



John Keel, CPA
State Auditor

An Audit Report on

**The Department of
Transportation's Oversight of
Regional Mobility Authorities**

October 2007

Report No. 08-007



An Audit Report on

The Department of Transportation's Oversight of Regional Mobility Authorities

SAO Report No. 08-007
October 2007

Overall Conclusion

The Department of Transportation's (Department) oversight of regional mobility authorities (authorities) includes approving the creation of authorities and monitoring grants and loans awarded to the authorities for transportation projects. As of September 2007, the Department had reviewed eight petitions submitted by local governments to create authorities, which the Texas Transportation Commission (Commission) subsequently approved. The Department has approved \$107 million in loans and grants to authorities to finance the planning, design, and construction of transportation projects.

Authorities also have received loans and grants from local governments to fund initial operations. Issuing revenue bonds is the primary financing mechanism available to authorities for the construction and operation of major transportation projects. The principal revenue source used to finance debt service for transportation projects built by authorities will be provided by tolls collected from users. Authorities have the option to set tolls high enough to generate surplus revenue to finance additional transportation projects.

There are opportunities for the Department to improve its oversight of authorities. For example:

- The Commission's process for approving the creation of authorities complies with the requirements listed in statute and the Title 43, Texas Administrative Code, Chapter 26. The Department could improve this process by providing more detailed criteria and examples of the types of materials that must be included in petitions submitted by local governments to create an authority.
- The Department could be more consistent in monitoring an authority's use of grants and loans that it awards to authorities. The Department effectively monitored \$17.5 million in loan and grant reimbursement requests from four

What is a Regional Mobility Authority?

A regional mobility authority (authority) is a political subdivision formed by one or more counties (or certain municipalities) to finance, acquire, design, construct, operate, maintain, expand, or extend transportation projects. The creation of an authority does not require voter approval. Authorities' projects may be tolled or non-tolled.

In addition to approving the creation of authorities and monitoring grants and loans awarded to authorities, the Department of Transportation (Department) performs several oversight activities of authorities. Specifically:

- Approving authorities' applications for federal highway or rail funds.
- Approving authorities' requests to begin construction on most roads.
- Reviewing and approving design and construction standards for roads that connect to state highways.
- Monitoring projects throughout the planning and construction processes.

authorities, but it did not monitor a \$52 million grant awarded to the Central Texas Regional Mobility Authority (Central Texas Authority). The \$52 million grant was awarded to provide equity for the Central Texas Authority and help it secure \$168 million in revenue bond financing for construction of the 183A Toll Road.

Key Points

County commissioners courts have the most direct oversight of authorities.

Member counties' commissioners courts exercise oversight of authorities by appointing members of an authority's board of directors—except for the chair, which is appointed by the Governor—and by monitoring authority operations. Directors serve two-year terms, with half of the directors' terms expiring each year. Directors are subject to a number of conflict of interest provisions and are generally required to file financial statements with the Texas Ethics Commission. Authorities that do not have a member county with a population greater than 200,000 people are exempt from the requirement to file financial statements with the Texas Ethics Commission.

Authorities are eligible to apply for grants and loans to finance transportation projects.

In addition to issuing revenue bonds, authorities can apply for loans and grants provided by the Department and the federal government; they also can receive contributions from local units of government.

The Department advanced a \$52 million grant to the Central Texas Authority, which the Central Texas Authority used as equity to attract \$168 million in bond financing for the development of the 183A Toll Road. The Department may grant the Central Texas Authority up to \$13 million more as part of this grant prior to calendar year 2012.

The Grayson County Regional Mobility Authority (Grayson County Authority) initiated an expansion of State Highway 289. Responsibility for this project was subsequently transferred from the Grayson County Authority to Grayson County. Grayson County issued \$63,725,000 in bonds to finance this project. Grayson County was able to obtain a lower interest rate on its bonds (in comparison the Central Texas Authority's bond issuance) because it pledged to use ad valorem taxes to repay the bonds. In addition, Grayson County will receive between \$5.3 million and \$7.0 million annually in supplemental financing from the Department in the form of "pass-through tolls" until it receives an entire award amount of \$84.5 million.

Only one authority has completed a transportation project.

