# A Statewide Desk Audit Promotional Items

Audit Report # 001-19-01 November 10, 2020

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## **Executive Summary**

### **Purpose and Scope**

The Fiscal Management Division of the Comptroller of Public Accounts (Comptroller's office) performed a desk audit of the purchase and use of promotional items by state agencies and universities from Sept. 1, 2015, through Aug. 31, 2018.

Texas Government code, section 2113.011 addresses restrictions on state agencies publicizing state officers or employees of a state agency. The attorney general has opined that this would include promoting the state agency (AG Op. JC 350). An ad hoc report was created to identify which agencies are using the promotional items Comptroller Object Code and if they have the specific statutory authority to purchase promotional items under that authority.

The objective of the audit was to ensure that expenditures related to promotional items were processed based on the appropriate statutory authority and complied with state laws and regulations.

The audit scope included a review of supporting documentation for expenditures related to promotional items. Using an ad hoc analysis report generated with Uniform Statewide Accounting System (USAS) data, auditors found that for the audit period, 57 agencies, including three abolished agencies, posted 7,537 transactions totaling \$9,915,605.50 using comptroller object 7309, promotional items. <u>See Table 1</u>.

Of the 54 active agencies that purchased promotional items, auditors selected a sample of 203 purchase transactions totaling \$1,921,657.46, from 45 agencies. The other nine agencies indicated their transactions were coded to the Comptroller's promotional items comptroller object incorrectly. See Table 2.

### Background

A state agency must have specific or implied statutory authority to make a purchase for a good or service and is responsible for determining if it has that statutory authority before entering into a purchase contract. <u>eXpendit – Statutory</u> <u>Authority for Purchase –</u> <u>Restricted Expenditure</u>

Specific statutory authority is clearly stated in statute. Per the *Texas Comptroller Manual* of *Accounts*, agencies must have statutory authority to use the promotional items comptroller object. This comptroller object covers items to promote the state of Texas, including, but not limited to:

- Food (marketing)
- Food (promotional)
- Marketing items
- Promotional items



Implied statutory authority must be determined by the purchasing agency, and the agency must demonstrate the purchase is necessary to fulfill its specific statutory duties. Texas Attorney General Opinion number JC-332 (2001) says agencies should note "the mere absence in Texas law of a prohibition on doing some act does not in itself furnish authority to perform that act."



## **Detailed Findings**

Without statewide criteria to determine implied authority or to determine if promotional item purchases were reasonable, auditors established criteria based on what a prudent person would consider a reasonable taxpayer expense, asking:

- Did the purchased item promote a particular program or product of the agency?
- Was the purchased item a prudent way to convey the agency message?
- Was the purchased item necessary to accomplish the business purpose?

For each of the sampled transactions, auditors verified whether the purchases were promotional items or used for a promotional event or activity, and asked agencies to explain what each item was, why it was purchased, and how it was used. Auditors then reviewed the supporting documentation for the purchases to determine whether each purchase fell within the agency's statutory authority.

## **Explicit or Implied Authority**

Auditors found that for most transactions tested, the agencies had either explicit authority (52 transactions totaling \$1,135,253.31) or implied authority (118 transactions totaling \$625,518.74) to make the purchases. This means that each purchase was in accordance with each agency's statutory authority.

During the audit period, agencies processed 26 transactions for promotional items purchases \$10,000 and over. <u>See Table 3</u> for a list of purchases and their purposes.

Of the 45 agencies audited, 12 agencies had explicit authority for their 52 purchases for \$1,135,253.31. See Table 4.

Auditors determined that another 29 agencies with 118 transactions totaling \$625,518.74 had implied authority for these purchases. This means that each purchase was in accordance with each agency's statutory authority. <u>See Table 5</u>.

Texas attorney general opinion number CM-1138 (1972) supports the concept of implied authority: "Where the law confers a responsibility or power upon a board, the authority to do such things as are reasonably necessary to carry into effect that responsibility or power is implied."



