a CMBL search for all eligible suppliers. According to the Department, this error occurred due to internal oversight and miscommunication.

The CMBL is a database of registered vendors, their contact information, and a list of their goods and services. Unless exempted by law, agencies must use the CMBL to select vendors for competitive bids or proposals and to the fullest extent possible for purchases exempt from SPD's purchasing authority. If agencies are required to use the CMBL, they must send a copy of the solicitation to all vendors on the CMBL bid list for the advertised NIGP commodity code(s). A copy of the bid list (with date the list was generated) and evidence of sending the solicitation must be maintained in the procurement file. See [State of Texas Procurement and Contract Management Guide – Centralized Master Bidders List](#) section.

Recommendation/Requirement

The Department must use the CMBL to ensure compliance with the rules and laws that govern Texas state government procurement and contract management practices. A dated copy of the CMBL solicitation results must be retained as evidence of the vendor search and included in the contract file.

In addition, staff training programs and related documentation must include CMBL instructions. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure timely CMBL documentation is included in each related procurement file. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Missing Written Approval to Supplement the Centralized Master Bidders List

Auditors identified one contract where the Department did not follow the proper CMBL solicitation process. The Department did not document the reason for soliciting from non-CMBL vendors and did not obtain written approval from its agency head or designee authorizing the addition of a non-CMBL vendor. According to the Department, this was due to internal oversight and miscommunication.



When an agency fails to document the reason to supplement a procurement with non-CMBL vendors and does not obtain written approval from the agency head or designee, there is an increased risk of reputational damage to the state and the agency since the reason for using non-CMBL vendors remains unknown.

The CMBL is an online directory of vendors registered to receive bidding opportunities from Texas purchasing entities. Agencies must use the CMBL to select vendors for competitive bids or proposals and, to the fullest extent possible, for purchases exempt from SPD's purchasing authority. An agency may supplement the CMBL with state certified historically underutilized businesses (HUBs) at any time if the agency determines that it may enhance competition or increase the number of HUBs that submit bids. However, an agency must obtain approval from its agency head or designee in order to solicit from non-CMBL vendors. Documentation regarding the additions to the CMBL bid list, including the written approval from the agency head or designee of the supplemented CMBL bid list, must be maintained in the procurement file. See [State of Texas Procurement and Contract Management Guide - Centralized Master Bidder List](#).

Recommendation/Requirement

The Department must ensure it documents instances where non-CMBL vendors are included in procurements that otherwise require the use of CMBL vendors. This justification must include the executive director's approval and be included in the procurement file.

In addition, staff training programs and related documentation should include instructions for supplementing the final bid list with non-CMBL vendors. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure proper written approval is included in the procurement file for non-CMBL vendors included in procurements. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Missing Nondisclosure Agreements and Conflict of Interest Statements

One contract was missing the required conflict of interest statement for the contract manager and purchasing staff involved in the procurement. Another contract was missing nondisclosure agreements for all members of the evaluation team. Conflict



of interest statements for this team were completed after the contract award and execution. In addition, these conflict of interest statements only listed the awarded vendor's name.

According to the Department, members of the evaluation team do not complete nondisclosure agreements prior to engaging in discussions or accessing proposal documents. The conflict of interest statements were not available for review. The Department stated both of these findings resulted from internal oversight and miscommunication.

When agency staff who are involved in the procurement process or contract management fail to complete nondisclosure agreements and conflict of interest statements, there is a risk of disrupting the integrity of the vendor selection as well as a risk of actual or potential conflicts of interest related to the purchased goods or services.

To safeguard the integrity of the evaluation process, individuals serving on an evaluation committee or as technical advisors must sign a nondisclosure agreement prior to receiving the responses or participating in evaluation committee activities. The agency must also conduct a due diligence inquiry as to the evaluation committee members' and technical advisors' actual and potential conflicts of interest related to the submitted responses. See [State of Texas Procurement and Contract Management Guide](#) – Non-Disclosure Agreements and Conflict of Interest Disclosures.