After approximately two years of construction, the Central Texas Authority opened the 11.6-mile-long 183A Toll Road in March 2007. The Central Texas Authority had expended \$203.5 million for construction costs as of July 2007.

Summary of Key Recommendations

This report contains recommendations addressed to the Department and the Central Texas Authority, including:

- The Department should:
 - Require its grant recipients to maintain transaction-level expenditure information and to report how these funds are spent.
 - Take steps to ensure that federal funding of authorities complies with federal rules.
 - Ensure petitions to create authorities contain all required information before submitting them to the Commission.
 - Clarify its expectations of data that should be presented in petitions by expanding the description of required petition data in its *Regional Mobility Authority Handbook*.
- The Central Texas Authority should:
 - Ensure that contract solicitations and awards are posted on its Web site and documented.
 - Consider following the applicable contracting guidelines set forth in the *State of Texas Contract Management Guide*.

Summary of Management's Response

The Department agrees with the findings and recommendations. The Central Texas Authority generally agrees with the findings and recommendations.

Summary of Objective, Scope, and Methodology

The objective of this audit was to determine whether the Department has adequate oversight processes and controls in place to ensure that authorities spend funds in a fiscally responsible manner, including: ensuring reasonable prices for contracted services, ensuring that expenditures are valid and supported, and ensuring that funds will be available to make bond payments on schedule.

The scope of this audit covered the Department's oversight of authorities between September 2002 and August 2007. In addition, auditors conducted a more detailed review of the Central Texas Authority because it was the only authority that has completed a transportation project or issued bonds.

The audit methodology included collecting information and documentation; performing selected tests and other procedures; analyzing and evaluating the results of the tests; and conducting interviews with elected officials, members of the board of several authorities, and management and staff at the Department, the Central Texas Authority, and the Central Texas Authority's contractors.

Contents

Detailed Results

Chapter 1	
Regional Mobility Authorities Are a New Means of Meeting Local and Regional Transportation Needs.....	1
Chapter 2	
Most Authorities Require External Funding to Build Projects	6
Chapter 3	
The Department Has Been Effective in Monitoring Reimbursement Requests, But It Did Not Monitor \$52 Million It Granted to the Central Texas Authority.....	11
Chapter 4	
The Department Should Ensure That Petitions Submitted to the Commission to Create Authorities Contain All Required Information	15
Chapter 5	
The Central Texas Authority Should Further Improve Its Contracting Practices	18

Appendices

Appendix 1	
Objective, Scope, and Methodology.....	25
Appendix 2	
Map of Existing Authorities and the 183A Toll Road	29
Appendix 3	
A Complete Listing of Eligible Transportation Projects for Regional Mobility Authorities and Bond Payment Responsibilities	31
Appendix 4	
Texas Transportation Commission and Department of Transportation Oversight of Regional Mobility Authorities.....	35

Appendix 5
Recent State Auditor's Office Work 36

Detailed Results

Chapter 1

Regional Mobility Authorities Are a New Means of Meeting Local and Regional Transportation Needs

A regional mobility authority (authority) is a political subdivision formed by one or more counties or eligible municipalities to finance, acquire, design, construct, operate, maintain, expand, or extend (build) transportation projects including:

- Roadways, both tolled and untolled.
- Passenger or freight rail (including rail facilities and trains).
- Transit systems.¹
- Airports.

(See Appendix 3 for a complete list of transportation projects in which authorities can be financially involved.)

Authorities may combine their transportation projects to form transportation systems. Statute allows authorities to build transportation projects not only within their member counties and municipalities, but also into adjoining Texas counties under certain conditions.² In addition, statute allows the Camino Real Regional Mobility Authority, which was formed by the City of El Paso, to build into New Mexico or Mexico under certain conditions.³

The Texas Transportation Commission (Commission) authorizes the creation of an authority, an action that does not require voter approval. The members of authorities' boards of directors are appointed by and accountable to member counties' commissioners courts and the Governor.

Chapter 1-A

Authorities Have Statutory Powers to Create Integrated, Multi-Modal Transportation Systems

Statute empowers authorities to carry out the powers and duties expressly granted to them by the Texas Transportation Code, including:

¹ Before providing public transportation or mass transit service, authorities must coordinate these efforts with existing transit providers in the area.