## **No Authority**

A state agency has implied statutory authority to purchase goods or services only if it is necessary for the agency to fulfill its statutory duties. Auditors noted three agencies with seven transactions totaling \$19,144.26 where the agencies had no authority. The agencies believed they had authority to purchase promotional items, but auditors could not support that view based on documentation provided by the agencies. See Table 6.

## **Miscoded Transactions**

During the review of supporting documentation and consultations with the agencies about the purchases, 10 agencies indicated that some of their purchases were miscoded. Of the 203 transactions reviewed, 26 transactions totaling \$141,741.15 were identified by the agencies as miscoded. See Table 7. The agencies adjusted the transaction entries and changed the comptroller objects from promotional items to other expenditure codes, such as consumables. However, those were rare. Auditors determined the majority of the procured items could serve no purpose except for promotion and informed the respective agencies with these determinations. The Comptroller's office recommended the agencies change the object codes for the transactions auditors deemed promotional back to the promotional items object code, when applicable. Several agencies were unable to make correcting entries in USAS since the transactions occurred in appropriation years that are now closed. It should also be noted that for items purchased relating to a federal grant/program, the Code of Federal Regulations, 2 CFR 200.421, does allow federal funds to be used for items that promote the federal program outreach and other specific purposes necessary to meet the requirements of the federal award. Each agency would need to determine from the federal awarding agency whether the items are allowable costs and should record program expenditures in a way that will enable the agency to meet federal program reporting requirements. The state agency, in consultation with the Comptroller's office, should determine the appropriate coding for these transactions in USAS.

Auditors noted one situation outside the sample where a university posted 39 miscoded transactions totaling \$36,616.27. According to the University, in 2018, it became aware that it has no statutory authority allowing it to procure promotional items from appropriated funds. The University reviewed the list of transactions and identified various items that should have been coded as consumables (or other) and not promotional items due to departmental oversight and a system automated program within the University's legacy system (Oracle) that changed expense types to promotional items based on commodity code. The University's Accounting & Reporting team reached out to the Appropriation Control Officer (ACO) and obtained clarification regarding promotional items. As a result, the University implemented new procedures/ training materials, including examples of unallowable expenses from State funds, which



includes promotional items as unallowable expenses. Additionally, the University's Accounts Payable department is now reviewing all transactions before interfacing them to USAS to ensure no promotional items are processed from appropriated funds.

On August 7, 2020, the University processed a refund to the state treasury for all purchases of promotional items identified during the audit and paid for with appropriated funds by submitting the necessary USAS transaction totaling \$36,616.27.

### **Conclusion**\General Observation

Agencies must update their policies and procedures to ensure they do not use appropriated funds to purchase goods or services they do not have authority to purchase. Agencies that have clear explicit or implied authority should review their purchases to ensure each purchase is necessary. See <u>eXpendit</u> — <u>Statutory Authority</u> <u>for Purchases</u>. Improper use of comptroller objects can cause inaccurate reporting of expenditures for open records requests as well as in annual financial statements. Erroneous coding can also affect the pre-payment audit function and the automatic calculation of prompt payment interest in USAS.



