

Administering Overpayment Recovery Audits in the State of Texas

Fiscal 2012 through 2014

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Executive Summary

Introduction and Procurement Summary

In January 2005, the Legislative Budget Board (LBB) included a recommendation in its *Staff Performance Report* to “Recover Certain State Agency Overpayments to Vendors.” The LBB recommended that the Comptroller of Public Accounts (Comptroller’s office) contract with a third-party firm to implement a recovery audit program for Texas. The LBB also recommended that only agencies with more than \$100 million in biennial expenditures from appropriated funds be included, and that each participating entity keep 50 percent of recovered money, from which it would pay the contracted third party firm.

As a result, the Comptroller’s office is statutorily required by Texas Government Code, Chapter 2115, to contract with one or more consultants to perform overpayment recovery audits at certain state agencies spanning the state fiscal biennium ending Aug. 31. The results are then summarized and sent to the Legislature before Jan. 1 of each odd-numbered year.

For the reporting period, the Comptroller’s office issued a Request for Proposals (RFP) for recovery audit services on Dec. 2, 2011. The contract was signed on March 28, 2012, with Experis US, Inc. (Experis) for a contingency fee rate of 14 percent on all recovered funds. The state’s negotiated rate was substantially lower than the industry average, ranging from 20 to 40 percent as cited in the LBB report. The contract included two renewal options, with the latest expiring on Aug. 31, 2015. However, only one renewal period was exercised and the contract ended Aug. 31, 2014.

Project Scope

The recovery audit program consisted of:

- A review of qualifying agencies’ accounts payable transactions
- Verification of contract terms and conditions, invoices and discounts
- Related regulatory matters in order to identify overpayments on behalf of the state and
- Payment transactions processed in fiscal years 2009 and 2010

Experis reviewed and tested payments for errors including but not limited to:

- Overpayments
- Duplicate payments
- Pricing errors
- Invoicing errors
- Missed rebates or discounts
- Contract pricing
- Contract terms
- Other recoveries that the Comptroller’s office determined will create an economic benefit for the state

Payments not eligible for inclusion included payroll, benefit and insurance payments to or for state employees, teachers or retirees; annuitant payments; investments, loans, bond debt service and related interest; payments on outstanding warrants; unemployment compensation; judgments and settlements; payments made under state receivership; payments already canceled or credited; certain grant payments; Medicaid program payments; payments made by the state to any agency, court, school district or public school of this state; overpayments of state taxes or state fees; tax refunds; or refunds of fees paid to the state and all other revenue refunds.

Project Status

Twelve agencies were subject to an overpayment recovery audit of their accounts payable transactions based on qualifying criteria in Texas Government Code, Chapter 2115. (See [Appendix B](#).)

As of December 2013, Experis completed the overpayment recovery audits on the twelve state agencies assigned and identified a total of \$181,696 in overpayment transactions. Recoveries for the fiscal years under review totaled \$121,784, with a balance of \$59,912 that was disputed by the vendors. See [Agency Audits](#) section for summary on each agency review.

A total of \$181,696 in findings was identified during the review of contract terms and conditions:

- \$30,802 was recovered due to a pricing reduction not realized for a transaction threshold
- \$90,982 was recovered due to construction contract rebates not being refunded or credited back to the initiating agency along with cost overbillings on Guaranteed Maximum Price (GMP) construction contracts
- The remaining \$59,912 was disputed by the construction and contract management vendors and was not recovered

Medicaid-related Payments Not in Scope

A provision in the Patient Protection and Affordable Care Act (PPACA) required states to establish a recovery audit contractor (RAC) program for Medicaid providers by April 1, 2011. The Health and Human Services Commission (HHSC) independently pursued a Medicaid RAC, eliminating this portion of the review from the statewide recovery audit program.

As of Nov. 1, 2014, no RAC audits have been completed. The contract was awarded to Health Management Systems (HMS), and HMS is currently working to have the first phase of audits completed by the summer of 2015.

Conclusion

According to Experis' research and data analytics, the state agencies selected for this review have demonstrated a strong proficiency for identifying duplicate payments early in the payable lifecycle. Therefore, it does not consider this a viable risk at those agencies.

