

March 27, 2019

These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on March 27, 2019 at 125 E. 11<sup>th</sup> Street, Austin, Texas 78701. The meeting convened at 10:02 a.m. with the following members present:

**Texas Transportation Commission Audit Subcommittee:**

Jeff Austin, III	Commissioner, Audit Subcommittee Chair
Alvin New	Commissioner, Audit Subcommittee Member

**Staff:**

Benito Ybarra	Chief Audit and Compliance Officer
Jeff Graham	General Counsel
Brian Ragland	Chief Financial Officer
Rich McMonagle	Chief Administrative Officer
Bob Kaufman	Director of Communications & Customer Service
Darran Anderson	Director of Strategy & Innovation
Randy Hopmann	Director of District Operations
Michael Lee	Director of Engineering & Safety Operations

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 1:29 p.m. on March 19, 2019, as required by Government Code, Chapter 551, referred to as "The Open Meetings Act."

**ITEM 1. Safety Briefing**

The meeting began with the Greer Building safety briefing video.

**ITEM 2. Consider the approval of the Minutes of the December 12, 2018, Audit Subcommittee meeting**

This item was presented by Benito Ybarra, Chief Audit and Compliance Officer. Commissioner New made a motion to approve, which was seconded by Commissioner Austin. The audit subcommittee approved the minutes of the December 12, 2018, Audit Subcommittee meeting by a vote of 2 - 0.

**ITEM 3. Compliance Division Update**

**a. External Audit Reports**

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander opened with an overview of the two External Audit reports that were discussed with a slide showing a side-by-side comparison of Sponsored Research Contracts, and Interagency Cooperation Contracts.

The first audit discussed, was the audit of the University of Texas Center for Transportation Research (CTR). Two issues were identified during the audit of CTR. The first issue identified was Unallowable Administrative Personnel Direct Cost that were charged directly to the project, totaling \$298,661. These costs should have been treated as indirect costs, and billed as such. Fifty-five of the 57 reimbursements tested included unallowable administrative personnel costs, and did not meet the criteria to be considered direct costs. Secondly, staff identified personnel costs were inconsistently and inequitably allocated to TxDOT. Eight administrative personnel allocated 86% of their time to TxDOT, even though they performed functions across multiple sponsored programs. The second issue identified in the audit of CTR was Unallowable Vehicle Mileage Costs. Forty-six of the 57 reimbursements tested included unallowable vehicle mileage; including vehicles that TxDOT directly

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paid operation and maintenance costs for in addition to paying for mileage; resulting in a duplicative charge. Additionally, the audit team identified mileage incurred for administrative activities and charged solely to TxDOT. The Compliance Division recommendations include the reimbursement of funds from CTR. In addition to the reimbursement totaling \$302,663, staff recommends establishing a process to consistently treat administrative personnel and mileage costs as an indirect cost and ensure they are not directly charged to sponsored projects that are not allowable. Finally, staff recommends establishing internal review processes to ensure monthly vehicle mileage reports are accurate. Commissioner Austin asked Director Alexander who would be responsible for implementing the recommendations, specifically the repayment of funds. Director Alexander answered that the Research & Technology Implementation Division (RTI) is working closely with CTR on the reimbursement; as well as updating the programming rules to ensure other institutions do not have similar issues. Director Alexander further confirmed a formal letter has already been sent to CTR, and RTI Division is updating the programming rules and requirements for all universities as to what is allowable and unallowable when it comes to Direct and Indirect personnel costs. Commissioner New asked Director Alexander what response has been received from CTR. Director Alexander responded, CTR's response is listed in the Management Response section of the audit; and that CTR agreed that the costs did not meet the requirements. Commissioner Austin asked for additional details regarding these types of research grants and the funds they receive. Director Alexander noted RTI Division had identified concerns specifically related to personnel costs, and those concerns led to this specific audit. Chief Ybarra joined the discussion highlighting one of the main takeaways from this audit is the internal focus within our agency and providing RTI with the tools necessary to hold these entities accountable moving forward.

The second audit discussed, is the audit of Texas A&M Transportation Institute (TTI) Interagency Contracts. The focus of this audit was to determine whether payments to TTI for interagency contracts were in compliance with applicable agreements, and federal and state requirements. In addition to focusing on whether TTI was in compliance with applicable agreements, the Compliance Division also sought to determine if TTI had implemented financial controls to ensure appropriate management of TxDOT Interagency Contracts. Overall, Compliance Division found that payments were in accordance with contract terms and applicable requirements. However, thirty-three of the 41 reimbursement requests tested did not contain the federally-required certification. Director Alexander noted the missing certification was on TTI's side of the contract; Commissioner Austin reiterated the federally-required certification was TTI's responsibility. Director Alexander stated that the few federally-required certifications that TTI did have in place, were using TxDOT forms. Director Alexander continued her presentation noting that TTI had implemented controls to ensure contract expenditures are accurate and allowable, in addition to having a number of review processes in place. Compliance Division recommendation for TTI is to implement a process that ensures federally-required certification is on all reimbursement requests. Commissioner Austin would like an updated subset to be included in the next round of grant work reminding entities of their responsibility regarding federally-required certifications.