## **Tables**

#### Table 1: Promotional Items Expenditures Sept. 1, 2015 to Aug. 31, 2018 By Agency

Agency #	Agency Name	# of Transactions	Amount
300	Governor – Fiscal	22	\$14,097.51
302	Attorney General	5	\$27,977.61
305	General Land Office	121	\$145,029.93
315	Comptroller – Prepaid Higher Education Tuition Board	12	\$23,230.19
320	Texas Workforce Commission	286	\$56,699.40
323	Teacher Retirement System of Texas	1	\$133.00
326	Texas Emergency Services Retirement System	8	\$6,048.83
327	Employees Retirement System of Texas	10	\$9,619.83
362	Texas Lottery Commission	128	\$3,979,041.39
401	Texas Military Department	78	\$105,351.23
403	Texas Veterans Commission	57	\$130,967.22
405	Department of Public Safety	11	\$126,021.78
448	Office of Injured Employee Counsel – Administered by 454	16	\$26,563.17
454	Texas Department of Insurance	12	\$7,109.48
458	Texas Alcoholic Beverage Commission	3	\$3,935.00
460	Texas Board of Professional Engineers – Semi-Independent	46	\$35,244.35
466	Office of Consumer Credit Commissioner – Semi-Independent	1	\$502.50
473	Public Utility Commission of Texas	13	\$55,046.25
477	Commission on State Emergency Communications	12	\$11,364.65
481	Texas Board of Professional Geoscientists	1	\$620.00
529	Health and Human Services Commission	571	\$236,361.79
530	Department of Family and Protective Services	803	\$416,895.28
537	Department of State Health Services	3079	\$1,482,557.49
538*	Abolished	3	\$137.50
539*	Abolished	149	\$58,824.75
551	Department of Agriculture	171	\$508,584.56
555	Texas A&M Agrilife Extension Service	1	\$470.50
580	Texas Water Development Board	10	\$16,905.90
582	Texas Commission on Environmental Quality	36	\$139,569.24
601	Texas Department of Transportation	726	\$1,105,046.51
608	Texas Department of Motor Vehicles	146	\$157,665.08
696	Texas Department of Criminal Justice	32	\$61,235.28
709	Texas A&M University System Health Science Center	98	\$113,666.91
711	Texas A&M University	11	\$16,543.94
713	Tarleton State University	2	\$961.68
715	Prairie View A&M University	9	\$10,819.40
717	Texas Southern University	2	\$6,295.05
718	Texas A&M University at Galveston	1	\$386.42
719	Texas State Technical College System	78	\$103,099.98
732	Texas A&M University – Kingsville	2	\$2,155.50
734	Lamar University	14	\$6,173.87
736*	Abolished	1	\$3,550.00
739	Texas Tech University Health Sciences Center	11	-\$684.55
745	University of Texas Health Science Center at San Antonio	61	\$33,057.54
746	University of Texas Rio Grande Valley	39	\$36,616.27
749	Texas A&M University at San Antonio	29	\$138,884.80
* Abolished	,, ,		+ 100,000.000

\* Abolished



Agency #	Agency Name	# of Transactions	Amount
751	Texas A&M University – Commerce	2	\$5,035.80
753	Sam Houston State University	28	\$59,380.60
760	Texas A&M University – Corpus Christi	16	\$37,738.36
763	University of North Texas Health Science Center at Fort Worth	8	\$5,730.57
764	Texas A&M University – Texarkana	25	\$16,950.04
781	Texas Higher Education Coordinating Board	104	\$53,965.31
784	University of Houston – Downtown	2	\$343.55
787	Lamar State College – Orange	47	\$29,443.41
802	Parks and Wildlife Department	317	\$229,211.59
808	Texas Historical Commission	21	\$24,356.67
809	State Preservation Board	39	\$33,065.59
	Total — 57 Agencies	7537	\$9,915,605.50