After meeting the contract terms and conditions for the audit reviews, there were a few examples of overpayments identified. One issue identified pricing that was not updated (lowered) to account for volume thresholds. It has been recommended that agencies review and monitor all contracts with pricing thresholds.

Other issues identified were related to construction contracts lacking or including vague language restricting the agencies' ability to recover rebates/refunds for Performance and Payment Bonds and billings not reconciled to the contractor's job cost ledger at the end of the project.

If the recovery audit program continues in its current format, the Comptroller's office makes the following recommendations:

- State law does not define the frequency of these audits.
 - ⇒ **Recommendation:** Allow the Comptroller's office to determine the frequency of auditing based on the state's best interests.
- The state receives no benefit from recovering state sales tax paid in error.
 - ⇒ **Recommendation:** Remove state sales tax from the list of overpayment types included in the recovery audits.

Issues Identified

The Comptroller's office noted the following issues during the implementation of the state's overpayment recovery audit program.

Performance and Payment Bond Rebates

Overpayment recovery audits have identified potential issues related to performance and payment bond rebates on construction contracts. In contracts reviewed, the rebate ownership was silent. According to Experis, performance bond rebates are typically passed on to the client as credits to the job cost. Similar issues related to construction contracts and bond rebates will more likely be encountered at other state agencies.

- ⇒ **Resolution:** The Comptroller's office determined that performance and payment bond rebates are not a recoverable item for this audit because the contracts were silent and did not explicitly state that these rebates were to be refunded back to the state. The Comptroller's office will work with all agencies to ensure that future contracts with performance and payment bonds address any rebates that are issued.

Multiple Versions of Medical Services Audits

The HHSC's Office of the Inspector General audits all five of the health and human service agencies' medical service programs and coordinates investigative efforts to recover Medicaid overpayments, particularly those due to fraud. Efforts include audits of third-party liabilities, service providers and tests of eligibility.

In 2011, the 82nd Legislature passed HB 1720 that required HHSC to establish a program to contract with one or more recovery audit contractors to identify and recover underpayments and overpayments under the Medicaid program. This program was also federally mandated under Section 6411 of the Patient Protection and Affordable Care Act. The Comptroller's office and HHSC held discussions to determine how to proceed with the reviews.

- ⇒ **Resolution:** Both the Comptroller's office and HHSC agreed that the latter should solely audit for Medicaid overpayments because the HHSC contract would include terms specific to Medicaid.

Restricted Sources of Funding

Chapter 2115 of the Government Code requires state agencies to pay the Comptroller's office's contracted third party firm from recovered funds. Some of these funds, however, do not permit the payment of consultant fees. Bond covenant-protected funds and certain trust funds are examples of such funds included in the audit program. The Comptroller's office included these expenditures because overpayment recoveries are beneficial to the state and the programs using these funds.

- ⇒ **Resolution:** When funds that were originally paid from restricted sources are recovered, agencies are instructed to compensate the consultant from any available administrative funds.

Agency Audits

The Comptroller's office uses data from the Uniform Statewide Accounting System (USAS) to determine the audit population for the state's recovery audit program. In an effort to create additional recovery opportunities for the state, the Comptroller's office included certain expenditure types in the qualifying calculation that the original LBB recommendation had not included. Specifically, the Comptroller's office did not exempt certain grants to companies and individuals, public assistance payments, real property, lottery prize payments or travel reimbursements from recovery audit consideration.

Additionally, the Comptroller's office sought to protect agencies from the cost of participating in a recovery audit outweighing the agency's anticipated gains from the audits. After establishing a baseline of expenditures to be included in the recovery audit, the Comptroller's office used totals from those expenditures and the center point of the LBB's research on anticipated recoveries (.04 percent) to compute anticipated gains. Using this computation, the Comptroller's office exempted agencies whose population of expenditures subject to the audit is less than \$62.5 million (where anticipated gains were less than \$25,000) to prevent loss to the state.