In addition, each state agency employee or official who is involved in procurement or contract management shall disclose any potential known conflict of interest with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor. A state agency employee or official is also required to disclose any potential conflict of interest at any time during the procurement process (from the initial request for bids for the purchase of goods or services until the completed final delivery of the goods or services) or term of a contract. See [Texas Government Code, Section 2261.252\(a\) and \(a-1\)](#) and [State of Texas Procurement and Contract Management Guide](#) – Non-Disclosure Agreements and Conflict of Interest Disclosures.

Recommendation/Requirement

The Department must ensure all agency employees or officers involved in procurement or contract management (including evaluation committee members and technical advisors):

- Sign nondisclosure agreements before engaging in evaluation committee activities.
- Complete conflict of interest statement before initiating purchases and at any time during the procurement process or term of a contract.

These documents should be maintained as part of the agency's procurement records according to record retention requirements.



In addition, staff training programs and related documentation should include instructions for completing nondisclosure agreements and conflict of interest statements. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure proper nondisclosure agreements and conflict of interest statements are included in the appropriate procurement files. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Missing Written Acknowledgement of Compliance with Procurement and Contract Management Guide

Auditors identified one contract missing written acknowledgment that the Department complied with its own and the Comptroller's contract management guide. The Department stated it was not aware of this requirement. Without a written compliance acknowledgment, there is no assurance the purchase was made according to the best value standard.

The contract manager or procurement director must acknowledge in writing that the Department complied with its contract management guide and the State of Texas Procurement and Contract Management Guide. See [State of Texas Procurement and Contract Management Guide – Pre-Award Contract and Contract Amendment Compliance Checks – Agency Reviews and Approvals](#).

Recommendation/Requirement

The Department must ensure the contract manager or procurement director acknowledge in writing that the Department complied with its contract management guide and with the *State of Texas Procurement and Contract Management Guide*. The acknowledgement should be maintained in the procurement file according to record retention requirements.

In addition, staff training programs and related documentation should include instructions for documenting the use of best value standards and other required agency reviews and approvals. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).



Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. The CFO, with procurement staff verification, will include such documentation in the appropriate procurement files. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Missing Required Contract Clauses

Auditors identified two contracts missing contract clauses required by the state's contract manual in effect at the time the contract was initiated. The following clauses were not fully included:

- Dispute Resolution – one contract included wording from the required clause related to the [Texas Government Code, Chapter 2260](#) dispute resolution process; however, it lacked wording regarding the:
 - mediation for all other specific breach of contract claims or disputes.
 - continuation/suspension of contract performance during breach of contract claims or disputes.
- Ownership/ Intellectual Property, including Rights to Data, Documents and Computer Software – both contracts were missing wording from the required clause regarding the requirement to keep relevant contract documents and records for seven years.

When required clauses are not included in a contract, there is an increased risk that contracts will be in violation of federal or state statutes and rules, which in turn increases the risk that the contracts and the Department will be subject to legal challenge or regulatory action.

The Texas Procurement and Contract Management Guide lists various contract clauses that protect the interests of the state. Contract language and wording must conform to the text of the required contract clauses and any additional language must not conflict with or weaken a required contract clause. Procurement staff should seek assistance from agency legal counsel prior to modifying the contract language since slight variations may result in non-compliance with applicable statutes and rules. See [State of Texas Procurement and Contract Management Guide](#) – Contract Terms.

Recommendation/Requirement

The Department must ensure all required clauses listed in the *Texas Procurement and Contract Management Guide* are included in its contracts and solicitations. Omitted required clauses or substantially altered language must be approved by the Department's legal counsel and the justification must be documented in the contract file.



Department Response

The Department's General Counsel reviews agency contracts for terms and conditions updates and revisions. We will update our terms and conditions to reflect the inclusion of the Ownership/Intellectual Property clause and revision of the Dispute Resolution clause.

Missing Vendor Compliance Verifications

Auditors identified 10 transactions from the purchase sample, four transactions from the payment card sample, and two contracts containing errors related to the Department's duty to perform vendor compliance verifications. When vendors are not checked prior to purchase or contract award, there is a risk of conducting business with unauthorized vendors or issuing payments to vendors who owe money to the state.