\* Abolished

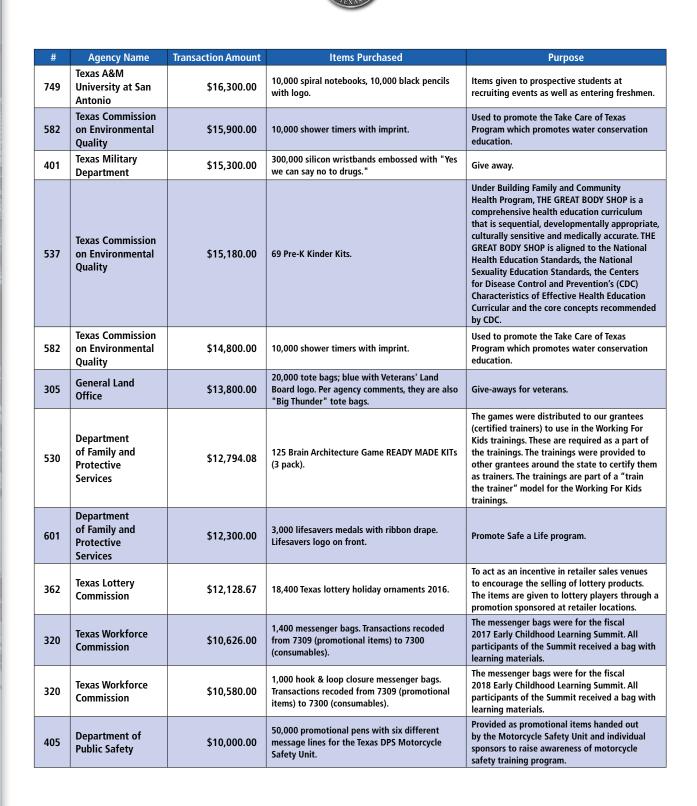
#### Table 2: Audit Sample by Amount

Agency #	Agency Name	Sample Amount
362	Texas Lottery Commission	\$802,147.24
537	Department of State Health Services	\$206,414.90
601	Texas Department of Transportation	\$135,993.50
405	Department of Public Safety	\$126,021.78
749	Texas A&M University at San Antonio	\$67,543.00
530	Department of Family and Protective Services	\$66,337.08
401	Texas Military Department	\$50,800.00
582	Texas Commission on Environmental Quality	\$47,157.24
551	Department of Agriculture	\$30,936.41
305	General Land Office	\$27,992.02
403	Texas Veterans Commission	\$27,892.00
608	Texas Department of Motor Vehicles	\$24,288.25
320	Texas Workforce Commission	\$23,497.00
529	Health and Human Services Commission	\$23,296.25
315	Comptroller – Prepaid Higher Education Tuition Board	\$21,067.04
760	Texas A&M University – Corpus Christi	\$20,682.22
802	Parks and Wildlife Department	\$20,476.53
753	Sam Houston State University	\$17,224.26
809	State Preservation Board	\$17,224.20
709	Texas A&M University System Health Science Center	\$10,051.51
719	Texas State Technical College System	\$14,511.88
808	Texas Historical Commission	\$14,257.01
696	Texas Department of Criminal Justice	
473		\$13,147.83
580	Public Utility Commission of Texas Texas Water Development Board	\$13,100.00 \$12,529.50
448	Office of Injured Employee Counsel – Administered by 454 Texas Board of Professional Engineers – Semi-Independent	\$10,991.78 \$8,664.00
781	Texas Higher Education Coordinating Board	\$6,918.35
715	Prairie View A&M University	\$6,131.60
-	Texas Department of Insurance	\$5,955.64
763	University of North Texas Health Science Center at Fort Worth	\$5,580.50
326	Texas Emergency Services Retirement System	\$5,562.11
327	Employees Retirement System of Texas	\$5,175.08
751	Texas A&M University – Commerce	\$5,035.80
745	University of Texas Health Science Center at San Antonio	\$4,706.42
477	Commission on State Emergency Communications	\$4,250.00
300	Governor – Fiscal	\$3,971.65
711	Texas A&M University	\$3,103.47
734	Lamar University	\$2,377.92
732	Texas A&M University - Kingsville	\$2,155.50
713	Tarleton State University	\$961.68
481	Texas Board of Professional Geoscientists	\$620.00
466	Office of Consumer Credit Commissioner – Semi-Independent	\$502.50
718	Texas A&M University at Galveston	\$386.42
323	Teacher Retirement System of Texas	\$133.00
302	Attorney General	Miscoded Transactions – No sample
458	Texas Alcoholic Beverage Commission	Miscoded Transactions – No sample
555	Texas A&M AgriLife Extension Service	Miscoded Transactions – No sample
717	Texas Southern University	Miscoded Transactions – No sample
739	Texas Tech University Health Sciences Center	Miscoded Transactions – No sample
746	University of Texas Rio Grande Valley	Miscoded Transactions – No sample
764	Texas A&M University – Texarkana	Miscoded Transactions – No sample
	University of Houston – Downtown	Miscoded Transactions – No sample
784		
784 787	Lamar State College – Orange Total — 54 Agencies	Miscoded Transactions – No sample \$1,921,657.46