² One condition is that the commissioners court of the adjoining county must agree with the authority's actions.

³ Among these conditions: the Texas Governor must approve the project's development, and the political subdivisions in which the project is located must approve the authority's action.

- Setting and collecting tolls. Authorities may set and collect tolls for their transportation projects.
- Acquiring property and exercising eminent domain authority. Authorities may acquire, hold, and dispose of property in the performance of their duties.
- Constructing public utilities. Authorities may construct public utility facilities, such as water lines, electric lines, and wireless communication facilities.
- Entering into comprehensive development agreements. Authorities may enter into comprehensive development agreements with private entities to build transportation projects. However, Senate Bill 792 (80th Legislature) limited authorities' ability to use comprehensive development agreements in the future, and authorities will be unable to enter into any comprehensive development agreement after fiscal year 2011.
- Entering into other contracts. Authorities are allowed to enter into contracts or agreements that are necessary or incidental to their powers, such as contracts or operating agreements with other transportation authorities, other political subdivisions of the state (such as a county or city),⁴ federal agencies, other states, or Mexico.⁵
- Setting speed limits and other safety restrictions. Authorities may adopt and enforce rules for the use of their transportation projects, including speed limits, weight limits, traffic rules, and other public safety rules.
- Exercising the right of first refusal for toll projects. Senate Bill 792 (80th Legislature) gave authorities the first option to develop toll projects within their boundaries.

Chapter 1-B

Member Counties' Commissioners Courts Provide Primary Oversight of Authorities

Authorities are governed by boards of directors, which are appointed by the commissioners courts of the authority's member counties,⁶ except for the board chair, who is appointed by the governor.⁷ (See Appendix 3 for information on the history of regional mobility authorities.)

Directors serve two-year terms, with half of the directors' terms expiring each year. Directors are subject to a number of conflict of interest provisions and

⁴ Authorities' contracts with these Texas governmental entities can include agreements to plan, design, construct, or operate transportation projects on behalf of these entities. Authorities can enter into similar contracts with the Department.

⁵ This includes the Mexican federal government or the governments of individual Mexican states.

⁶ Statute permits certain municipalities to form authorities. The governing body of a municipality that creates an authority has the same powers and duties as a county commissioners court that creates an authority.

⁷ The governor may appoint an additional director to ensure that there are an odd number of directors on the board.

are generally required to file financial statements with the Texas Ethics Commission. However, authorities that have no member county with a population greater than 200,000 people are exempt from the requirement to file financial statements with the Texas Ethics Commission. As a result, the directors of the Grayson County Regional Mobility Authority, the North East Texas Regional Mobility Authority, and the Sulphur River Regional Mobility Authority are not required to file financial statements with the Texas Ethics Commission. These exempt counties' commissioners courts may require directors to file financial statements through a means designated by the commissioners court.

Commissioners courts have statutory powers to monitor authorities' activities. Statute requires authorities to provide information to their member counties' commissioners courts. Specifically, an authority must submit:

- A written annual report on the authority's activities. Any member county's commissioners court can require the authority to present this annual report to the commissioners court and receive questions and comments. This report should describe:
 - ♦ All transportation revenue bond issuances anticipated for the coming year.
 - ♦ The authority's financial condition.
 - ♦ All project schedules.
 - ♦ The status of the authority's performance under the most recent strategic plan.
 - ♦ A biennial strategic plan, which must cover the succeeding five fiscal years and must include all information, stipulated by a majority of the member counties' commissioners courts.

Chapter 1-C

There Are Eight Existing Authorities; Six of Those Do Not Have a Full-time Staff

In June 2007, the Commission authorized the creation of the Sulphur River Regional Mobility Authority, making it the eighth existing authority in the state. In addition, Presidio County submitted a petition in April 2007 to form an authority. Five of the eight existing authorities cover a single county or city. Six of the authorities do not have a dedicated, full-time staff.

Authorities without dedicated, full-time staffs receive administrative support from local governments. For example:

- **Cameron County Regional Mobility Authority.** The county administrator is this authority's executive director.