Warrant Hold Check

The Department was unable to provide evidence it conducted a warrant hold check for four payment card purchases (over \$500 each) and two contracts. One additional purchase transaction listed an incorrect vendor name. As a result, no warrant hold check was conducted for the contracted vendor. According to the Department, these errors were due to internal miscommunication and oversight.

Agencies must verify warrant hold status for:

- Transactions involving a written contract.
- Payments made with local funds.
- Payment card purchases over \$500.

For transactions involving a written contract, agencies must verify the warrant hold status no earlier than the seventh day before and no later than the day of contract execution. If the vendor is on warrant hold, the agency may not enter into a written contract unless the contract requires the agency's payments under the contract to be applied directly toward eliminating the person's debt or delinquency. This requirement described above specifically applies to any debt or delinquency, regardless of when it arises.

Agencies must not proceed with purchases made with local funds or payment card purchases over \$500 until the warrant hold is released. Emergency payments are not subject to this requirement. Although payments made through the Uniform Statewide Accounting System (USAS) are automatically checked for holds and the system identifies payments issued to persons with outstanding state debt, this does not relieve an agency from conducting the warrant hold check. See [eXpendit – Restricted Expenditures - Persons Indebted to the State](#).



System for Award Management Check

The Department conducted delayed System for Award Management (SAM) checks for eight purchase transactions and one contract. These checks were conducted after the purchases were completed and the contract was awarded. One additional purchase transaction listed an incorrect vendor name. As a result, no SAM check was conducted for the contracted vendor. According to the Department, these issues were the result of internal oversight.

Agencies must check the SAM database to verify the vendor is not excluded from grant or contract participation at the federal level. A contract cannot be awarded to a vendor named on the U.S. Treasury Department, Office of Foreign Assets Control's master list of specially designated nationals & blocked persons (with limited exceptions). See [executive order 13224](#).

Iran, Sudan, and Foreign Terrorist Organization Check

The Department was unable to provide proof staff conducted the Iran, Sudan and foreign terrorist organization checks for four purchase transactions. According to the Department, this error was due to an internal oversight.

Agencies may not contract with a company doing business with Iran, Sudan, or a foreign terrorist organization. Prior to award, agencies must check the divestment lists posted on the Comptroller's website to determine if the potential awardee is in violation of this requirement. If the potential awardee is on the list, an agency cannot award the contract to the that vendor. See [Texas Government Code, Sections 2252.152, 2252.153, and 2270.0201](#)

Boycott Israel Check

The Department was unable to provide proof staff conducted boycott Israel checks for four purchase transactions. According to the Department, this error was due to an internal oversight.

Agencies may not contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

Before awarding the contract, agencies must check the divestment lists posted on the Comptroller's website to determine if the potential awardee is in violation of this requirement. If the potential awardee is on the list, an agency cannot award the contract to that vendor. See the [State of Texas Procurement and Contract Management Guide – Boycott Israel Check](#).



Recommendation/Requirement

The Department must ensure all required vendor compliance verifications are conducted prior to any purchase and contract award, extension or renewal. Staff must retain records of these review results in the procurement file to show the verification requirements were met.

In addition, staff training programs and related documentation should include instructions for performing vendor compliance verifications. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure proper inclusion of such documentation in the appropriate procurement files. In addition, procurement staff implemented the use of available checklists in the Texas Procurement and Contract Management Guide.

Missing Pre-Award VPTS Check and Untimely VPTS Reporting

Auditors identified one instance where the Department failed to conduct VPTS check before awarding the contract. Auditors also noted the Department failed to report on time two purchases and two contracts over \$25,000 to VPTS. The two contracts were reported four months and five months after the contract expired. The two purchase transactions were reported eight months and 19 months after receiving the goods/ services. According to the Department, these errors resulted from internal oversight and miscommunication.

Agencies must review vendor performance reports in VPTS before awarding a contract in order to identify vendors with a history of poor performance and/or unethical business practices. In addition, when agencies do not report vendor performance on time, procurement staff in other agencies do not have the means to properly evaluate vendor performance and practices.