#### Table 3: Promotional Items Purchases \$10,000 and Over By Amount

#	Agency Name	Transaction Amount	Items Purchased	Purpose
362	Texas Lottery Commission	\$246,000.00	3,000,000 6 .18. 6 (3) SCRATCH COIN with Texas Lottery logo (1,500,000 gold currency and 1,500,000 silver currency). Texas lottery logo embossed on two sides.	To act as an incentive in retailer sales venues to encourage the selling of lottery products. The items are given to lottery players through a promotion sponsored at retailer locations.
362	Texas Lottery Commission	\$192,633.50	Setup, mobile application and website integration and to reserve 75 cruise vacation trip prizes.	increase Powerball sales during the promotion period.
537	Department of State Health Services	\$152,600.00	20,000 hand sanitizer with imprint, 35,000 6-pack insulated cooler bag with imprint, 20,000 on the move backpack with imprint, 15,000 first aid kits with imprint.	Ready or Not Training materials that will go out and be distributed throughout the region to support Preparedness Program.
601	Texas Department of Transportation	\$62,500.00	25,000 bicycle white and red light sets. Message "Save a life" logo.	Bicycle and walking safety message in both English and Spanish.
601	Texas Department of Transportation	\$48,523.50	19,725 bicycle and walking safety lights. White and red light sets. Message "Safe a life" logo.	Bicycle and walking safety message in both English and Spanish.
530	Department of Family and Protective Services	\$40,000.00	Partners in Prevention conference planning fee and promotional items and supplies.	Promo and speaker gifts, awards, lanyards, printing, supplies.
405	Department of Public Safety	\$30,466.87	5,000 twist plastic stylus pens with logo www. joindps.com, 3,000 earbuds in case with logo www.joindps.com, 5,000 non-woven reusable grocery tote with logo www.joindps.com, 5,000 front zippered cinch bag with logo www. joindps.com, 5,000 polyester lanyard with logo www.joindps.com.	To recruit trooper applicants.
749	Texas A&M University at San Antonio	\$30,349.00	10,000 sport pack, 5,000 USB drives, 1,000 T-shirts.	Items given to prospective students at recruiting events/ as well as entering freshmen.
537	Department of State Health Services	\$27,500.00	50,000 hand sanitizer with imprint.	Ready or Not Training materials that will be distributed throughout the region.
405	Department of Public Safety	\$22,400.00	40,000 motorcycle training program embroidered patches.	Provided as promotional items handed out by the Motorcycle Safety Unit and individual sponsors to raise awareness of motorcycle safety training program.
405	Department of Public Safety	\$21,697.91	4,635 20-ounce aluminum sports bottles with carabiners www.joindps.com, 3,000 cowboy hat stress reliever www.joindps.com on Highway Patrol patch, 5,000 polyester drawstring backpack www.joindps.com below Texas Highway Patrol patch, 4,000 lanyards www. joindps.com, 4,000 stylus ballpoint pens www. joindps.com, 2,500 mood shadow pencils www. joindps.com.	To recruit trooper applicants.
403	Texas Veterans Commission	\$21,090.00	37,000 reusable full color tote bags.	Tote bags were printed with the agency logo and contact information for outreach to increase brand awareness among potential veteran customers.
551	Department of Agriculture	\$18,594.18	2,800 chili seasoning mix packets, 2,800 single serve coffee packets, 2,800 cell phone stand, 2,800 flower & herb planter kit, 2,800 headphone carrying case, 2,800 bottle holders, 2,800 drawstring backpack with TDA seal.	The food and non-food items are a part of the 2015-2016 School Meals Toolkit showing examples of ideas schools could use for fundraising.
405	Department of Public Safety	\$18,285.00	50,000 temporary tattoos 2x2 size, 5,000 police car stress reliever, 5,000 16-ounce stadium cup – blue, 5,000 rectangular swivel keychain flashlight, 5,000 25-sheetstik-withit adhesive notepad (3"x3").	To recruit trooper applicants.