The Comptroller's office also exempted the following from recovery audit efforts because recovering these funds would not be beneficial to the state:

- State sales tax
- Payments made to other state entities
- Payments made under receiverships
- Payments recorded by agencies on behalf of other governmental units

The Overpayment Recovery Audit Program

The overpayment recovery audits began with entrance conferences at each agency being audited. The Comptroller's office's recovery audit team participated in the conferences so the team could observe how the audits are conducted and which controls are being assessed.

The audits are data driven. Audit fieldwork at the agencies began after the agencies provided the necessary data for review. The contractor's audit fieldwork was limited to six months aggregate time spent at any one agency. The Comptroller's office, along with the affected agency, could have extended fieldwork at an agency if the Comptroller's office believed that it would have been cost beneficial to do so.

The entire audit, including collections that occur after fieldwork is completed, was limited to a period of 18 months from the day the audit began. Because the duration of the audit in its entirety was 18 months, the Comptroller's office required the contractor to provide final management review reports not later than one month after the fieldwork phase ended at each agency.

Overpayment Recovery Audit Plan and Process

The Comptroller's office initiated two agencies' contracted overpayment recovery audits to begin the statewide program: Texas Facilities Commission (TFC) and Texas Parks and Wildlife Department (TPWD). Experis staff developed a risk assessment to determine these initial assignments.

After the first two audits began, Experis determined that it would be most beneficial to initiate the remaining 10 agencies' audits concurrently. Working on all agencies' overpayment reviews would expedite the recovery of funds. Based on the results of that review, Experis suggested the order of remaining work to be performed among the agencies. Remaining work involved detailed contract reviews and documenting the results of any additional data analysis tests that were performed. In August 2012, the Comptroller's office agreed to initiate the 10 remaining agencies' audits over a three-month period.

Work Streams

Experis divided these audits into two phases called 'work streams.' The first work stream involved payment data analysis of reports generated from the statewide financial systems. The second work stream involved fieldwork visits to each agency to review invoices and other relevant documents for overpayments or errors.

Work Stream 1

Used data from USAS to provide a series of data-analytic reports to determine potential overpayment recovery opportunities due to duplicate payments or system/data errors.

Reports generated included but were not limited to:

- Duplicate invoice dates
- Multiple vendors
- Data errors
- Appropriation funds
- Document numbers

Work Stream 2

Reviewed high-spend/high-risk contracts to ensure that agencies paid vendors according to the terms and conditions of their contracts.

This activity required review of:

- Paper or electronic copies of the contracts selected
- Any amendments or change orders
- Invoices
- Job cost ledgers
- Purchase orders
- Other relevant information

Integration with Comptroller Post-Payment Audits

The Comptroller's office also uses data-mining techniques to target compliance issues and concurrently participated in recovery audit activities. The Comptroller's office used information learned from previous overpayment recovery audits. For example, the expenditure audit team incorporated into the Comptroller's office's audit program, the statement analysis technique used by the previous contractor. (Statement analysis is a review method used by recovery auditors to determine if vendors have unused credits of which the agency might not be aware.)

The Comptroller's office has upgraded its existing reports to find duplicate payments and created new reports to find pricing discount errors. The agency continues to search for ways to improve the expenditure audit program through the use of new data-analysis techniques. In addition, the expenditure audit team has initiated a pilot to include an expanded review of agencies' construction contracts as part of post-payment audits.

Appendices

Appendix A: Risk Model and Ranking Factors

Experis analyzed data obtained from the Comptroller's office and from the 12 agencies subject to the overpayment recovery audit. The following tables were provided by Experis and depict agency risk, ranging from 1 (lowest) to 5 (highest).