VPTS provides state agencies with a comprehensive tool to evaluating vendor performance and reduce risk in the contract awarding process. Agencies are required to use VPTS to determine whether to award a contract to a vendor. A vendor's performance must be reported to VPTS once a contract valued at more than \$25,000 is completed or otherwise terminated. If the value of the contract exceeds \$5 million, the agency must review the contractor's performance at least once each year during the term of the contract and at each key milestone identified for the contract. See [State of Texas Procurement and Contract Management Guide – Vendor Performance Tracking System Check and Vendor Performance Reporting](#).



Recommendation/Requirement

The Department must ensure procurement staff use VPTS before determining whether to award a contract to a vendor. Staff must retain records in the procurement file of the VPTS review results dated prior to contract award. When the total value exceeds \$25,000, the Department must also ensure the vendor's performance is assessed and reported to VPTS once a contract is completed or otherwise terminated. Similarly, if the contract value exceeds \$5 million, reports must be done at other required intervals.

In addition, staff training programs and related documentation should include instructions on using and reporting to VPTS. Using a procurement checklist could help ensure all requirements are completed; a template checklist is available in the [State of Texas Procurement and Contract Management Guide](#).

Department Response

An internal meeting was held between the CFO and purchasing staff when this issue was first brought forward during audit field work. Procurement staff will ensure such verifications and reporting are performed for the relevant contracts. In addition, procurement staff implemented the use of available checklists in the Texas procurement and contract management guide.

Travel Transactions

Auditors developed a sample of 35 travel transactions totaling \$19,705.63 to ensure the Department complied with the GAA, [Textravel \(FPP G.005\)](#) and pertinent statutes. Audit tests revealed the following exception in this group of transactions.

Improper Payment of Non-Overnight Meals

Auditors identified one instance of improper payment where an employee traveled for less than six consecutive hours outside designated headquarters and was paid for meal expenses. According to the Department, this error was due to an internal oversight.

The meal expense is only reimbursable if the employee is outside the designated headquarters for at least six consecutive hours, unless the employee is a chief administrator of a state agency or the travel provisions of the GAA authorize the reimbursement. See [Texas Government Code, Section 660.113\(b\)](#).

Recommendation/Requirement

The Department must provide increased training for staff who review travel vouchers to ensure that only eligible expenses are reimbursed. The Department must not reimburse employees for meal expenses when the travel is less than six hours outside of the designated headquarters.



Department Response

In the one instance of a \$14.00 ineligible reimbursement, the Department contacted the employee and received reimbursement. Confirmation of this action was provided to the Comptroller's audit staff.

The Department has provided additional training to all staff, stressing that the correct departure and arrival times be noted on all vouchers. In addition, we have strengthened our review process in regards to non-overnight meal reimbursements.

Fixed Assets

The audit included a review of a limited number of fixed assets acquired by expenditures during the audit period to test for accurate reporting and to verify the existence of the assets. All assets tested were in their intended locations and properly recorded in the State Property Accounting (SPA) system. Audit tests revealed no exceptions.

Internal Control Structure

Control Weakness Over Expenditure Processing

As part of the planning for the post-payment audit, auditors reviewed certain limitations the Department placed on its accounting staff's ability to process expenditures. Auditors reviewed the Department's security in USAS, the Uniform Statewide Payroll/Personnel System (USPS), the Texas Identification Number System (TINS) and voucher signature cards in effect on Dec. 11, 2020. Auditors did not review or test any internal or compensating controls that the Department may have relating to USAS, USPS, or TINS security or internal transaction approvals.

The Department had two employees with multiple security capabilities. These employees had security access to:

- Enter/edit and release/approve payment vouchers and payroll in USAS.
- Process/edit and release payment vouchers and payroll in USPS.
- Enter/edit and release/approve a payment voucher in USAS and create/edit a vendor profile/direct deposit information in TINS.
- Edit/update a vendor or employee profile/direct deposit information and approve paper vouchers.
- Hire an employee in USPS, edit the employee direct deposit information, and process/release payrolls in USPS.
- Enter/edit payment vouchers in USAS, approve paper vouchers, and change the warrant hold status of a vendor in TINS.



Additionally, one of the employees had the security access to enter/edit and release payment vouchers in the Department's internal accounting system.