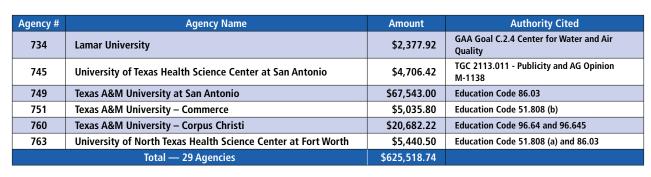


#### Table 4: Agencies With Explicit Authority by Agency

Agency #	Agency Name	Amount	Authority Cited
300	Governor – Fiscal	\$3,971.65	Texas Gov't Code 485.004, 481.022
315	Comptroller – Prepaid Higher Education Tuition Board	\$21,067.04	Sec. 54.705, 54.618 Ed. Code
362	Texas Lottery Commission	\$802,147.24	TX Gov't Code 466.451, 466.014
401	Texas Military Department	\$50,800.00	TX Gov't Code Sec. 437.253
403	Texas Veterans Commission	\$27,892.00	Sec. 434.0161 Gov't Code
405	Department of Public Safety	\$22,400.00	Transportation Code Section 201.621
580	Texas Water Development Board	\$12,529.50	Water Code Section 6.198
601	Texas Department of Transportation	\$135,993.50	Transportation Code Section 1001.011
781	Texas Higher Education Coordinating Board	\$6,855.35	Education Code 61.9705
802	Parks and Wildlife Department	\$20,476.53	TPW Code 13.015 (a-2), 11.0181 (a)
808	Texas Historical Commission	\$14,268.59	TX Gov't Code 442.005
809	State Preservation Board	\$16,851.91	TX Gov't Code 442.005
	Total — 12 Agencies	\$1,135,253.31	