- Camino Real Regional Mobility Authority. The City of El Paso provides legal and administrative services to this authority.
- Grayson County Regional Mobility Authority. One of Grayson County’s commissioners is this authority’s acting executive director.
- Hidalgo County Regional Mobility Authority. The Lower Rio Grande Valley Development Council contracts with this authority to provide administrative support.
- North East Texas Regional Mobility Authority. Some of this authority’s board members have assumed operational duties on a volunteer basis.

Table 1 presents information on the state’s eight existing authorities and their initial transportation projects.

Table 1

Existing Authorities' Initial Projects and Staffing				
Authority	Member Counties	Creation Date	Initial Transportation Project	Staffing
Alamo Regional Mobility Authority	Bexar	December 2003	Expand portions of Loop 1604, U.S. 281, and Interstate Highway 35. Improvements to ramps on Loop 1604.	4 full-time equivalent staff.
Cameron County Regional Mobility Authority	Cameron	September 2004	West Loop Project.	No full-time staff
Camino Real Regional Mobility Authority	City of El Paso ^a	June 2006	Loop 375 Project (Cesar Chavez Highway).	No full-time staff
Central Texas Regional Mobility Authority	Travis, Williamson	October 2002	183 A Toll Road.	11 full-time equivalent staff.
Grayson County Regional Mobility Authority	Grayson	November 2004	State Highway 289.	No full-time staff
Hidalgo County Regional Mobility Authority	Hidalgo	November 2005	The Hidalgo County Loop; U.S. 83 La Joya Relief Route; U.S. 281 alternate route from Edinburg to Pharr International Bridge.	No full-time staff
North East Texas Regional Mobility Authority	Bowie, Cass, Cherokee, Gregg, Harrison, Panola, Rusk, Smith, Titus, Upshur, Van Zandt, Wood	October 2004	Loop 49.	No full-time staff
Sulphur River Regional Mobility Authority	Delta, Hopkins, Hunt, Lamar	June 2007	Expansion of State Highway 24.	No full-time staff

^a El Paso is one of a few cities authorized by statute to form authorities.

Source: Commission minute orders, authority petitions, and authority Web sites.

The Central Texas Regional Mobility Authority (Central Texas Authority) is the only authority that has completed a transportation project. It took about two years for the Central Texas Authority to build the 183A Toll Road, which opened to

traffic in March 2007. The Central Texas Authority had expended \$203.5 million for construction costs as of July 2007. The toll road is 11.6 miles long, consisting of 4.5 miles of tolled expressway and 7.1 miles of untolled access road. Eventually, the Central Texas Authority plans to build a tolled expressway between the access lanes.

Most Authorities Require External Funding to Build Projects

Authorities are created without any immediate source of revenue to fund their operations. Although authorities have statutory authority to finance transportation projects through mechanisms such as tolls on road projects, initial start-up operations and planning and construction of transportation projects require external sources of funds. Six of the eight authorities currently in existence have received varying levels of start-up funds from city and county governments. In addition, a significant infusion of capital is required to finance the development of transportation projects. Capital for planning, designing, and building projects either has or will likely need to come from a combination of grants and loans from the Department and bonds issued by the authorities and/or local governments.

The Department provided \$64.7 million in grants to the Central Texas Authority to finance the development of the 183A Toll Road. The Department advanced the Central Texas Authority \$52 million of this grant funding, which the Central Texas Authority used to create equity so that bond rating agencies, capital markets, and other third parties could rely on the availability of these funds. The financial assistance provided by the Department to other authorities through April 2007 has been in the form of no-interest loans, which eventually will have to be repaid.

Local governments within an authority's jurisdiction also may play a role in financing projects. For example, Grayson County issued bonds to finance the expansion of State Highway 289, which was initiated by the Grayson County Regional Mobility Authority (Grayson County Authority). Responsibility for this project was transferred from the Grayson County Authority to Grayson County. It is notable that Grayson County was able to obtain a higher credit rating and lower interest rate on its bonds (in comparison to the Central Texas Authority's bond issuance) because it pledged to use ad valorem taxes to repay the bonds, if necessary. In addition, Grayson County will receive supplemental financing from the Department in the form of "pass-through tolls."