Auditors generated a report to determine whether any of the Department's payment documents processed through USAS during the audit period due to the action of only one individual. The report did not identify any expenditures processed without oversight. Auditors also verified that no documents were released by unauthorized users during the audit period.

As a small agency with limited accounting staff, the Department has provided certain key staff with the ability to perform multiple functions in case of an emergency. Although the Department regularly monitors activity for irregularities, the risk of non-segregated system access still exists and remains regardless of any monitoring measures in effect.

Recommendation/Requirement

To reduce risk to state funds, agencies must have controls over expenditure processing that segregate each accounting task to the greatest extent possible. Ideally, no individual should be able to process transactions without another person's involvement.

Auditors recognize that the Department converted to CAPPs in fiscal 2022, so there are no recommendations regarding USPS access.

The Department should consider implementing the following recommendations:

- Limit user access to enter/change vouchers or release/approve batches in USAS.
- Work with the Comptroller's office Statewide Fiscal Systems security staff to set up user profiles that separate the entry and approval of payroll transactions.
- Limit users with access to enter/change vouchers or release/approve batches in USAS to view only access in TINS (PTINS02). An individual must not be able to create or approve a payment and create or change a vendor profile/direct deposit information.
- Limit users with access to approve paper vouchers (being on the signature card) to view only access in TINS (PTINS02). An individual must not be able to create or change a vendor/employee profile or direct deposit information and approve a payment.
- Ensure that employees who can process a payment voucher in USAS/approve a paper voucher (are on signature card), do not have the ability to change the warrant hold status of a vendor in TINS.



- Ensure that employees with voucher/payment entry/change/delete status in the Department's internal system are not be able to approve/release payments in the internal system or in USAS. A supervisor or another employee should approve the vouchers in the internal system.

Department Response

Although this is a repeat finding from the 2018 Post-Payment Audit, we respectfully disagree with the recommendations. As has been stated previously, the Department makes every effort to ensure one individual does not process expenditure payments without oversight. However, as a small agency with a limited accounting staff, it is necessary for certain key staff to have this ability in emergency situations. We believe our current robust internal controls are appropriate and reliable to ensure only proper expenditures are processed by the Department. In addition to the above, the following controls are in place with special attention to item 3:

- 1. Based on a recommendation from the 2016 State Auditor's Office audit, a MUSL (our internal payment processing system) monthly report is run and compared to USAS reports (DAFR2901 and USAS screen 37) to document if any entry and release by the same employee in the internal accounting system and USAS has occurred. This report is presented to the CFO for review monthly. Since implementation, there have been no such instances identified.*
- 2. In the event an individual must process and release a payment, the related transactions are required to be reviewed the following day by the CFO, the Chief Accountant, or the Deputy Commissioner.*
- 3. In fiscal year 2022, we changed the agency's D02 profile from Warning to Fatal. This change was not recommended by Comptroller staff as this change could negatively affect our agency's operations due to its size. Regardless, this change was made.*
- 4. We reconcile our internal accounting system to USAS monthly. This reconciliation is prepared by the Chief Accountant and reviewed by the CFO.*
- 5. Monthly financial statements (by division) are prepared by Accounting staff and are reviewed by the Banking Commissioner, Deputy Commissioner, and Division Directors.*
- 6. Each Division Director participates in the preparation of the budget for their area. Quarterly, divisional financial statements with budget to actual comparisons both for the quarter and year to date are provided to the Commissioner, Deputy Commissioner and Division Directors. Each Director must explain any budget deviation for their division that is in excess of \$1,000 and 5% of the budget.*



These reviews mitigate the possibility of an improper expenditure being made. We believe we are taking all necessary measures to ensure a viable internal control structure without adding staff or hindering our business and accounting operations.

Comptroller Response

The Comptroller's office appreciates the Department's efforts to mitigate the possibility of an improper expenditure being made and understands the limitation posed by the agency's small size. However, the risks of non-segregated system access still exist and will remain regardless of the other mitigating controls in place to prevent fraudulent activities.

Security

The audit included a security review to identify Department employees with security in USAS or on the voucher signature cards who were no longer employed or whose security had been revoked. Upon termination or revocation, certain deadlines must be met so security can be revoked in a timely manner. Audit tests revealed no exceptions.