#### b. Summary of Investigations for FY 2019 , 2<sup>nd</sup> Quarter

This item was presented by Kristin Alexander, Director of the Compliance Division. Twenty-five cases were opened in the 2<sup>nd</sup> quarter of Fiscal Year 2019, a slight decrease from the first quarter of the fiscal year. The Investigations Section closed 27 cases, which is even with first quarter reports. The allegation and investigation numbers remain high, as of March 26, 2019, 214 allegations have been triaged to the Compliance Division for Fiscal Year 2019, trending higher than last year. The investigation assignments remain in-line with Fiscal Year 2018 volume; however that number was

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much higher than previous years and correlates with increase in employee conduct complaints. From the 27 closed cases, 9 cases were substantiated – 33%, a decrease from the previous quarter and more in line with normal levels. Locations of the investigations included 17 in the districts and 7 in divisions, which is an increase for divisions, given the percentage of TxDOT employees that are division employees in comparison to district employees. Three closed cases involved third-parties. The significant investigations of this quarter included three separate instances of falsification of documentation. One of the three falsifications of documentation involved a third-party and will be discussed in more detail during the Sanctions Updates. The two not involving a third-party were employees. One included falsifying a contract, and one was related to falsifying inspection(s). Commissioner New asked for clarification if the falsifying inspection was a job inspection, specifically maintenance job inspection, or construction job inspection. Director Alexander responded it was maintenance job inspection, so the employee would receive payment for performing work; she further stated the employee had fallen behind on work, and falsified documents to receive payment. Both falsifications that involved employees resulted in employee termination.

### c. Sanctions Updates

This item was presented by Kristin Alexander, Director of the Compliance Division. In August of 2018 the Commission adopted new Rules governing a sanctions process. These rules established one department-wide process for sanctioning an entity that violated TxDOT's ethical conduct requirements. After the rules were adopted by the Commission, the Executive Director appointed a Sanctions Committee, a Sanctions Policy was established and has been incorporated into the Compliance Division Manual, and now the Compliance Division maintains a department-wide sanction list on both internal and external websites. Commissioner Austin asked for clarification on Executive Director Bass appointed committee, and Director Alexander responded that the committee is a standing committee with individual one-time members depending on the location [division or district] of the issue; this ensures the right individuals are participating in on the conversations. Commissioner Austin asked further if when committees are formed, are mission(s), charter(s), time-frame, and roles/responsibilities outlined. Director Alexander responded that in the specific instance of the Sanctions Committee, a formal policy was adopted that includes committee members. Chief Ybarra added that a Charter is also in place for the Sanctions Committee. The Sanction Committee Charter includes who presides over the committee, standing committee members, and one-time members that would come in based on the issue identified. Commissioner Austin recommends evaluating current committees and standardizing committees; to include, but not be limited to charters, outlining committee members, and evaluating if the committee is still a necessity. Chief Ybarra added the recent addition of the Performance Review Committee (PRC), which holds contractors accountable for the work performed and chaired by Randy Hopmann, has been seen as interchangeable with the Sanctions Committee. As PRC continues to form, more formalization forms around PRC.

Since the adoption and formation of the Sanctions committee, the committee has met on three separate issues. The first issue discussed, included a Facilities Contractor that offered a \$5,000 payment to an employee of a TxDOT prime contractor to award subcontract work on a TxDOT project. The prime contractor declined the offer, and then reported the offer to TxDOT. Director Bass imposed a \$250,000 limit on funds that TxDOT may award or pay to the contractor for a period of 1 year, either as a prime or subcontractor. In responses to Commissioner Austin's questions around sanction listings, Chief Ybarra noted there is a list available online, listing the sanctioned entities that TxDOT is unable to do business with. Previously, TxDOT has tried working with the Texas Comptroller to list the sanctioned contractors on their website as well; however, TxDOT did not receive

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confirmation from the Comptroller's office. Michael Lee, Director, Engineering and Safety Operations stated that if the sanctioned contractor received Federal Aid, then Federal Highway Administration (FHWA) adds them to the nationwide sanctions list. To qualify for bidding with TxDOT, an entity may not be listed as sanctioned per FHWA.