#### Table 5: Agencies With Implied Authority by Agency

Agency #	Agency Name	Amount	Authority Cited
305	General Land Office	\$27,992.02	Natural Resources Code Sec. 161.079 and 31.455, Gov't Code Sec. 2155.149
326	Texas Emergency Services Retirement System	\$5,562.11	GAA Output Measures 1.2.1.1
327	Employees Retirement System of Texas	\$3,430.00	Texas Insurance Code 1551.2011
405	Department of Public Safety	\$100,871.70	GAA, Art. V, DPS Rider 48
448	Office of Injured Employee Counsel – Administered by 454	\$10,991.78	Sec. 404.154, Labor Code
454	Texas Department of Insurance	\$5,955.64	Insurance Code Sec. 521.053, Gov't Code Sec. 417.0051, and Labor Code Sec. 411.014
460	Texas Board of Professional Engineers – Semi-Independent	\$6,664.20	Sec. 1001.201, Occupations Code
466	Office of Consumer Credit Commissioner – Semi-Independent	\$502.50	Sec. 14.102, Finance Code
473	Public Utility Commission of Texas	\$13,100.00	Sec. 39.902, Utilities Code
477	Commission on State Emergency Communications	\$2,950.00	Health and Safety Code Section 771.051 (a)(6)
529	Health and Human Services Commission	\$400.34	Health and Human Services Procurement Manual, April 2015, V 1.1
537	Department of State Health Services	\$184,234.90	Health and Safety Code Section 1001.071
551	Department of Agriculture	\$30,936.41	Agriculture Code Chapter 12.0025, 2.003 (6), and 12.007
582	Texas Commission on Environmental Quality	\$47,157.24	Health and Safety Code 361.0202
608	Texas Department of Motor Vehicles	\$24,288.25	Transportation Code Section 1001.011
696	Texas Department of Criminal Justice	\$13,147.83	ABTPA Interagency Contract, Employee Recruitment Initiative, Texas Correctional Industries' program, and HUB Program TGC 493.012
709	Texas A&M University System Health Science Center	\$14,511.88	Sec. 89.004 Expenditure of State Funds
711	Texas A&M University	\$3,103.47	Education Code 86.03
713	Tarleton State University	\$961.68	Professional Nursing Shortage Reduction Program - THECB Grant
715	Prairie View A&M University	\$6,131.60	GAA Goal D.1.1 Academic Development Initiative
718	Texas A&M University at Galveston	\$386.42	Education Code 86.03
719	Texas State Technical College System	\$14,297.61	Sec. 1.006, Statutory Authority of Purchases from State of Texas Purchase Policies and Procedures Guide.
732	Texas A&M University – Kingsville	\$2,155.50	Expendit; A state agency has implied authority to inform the public about is regulatory functions.
		•	



#### Table 6: Unauthorized Purchases by Agency

Agency #	Agency Name	Amount	Items Purchased
477	Commission on State Emergency Communications	\$1,300.00	200 challenge coins & pouches.
481	Texas Board of Professional Geoscientists	\$620.00	500 3/4 polyester lanyards.
753			125 Bookbound Journals with logo, 400 Cards with Envelopes, 5,000 pens with logo, 330 shirts with logo, and 2655 caps with logo to promote Correctional Management Institute of Texas (CMIT) to students.
	Total — 3 Agencies	\$19,144.26	

#### Table 7: Miscoded Transactions by Agency

Agency #	Agency Name	Amount	Items Purchased
320	) Texas Workforce Commission		1,400 messenger bags, 1,000 black neck wallets, 500 house shaped hand fans, 1,000 hook & loop closure messenger bags, 500 AR402 house shaped hand sanitizers.
323	Teacher Retirement System of Texas	\$133.00	Desk protectors for investment staff
327	Employees Retirement System of Texas	\$1,745.08	Snowflake ornaments, VariDesk (Pro Plus 36) for employee, 500 Spot bid fair – 16-oz big game stadium cups , green with black logo.
405	Department of Public Safety	\$2,750.08	Bottled water used by the Texas Highway Patrol for field operations for precaution of health risks. Also purchased 4 tear drop flag banners with pole.
460	Texas Board of Professional Engineers – Semi-Independent	\$2,000.00	UTSA science fair, Judges Choice Award.
529	Health and Human Services Commission	\$22,895.91	12 vanilla Visa metallic \$25 gift cards purchased at HEB plus \$3.95 activation fee for each card. Employee awards: lapel pins, 440 cozy fleece blankets, 440 14-ounce Hawaii tumbler, 440 peak lunch cooler bag. Gifts to volunteers, Food at event honoring civil authorities (police, fire, sheriff's office) - Waco Center for Youth 350 plates @\$10.50.
530	Department of Family and Protective Services	\$66,337.08	125 Brain Architecture game ready made kits, 700 travel tumblers with imprint, 150 Harrington coach jackets with imprint (various sizes), 150 laptop backpacks with imprint.
537	Department of State Health Services	\$22,180.00	69 Pre-K Kinder Kits.
763	University of North Texas Health Science Center at Fort Worth	\$140.00	Embroidery services for uniforms.
781	Texas Higher Education Coordinating Board	\$63.00	Speaker award.
	Total — 10 Agencies	\$141,741.15	