Experis based its rankings on:

- Number of vendors paid
- Total amounts spent
- Number of transactions processed
- Amount of reversed transactions by agencies in the accounting systems
- Any penalty amounts paid

Experis Risk Model and Ranking Results, Vendor Payment Score

Agency Number and Name	Risk Score	Vendor Count	Vendor Count Score	Vendor Payments	Vendor Payment Score
601 Texas Department of Transportation	500	17,707	5	\$9,500,795,760	5
696 Texas Department of Criminal Justice	455	5,843	5	\$2,525,930,776	5
802 Texas Parks and Wildlife Department	395	13,889	5	\$202,052,802	3
405 Department of Public Safety	370	3,119	4	\$592,795,267	4
401 Texas Military Department	330	2,290	3	\$179,578,504	3
582 Texas Commission on Environmental Quality	300	2,875	3	\$194,649,386	3
313 Department of Information Resources	265	347	1	\$550,481,584	4
644 Texas Juvenile Justice Department	265	3,748	4	\$103,296,917	2
739 Texas Tech University Health Sciences Center	230	1,333	2	\$89,555,967	1
303 Texas Facilities Commission	215	1,045	2	\$127,134,701	2
304 Comptroller of Public Accounts	185	1,258	2	\$124,802,748	2
771 Texas School for the Blind and Visually Impaired	145	734	1	\$62,004,776	1
Totals	—	54,188	—	\$14,253,079,188	—

Experis Risk Model and Ranking Results, Penalty Score

Agency Number	Transaction Count	Transaction Score	Reversal Amount	Reversal Score	Penalty Amount	Penalty Score
601	567,263	5	(\$4,459,969)	5	\$251,163	5
696	506,764	5	(\$728,482)	4	\$3,298	3
802	353,442	4	(\$213,765)	3	\$41,364	4
405	150,397	4		1	\$175,600	5
401	54,892	3	(\$539,257)	4	\$43,541	4
582	56,208	3	(\$111,275)	3	\$7,505	3
313	11,513	1	(\$9,828,256)	5	\$38,592	4
644	72,259	3		1	\$1,686	2
739	60,713	3	(\$6,293,834)	5	\$903	1
303	27,141	2	(\$66,331)	2	\$3,455	3
304	33,426	2	(\$95,481)	2	\$951	1
771	10,471	1	(\$155,047)	3	\$1,994	2
Total	1,904,489	–	(\$22,491,697)	–	\$570,052	–

Appendix B: Agencies Subject to Mandatory Recovery Audits

Agency Number and Name	Total Expenditures	Vendor Payments	Vendor %	Projected Savings (Based on 0.04% of Vendor Payments)
601 Texas Department of Transportation	\$14,655,431,884	\$9,500,795,760	65.07%	\$3,814,532
696 Texas Department of Criminal Justice	\$7,179,794,505	\$2,525,930,776	35.61%	\$1,022,795
405 Department of Public Safety	\$3,052,516,644	\$592,795,267	19.73%	\$240,850
582 Texas Commission on Environmental Quality	\$986,915,987	\$194,649,386	20.15%	\$79,555
802 Texas Parks and Wildlife Department	\$742,717,121	\$202,052,802	28.10%	\$83,488
313 Department of Information Resources	\$598,381,914	\$550,481,584	92.48%	\$221,349
304 Comptroller of Public Accounts	\$574,862,747	\$124,802,748	22.03%	\$50,664
644 Texas Juvenile Justice Department	\$517,327,984	\$103,296,917	20.52%	\$42,459
739 Texas Tech University Health Sciences Center	\$386,433,690	\$89,555,967	25.34%	\$39,169
401 Texas Military Department	\$280,034,401	\$179,578,504	68.92%	\$77,200
303 Texas Facilities Commission	\$262,751,571	\$127,134,701	48.72%	\$51,203
771 Texas School for the Blind and Visually Impaired	\$109,829,425	\$62,004,776	58.16%	\$25,553
Totals	\$29,346,997,872	\$14,253,079,188	—	\$5,748,815

Appendix C: Agencies Final Reports

Agency 303, Texas Facilities Commission

Number of Payments Reviewed	Amount of Payments Reviewed	Over-payments Identified	Cause of Over-payment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
27,141	\$127,134,701	\$81,291	Cost Overbill	9/30/2012	\$64,450	\$16,841	\$16,841	State

Recovery:

- \$41,148 for a construction contract cost overbilling identified by performing a detailed reconciliation of the job cost ledger to amount billed by the vendor, who issued a refund check in that amount. The reconciliation included costs billed greater than costs recorded and fee adjustments based on the contract and change orders.
- \$23,302 for a construction contract cost overbilling identified by performing a detailed reconciliation of the job cost ledger to amount billed by the vendor, who issued a refund check in that amount. The reconciliation included costs identified in the job cost ledger that were not reimbursable, costs billed greater than costs recorded and an allocation of cost savings based on the contract.