Most authorities are likely to incur significant debt to build their transportation projects. Absent additional grant funding from the State, the principal revenue stream to finance debt service on projects built by authorities will be provided by tolls collected from users. Authorities have the option of setting toll rates high enough to generate revenues in excess of the authorities' operational and debt service costs. Generating such surplus revenue may be necessary if an authority plans to develop additional transportation projects.

The Department Has Used Several Methods to Finance Projects

Most authorities receive some initial funding from their member counties and are eligible to apply to the Department for grants and loans to help pay operational costs. Table 2 shows the amount of funding authorities have received from their member local governments and the Department.

Table 2

Financing That Authorities Have Received from Local Governmental Entities and the Department					
Authority	Initial Funding from Local Governmental Entities	Financing from the Department			
		Award Amount	Award Date	Type of Financing	Amount Spent (As of April 2007)
Central Texas Regional Mobility Authority	\$1,100,000	\$12,700,000	May 2003	Toll Equity Grant	\$12,700,000
		52,000,000 ^a	February 2005	Toll Equity Grant	Unknown ^b
Alamo Regional Mobility Authority	1,250,000 ^c	1,000,000	December 2005	Toll Equity Loan	528,800
		7,500,000	January 2006	Toll Equity Loan	2,836,200
North East Texas Regional Mobility Authority	11,800	12,250,000	March 2006	Toll Equity Loan	1,483,900
Cameron County Regional Mobility Authority	275,000	21,600,000	August 2006	Toll Equity Loan	0
Grayson County Regional Mobility Authority	10,000	n/a ^d	n/a	n/a	n/a
Hidalgo County Regional Mobility Authority	200,000	n/a	n/a	n/a	n/a
Camino Real Regional Mobility Authority	\$0	n/a	n/a	n/a	n/a
Sulphur River Regional Mobility Authority	n/a	n/a	n/a	n/a	n/a
Total	\$2,846,800	\$107,050,000			\$17,548,900

^a The Central Texas Regional Mobility Authority has received the minimum award of \$52 million. The Department will grant the Central Texas Regional Mobility Authority a maximum of \$13 million more based on the Central Texas Regional Mobility Authority's financial needs through calendar year 2011.

^b Auditors were unable to determine how much of these funds had been spent by the Central Texas Regional Mobility Authority (see Chapter 3-B).

^c The Alamo Regional Mobility Authority's initial local funding consisted of three loans from Bexar County and the City of San Antonio. All other authorities receiving initial local funding do not have to repay these funds.

^d The Grayson County Regional Mobility Authority was awarded a \$84,506,000 in pass-through tolls to build State Highway 289, which was a project included on this authority's petition to the Commission. The Grayson County Regional Mobility Authority transferred the project to Grayson County because Grayson County was in a better position to obtain the funds needed to build State Highway 289.

Sources: Financial agreements between authorities and the Department, Department accounting records, interviews with Department and authorities' staff and management, and authority financial records and reports.

As shown in Table 2, the Department used the following funding methods to provide funds to authorities:

- Toll Equity Grants. Toll equity grants are non-repayable grants awarded by the Department. The Central Texas Authority is the only authority to receive toll equity grants. The first award was made in 2003 for \$12.7 million and was designated to be used for the study and development of the 183A Toll Road project. The second award was made in 2005 for \$65 million. The Central Texas Authority was given \$52 million of this amount as equity to attract financing for the 183A Toll Road project, as well as to help pay for design, construction, and operational costs. The Central Texas Authority is eligible to receive the remaining \$13 million of this grant award until 2011.
- Toll Equity Loans. Toll equity loans are interest-free loans from the Department. Repayment begins when an authority:
 - ♦ Receives sufficient additional financing to build its project and to repay the bonds.
 - ♦ Opens the toll project.

The toll equity loan agreements dictate a repayment ceiling of 10 percent of project revenues received annually. The loan agreements also give the Department a security interest in the transportation project being financed, allowing it to take possession of:

- ♦ Any work product purchased with the loan funds if the project is not completed.
- ♦ Projects built with loaned funds if the authority defaults on the loan.
- Pass-through Tolls. This is a form of aid through which the Department reimburses a local governmental entity, including an authority, for some or all of the cost of a transportation project. This reimbursement is based on road usage. The State does not collect any tolls from drivers. Grayson County will receive between \$5.3 million and \$7.0 million annually in pass-through tolls, until it receives an entire award amount of \$84.5 million.