The second sanction discussed was a construction contractor who submitted falsified invoices to TxDOT under the name of a fictitious entity for change order work the contractor was doing for TxDOT. Director Bass debarred the contractor for 2 years for future work. The same contractor, even though debarred was allowed to finish work on a project. The third sanction discussed was the same as discussed during the second sanction. The contractor submitted falsified subcontractor agreement for work to be completed by the subcontractor. The act of submitting falsified invoices, and falsified agreement for subcontractor work were taken in consideration as a whole, and the sanction imposed was default on the contract and further actions are pending. The project and contractor were discussed by the Performance Review Committee and referred to the sanctions committee for consideration of expanding the debarment period beyond the initial two years. Prompted by a question by Commissioner Austin, Director Alexander clarified that Performance Review Committee and Sanction Committee are different. The Sanction Committee focuses on contractors who are found eligible for sanction, can be debarred up to 5 years, higher than in previous years, and includes fraud and ethical violations. The Performance Review Committee meets quarterly and reviews contractor performance evaluations; the objective of the PRC is to help contractors improve performance and better deliver in line with our performance expectations. Commissioner Austin asked Jeff Graham, General Counsel, if the 5 year debarment is an internally created rule by TxDOT, and is the agency prohibited from not doing business with an entity at all. Mr. Graham responded, rules are self-created, and the agency has not received judicial ruling on what limits are set. Director Alexander included the five year rule we consider now is following federal guidelines, federal debarment is limited typically to 5 years. Commissioner Austin commented on regulatory agencies in other industries, and asked does TxDOT regularly submitted into regulatory agencies when fraud is committed against an agency. Director Alexander responded that if it is a criminal act that has been committed, TxDOT does report to appropriate law enforcement. If the contractor is involved in a federal project, then TxDOT reports the fraud to the Office of the Inspector General for the Department of Transportation, as part of the process; inclusive on all TxDOT Investigations.

#### **ITEM 4. Internal Audit Division Update**

##### **a. Management action plan (MAP) follow-up status**

This item was presented by Craig Otto, Director of the Internal Audit Division. During the opening of this discussion, Commissioner Austin asked what follow-up is planned for TTI and CTR by the Compliance Division. Chief Ybarra stated the normal process would be Compliance Division would follow-up with RTI; but if Commissioner Austin would like, Compliance Division will do a follow-up during the next quarterly meeting. Commissioner Austin confirmed he would like a follow-up discussion during the next Audit Subcommittee similar to MAP follow-ups, and would like the discussion to confirm the repayment of the funds. Director Otto picked backed up on management action plans, noting there has been an up-tick in the number of open MAPs since the last quarterly meeting. This number is expected, as the number of closed audit's increases, MAPs naturally increase. The increase shows that business partners are working towards completion, and implementing corrective actions, no overdue MAPs are reported this quarter. In terms of progress, the Internal Audit Division set out to do forty-one MAP follow-up engagements. Of that number, 16 follow-up engagements are completed, 8 are in progress, which leaves 17 to be completed. Internal

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Audit Division feels they have ample resources and time to complete the remaining 17 prior to the end of the fiscal year.

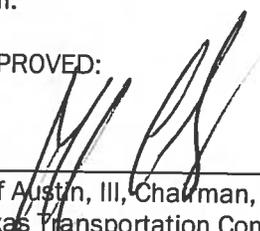
b. Internal Audit Report – Fund Programing and Management

This item was presented by Craig Otto, Director of the Internal Audit Division. The audit presented was the Fund Programming & Management audit, which had 1 finding, and the overall engagement assessment was satisfactory. The finding, rated as needs improvement, was manual processes used to determine toll/non-toll projects and control use of Proposition 1 and Proposition 7 funding. The Internal Audit Division included evaluation of design-build projects from FY2015 through September 2018 to determine appropriate treatment of Proposition 1 and Proposition 7 funding, in conformance with state law. The audit team identified one exception in which \$331,000 out of the \$3.1B (.0011%) evaluated was used on a used on a toll project. The project identified was let in late 2014, and the expenses incurred in 2018. In addition to the project mentioned, other inaccuracies were identified between DCIS and PeopleSoft; none of the identified inaccuracies other than the single project used Proposition 1 Funding. Commissioner Austin summarized that the action has already been corrected, and the checks and balance process within Financial Management worked; the error was caught internally, and funds have been properly re-allocated. Stephen Stewart, Director, Financial Management Division, joined the discussion to cover the audit of the State Highway fund which includes Proposition 1 and Proposition 7 funds. His division does additional work to ensure the accuracy and has many compensating controls on the front end and the back end to make sure Proposition 1 Funds and Proposition 7 Funds are reported accurately. Commissioner Austin verbally applauded the work of the Internal Audit Division on this audit, and being able to catch errors internally. Chief Ybarra reiterated Director Otto's assessment that the risk of this happening is low given the environment; however, the Compliance Division will work closely with the Financial Management Division throughout the next couple of years on the Sarbanes-Oxley Act (SOX) testing of the processes.

For this meeting, Commissioner Austin stated that Federal Legislative and State Legislative Implementation updates were excluded from the agenda allowing them to dedicate their time and effort to the current legislative session.

Commissioner Austin adjourned the meeting of the March 27, 2019 Audit Subcommittee at 10:41 a.m.

APPROVED:



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Jeff Austin, III, Chairman, Audit Subcommittee  
Texas Transportation Commission