Issues:

- \$4,737 potential recovery identified for overbilling of state unemployment and FUTA tax. The vendor did not agree that it was owed, and the TFC did not pursue.
- \$12,104 potential recovery for Performance and Payment Bond rebates that was not passed on to TFC. The vendor did not agree that it was owed, and TFC did not pursue.

Agency 802, Texas Parks and Wildlife Department

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
353,442	\$202,052,802	\$30,802	Reduced pricing	9/30/2012	\$30,802	–	–	–
–	–	\$43,071	Cost Overbill	–	–	\$43,071	–	–

Recovery:

- \$30,802 overpayment caused by a change in rates for transaction fees that were not reduced per terms and conditions of contract. The vendor has issued a credit to the TPWD.

Issues:

- \$43,071 potential recovery identified for construction cost overbilling. TPWD sent a letter via certified mail requesting reimbursement on Aug.28, 2013, but received no response or acknowledgement from the vendor.

Agency 771, Texas School for the Blind and Visually Impaired

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
10,471	\$62,004,776	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 401, Texas Military Department

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
54,892	\$179,578,504	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 313, Department of Information Resources

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
11,513	\$550,481,584	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 304, Comptroller of Public Accounts

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
33,426	\$124,802,748	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 405, Department of Public Safety

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
150,397	\$592,795,267	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 582, Texas Commission on Environmental Quality

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
56,208	\$194,649,386	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 739, Texas Tech Health Sciences Center

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
60,713	\$89,555,967	\$ 26,532	Cost and Payment Bonds	6/30/2013	\$ 26,532	–	–	–

Recovery:

- \$26,532 for refunded bond costs

Issues:

- None

Agency 601, Texas Department of Transportation

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
567,263	\$9,500,795,760	–	–	–	–	–	–	–

Recovery:

- None

Issues:

- Did not consider construction contracts as part of review

Agency 696, Texas Department of Criminal Justice

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
506,764	\$2,525,930,776	–	–	–	–	–	–	–

Recovery: None

Issues: None

Agency 644, Texas Juvenile Justice Department

Number of Payments Reviewed	Amount of Payments Reviewed	Overpayments Identified	Cause of Overpayment	Targeted Recovery Date	Actual Amount Recovered	Payments Disputed by Agency	Payments Disputed by Vendor	Source of Funding
72,259	\$103,296,917	–	–	–	–	–	–	–

Recovery: None

Issues: None

Appendix D: Duplicate Payments to Vendors Resolved by Agency Prior to Audit

Agency Number and Name	Number of Payments Reviewed	Amount of Payments Reviewed	Issues from Audit Sample Identified by Experis, Corrected by Agency	Overpayments from Sample Corrected by Agency Prior to Audit
303 Texas Facilities Commission	27,141	\$127,134,701	1	\$234
802 Texas Parks and Wildlife Department	353,442	\$202,052,802	0	–
771 Texas School for the Blind and Visually Impaired	10,471	\$62,004,776	0	–
401 Texas Military Department	54,892	\$179,578,504	0	–
313 Department of Information Resources	11,513	\$550,481,584	0	–
304 Comptroller of Public Accounts	33,426	\$124,802,748	0	–
405 Department of Public Safety	150,397	\$592,795,267	3	\$813,978
582 Texas Commission on Environmental Quality	56,208	\$194,649,386	6	\$69,462
644 Texas Juvenile Justice Department	72,259	\$103,296,917	3	\$1,594
601 Texas Department of Transportation	567,263	\$9,500,795,760	10	\$262,950
696 Texas Department of Criminal Justice	506,764	\$2,525,930,776	4	\$72,728
739 Texas Tech University Health Sciences Center	60,713	\$89,555,967	3	\$19,847
Totals	1,904,489	\$14,253,079,188	–	\$1,240,793

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