Appendices

Appendix 1 — Objectives, Scope, Methodology, Authority and Team

Audit Objectives

The objectives of this audit were to:

- Ensure payments are documented so a proper audit can be conducted.
- Ensure payment vouchers are processed according to the requirements of any of the following:
 - Uniform Statewide Accounting System (USAS),
 - Uniform Statewide Payroll/Personnel System (USPS),
 - Standardized Payroll/Personnel Reporting System (SPRS),
 - Human Resource Information System (HRIS) or
 - The Centralized Accounting and Payroll/Personnel System (CAPPS).
- Verify payments are made in accordance with certain applicable state laws.
- Verify assets are in their intended locations.
- Verify assets are properly recorded for agencies and institutions of higher education that use the State Property Accounting (SPA) system.
- Verify voucher signature cards and systems security during the audit period are consistent with applicable laws, rules and other requirements.

Audit Scope

Auditors reviewed a sample of the Texas Department of Banking (Department) payroll, purchase, procurement and travel transactions that processed through USAS and USPS from March 1, 2019, through Feb. 29, 2020, to determine compliance with applicable state laws.

The Department received appendices with the full report, including a list of the identified errors. Copies of the appendices may be requested through a [Public Information Act](#) inquiry.

Texas law requires the Texas Comptroller of Public Accounts (Comptroller's office) to audit claims submitted for payment through the Comptroller's office. All payment transactions are subject to audit regardless of amount or materiality.

The audit provides a reasonable basis for the findings set forth in this report. The Department should implement the recommendations listed in the Detailed Findings of this report. It is the Department's responsibility to seek refunds for all overpayments unless it determines it is not cost effective to do so. If necessary, the Comptroller's office may take the actions set forth in Texas Government Code, Section 403.071(h), to ensure that the Department's documents comply in the future. The Department must ensure that the findings discussed in this report are resolved.



Audit Methodology

The Expenditure Audit section uses limited sampling to conduct a post-payment audit, and relies on professional judgment to select areas the auditor considers high risk.

Fieldwork

Each auditor in the Expenditure Audit section approaches each audit with an appropriate level of professional skepticism based on the results of the initial planning procedures.

If an auditor suspects during an audit that fraud, defalcation or intentional misstatement of the facts has occurred, the auditor will meet with his or her supervisor, the Statewide Fiscal Oversight manager, or both, to decide what action or additional procedures would be appropriate.

Audit Authority

State law prohibits the Comptroller's office from paying a claim against a state agency unless the Comptroller's office audits the corresponding voucher.

- Texas Government Code, Sections 403.071(a), 403.078, 2103.004(a)(3).

State law allows the Comptroller's office to audit a payment voucher before or after the Comptroller's office makes a payment in response to that voucher.

- Texas Government Code, Section 403.071(g)-(h).

In addition, state law authorizes the Comptroller's office to conduct pre-payment or post-payment audits on a sample basis.

- Texas Government Code, Sections 403.011(a)(13), 403.079, 2155.324.

Audit Team

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Appendix 2 — Definition of Ratings

Compliance Areas

Definition	Rating
Agency complied with applicable state requirements and no significant control issues existed.	Fully Compliant
Agency generally complied with applicable state requirements; however, control issues existed that impact the agency's compliance, or minor compliance issues existed.	Compliant, Findings Issued
Agency failed to comply with applicable state requirements.	Noncompliant
Restrictions on auditor's ability to obtain sufficient evidence to complete all aspects of the audit process. Causes of restriction include but are not limited to: <ul style="list-style-type: none">• Lack of appropriate and sufficient evidentiary matter.• Restrictions on information provided to auditor.• Destruction of records.	Scope Limitation

Internal Control Structure/Security Areas

Definition	Rating
Agency maintained effective controls over payments.	Fully Compliant
Agency generally maintained effective controls over payments; however, some controls were ineffective or not implemented. These issues are unlikely to interfere with preventing, detecting, or correcting errors or mitigating fraudulent transactions.	Control Weakness Issues Exist
Agency failed to effectively create or implement controls over payments.	Noncompliant

Repeat Finding Icon Definition



This issue was identified during the previous post-payment audit of the agency.