

May 29, 2019

These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on May 29, 2019 at 125 E. 11<sup>th</sup> Street, Austin, Texas 78701. The meeting convened at 10:00 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
Bill Hale	Chief Engineer
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 11:30 a.m. on May 21, 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 March 27, 2019, 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 March 27, 2019, Audit Subcommittee meeting by a vote of 2 - 0.

**ITEM 3. 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. The total number of open MAPs has risen since the previous meeting of the Audit Subcommittee due to the publishing of additional audit reports. There are no overdue MAPs thanks to the willingness and cooperation of the clients working with Internal Audit. The FY2019 MAP progress includes 25 Follow-Up Engagements completed, 6 engagements are currently in progress and 10 additional Follow-Up engagements will be completed for FY19. Commissioner Austin requested as the Internal Audit Division begins their Fiscal Year 2020 plan, he would like Chief Ybarra to visit with each commissioner to discuss any items or engagements they would like considered. Chief Ybarra is currently working with both of his divisions on annual risk assessments and will reach out for feedback and input will be solicited from both the TxDOT Commissioners and the TxDOT Administration.

**b. Internal Audit Report – Design-Build Stipend Payments**

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This item was presented by Craig Otto, Director of the Internal Audit Division. Two findings were identified during this audit with an overall rating of Satisfactory; the audit primarily focused on process for stipend payments, and the utilization of the work products purchased between June 2014 and December 2018. The audit included 5 design-build projects and no stipend payments have been processed since January 2018. The Internal Audit team identified four areas for improvement. They included establishment of criteria, documentation to support value, inventory of work products purchased and communication. Commissioner Austin asked if the auditors were able to identify any common threads, or ideas in the design build projects. Director Otto replied that each is unique and project specific. Commissioner Austin asked if Design-Build Stipend payments is a practice in all states, and General Counsel Jeff Graham answered, yes, it is written in the law; stipend payment is a minimum of .25% of the awarded design-build contract amount but depends on the valuation of the work product. Commissioner New asked about the history of the Design-Build statute, and Commissioner Austin echoed with a request for more information. Chief Bill Hale joined the conversation and provided examples of the use of design-build projects. Commissioner Austin asked if we have ever paid below the .25%, and Director Otto responded that if the valuation of the product is below .25%, then we would pay the valuation amount, not the full .25%. Commissioner Austin would like to see the positive findings summarized and shared within the agency. Chief Ybarra agreed to have Internal Audit Division begin a draft of lessons learned and work with Project Finance, Debt, and Strategic Contracts Division (PFD) as well as Chief Hale to create a work group that will discuss and summarize lessons learned in alternative delivery concerns to share with the Districts and Divisions.

#### **ITEM 4. Compliance Division Update**

##### **a. External Audit Reports follow-up status**

This item was presented by Kristin Alexander, Director of the Compliance Division. This item was at the request of the audit subcommittee to verify if the entities discussed during the March 2019 meeting had implemented corrective actions. The University of Texas at Austin's Center for Transportation Research (CTR) has acknowledged it must reimburse TxDOT \$279,000 in costs identified as unallowable; and reimbursement is expected in June 2019. Director Alexander complimented the Research & Technology Implementation Division on their proactive actions in testing additional grants with CTR; established specific award conditions targeting the areas of noncompliance, and revised award criteria for all research awards to further restrict the use of administrative personnel as direct costs. Director Alexander continued the discussion of item 4a. with Texas Transportation Institute (TTI), also at the request of the audit subcommittee during the March 2019 meeting. TTI has fully implemented their corrective action plan. Beginning in May 2019, TTI revised its reimbursement request process to include the required federal certifications. The final entity discussed in item 4a. is the Houston-Galveston Area Council (HGAC). HGAC has not reimbursed TxDOT \$125,659 for unallowable costs paid to a subrecipient that was determined to be fraudulent. The executive director for HGAC has assured TxDOT that he will bring this issue to the board at their June 2019 meeting. Director Alexander confirmed that a letter was sent to HGAC making them formally aware of the noncompliance, and that continued noncompliance would result in action from TxDOT up-to Grant Sanctions. Commissioner Austin asked what types of grants HGAC is awarded. Commissioner New would like a follow-up status on HGAC during the August 2019 meeting.

##### **b. Summary of Investigations for FY 2019, 3<sup>rd</sup> Quarter**

This item was presented by Kristin Alexander, Director of the Compliance Division. The Compliance Division Investigations Section opened 21 cases in the 3<sup>rd</sup> quarter, which is a slight decrease from

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the 2<sup>nd</sup> quarter. The Investigations Section closed 31 cases, an increase over the 2<sup>nd</sup> quarter. Of the 31 cases closed, 19 were substantiated a significant increase. The number of investigations in Divisions and of Third-Parties increased as well. Two of the third-party investigations were referred to the Sanctions Committee.

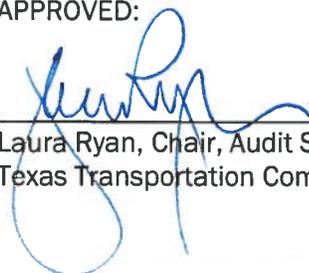
c. Sanctions Updates

This item was presented by Kristin Alexander, Director of the Compliance Division. The first sanction update is an engineering consultant firm that created a conflict of interest by employing a TxDOT employee to perform material testing, including at least one TxDOT project. The TxDOT disciplinary action included employee termination. The second sanction update is an engineering consultant firm that performed work without a work authorization and invoiced TxDOT for work on an unrelated TxDOT project, at the request of a TxDOT employee. Before the conclusion of the investigation, the TxDOT employee resigned. The third and final sanction update is a construction contractor that submitted a falsified independent auditor's report during the TxDOT Bidders Requalification process. Commissioner Austin requested the entity names of the three firms discussed during the sanction update. All three are still in the sanctions process, which can result in a written reprimand up to debarment for up to 5 years. Commissioner Austin discussed other industries and the reporting structure to professional boards, he asked questions about TxDOT's process of reporting sanctioned consultants and contractors to professional licensing boards. Director Alexander responded that if an engineering firm violates the code of ethics, then yes, we as an agency have a duty to report them to the licensing board. She further explained the internal process for Conflict of Interest policies. Commissioner Austin would like to see an internal protocol developed that documents whether or not during the TxDOT Investigation, if TxDOT contacted the professional licensing board for entities that are sanctioned.

For this meeting, Federal Legislative and State Legislative Implementation updates were intentionally left off the agenda allowing them to dedicate their time and effort to the Legislative Session that ended on Monday, May 27, 2019. Commissioner Austin requested that Legislative updates be added to the August 2019 agenda of the Audit Subcommittee.

Commissioner Austin adjourned the meeting of the May 29, 2019 Audit Subcommittee at 10:46 a.m.

APPROVED:



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Laura Ryan, Chair, Audit Subcommittee  
Texas Transportation Commission