In addition, the Texas Transportation Code provides authorities with several financing options. These include:

- Issuing revenue bonds. The Central Texas Authority used revenue bonds as a key means for financing the 183A Toll Road project.
- Obtaining other external financial assistance. Authorities can apply for and receive loans, gifts, grants, and other contributions of money, property, labor, or other items of value from any source, including Texas state

agencies,⁸ political subdivisions of Texas, private entities, the federal government,⁹ other states, the Mexican federal government, and a state of Mexico. These funds may be used for any purpose allowed by statute, including the construction of a transportation project.

- **Concession agreements.** Authorities can enter into a concession agreement, which is a type of comprehensive development agreement that allows a private sector entity to finance a transportation project. This arrangement provides external capital for an authority's projects. As noted in Chapter 1-A, authorities will be prohibited from entering into comprehensive development agreements after fiscal year 2011.
- **Surplus Revenues.** If an authority has a transportation project that generates toll revenues in excess of the authority's financing and operating needs, the authority may choose to use the funds in a number of ways, including studying the feasibility of other projects or financing other projects.

Chapter 2- B

Local Bonds Are a Major Source of Funding for Transportation Projects

The Central Texas Authority issued bonds to finance its 183A Toll Road project. The Department made an advance award to the Central Texas Authority of \$52 million to help it secure \$168.0 million in revenue bonds financing. The Department's toll equity grant reduced the risk to bond buyers by contributing capital to the project, thereby improving the Central Texas Authority's bond rating. In addition, the Central Texas Authority paid \$9.1 million in bond insurance premiums to further improve the bonds' rating.

Grayson County listed State Highway 289 as its planned transportation project when it petitioned the Commission to create the Grayson County Authority. Subsequent to the creation of the Grayson County Authority, responsibility for the State Highway 289 project was transferred from the Grayson County Authority to Grayson County. Grayson County issued \$63.7 million in bonds to finance the estimated \$59.6 million cost to construct State Highway 289. Grayson County was able to obtain a better interest rate than the Central Texas Authority on its bonds because it pledged to use ad valorem taxes to repay the bonds. The county paid \$0.4 million in issuance costs, including bond insurance.

The 183A Toll Road belongs to the Central Texas Authority and is not part of the state highway system. The bonds will be repaid through tolls charged to

⁸ If an authority receives funds from the General Revenue Fund, the Texas Mobility Fund, or the State Highway Fund, it may use the funds only to acquire, design, finance, construct, operate, or maintain turnpike projects (such as the 183A Toll Road or Loop 49) or transit systems.

⁹ Authorities must receive Department approval before applying for federal highway or rail funds.

users. State Highway 289 will be part of the state highway system; users will not be charged a toll.

Both Grayson County and the Central Texas Authority received funds from the Department (which they are not required to repay) to build their transportation projects. Due to differences in how these two entities structured the financing of their projects, Grayson County was able to incur lower financing costs to build its project. The State Highway 289 project, which was initiated by the Grayson County Authority, was transferred to Grayson County after House Bill 2702, (79th Legislature, Regular Session) allowed counties to use property taxes to pay bonds issued to finance roads that are part of the state highway system. The Central Texas Authority did not have assets to use to secure bond financing. As a result, the Central Texas Authority is paying higher financing costs to build the 183A Toll Road than Grayson County is paying to finance State Highway 289.

The \$84.5 million in pass-through tolls from the Department will cover 86.1 percent of Grayson County's total \$98.1 million in debt service. In addition, Grayson County has reserved \$6.3 million of the initial bond receipts for debt service, as required by the bond covenant. As a result, Grayson County will need to raise only \$7.2 million through other means. The Central Texas Authority will have to repay its bonds mainly from toll receipts.

The Department Has Been Effective in Monitoring Reimbursement Requests, But It Did Not Monitor \$52 Million It Granted to the Central Texas Authority

The Department has been effective in monitoring the funding it provided to authorities to reimburse them for expenses. The Department also granted the Central Texas Authority \$52 million in advance of the authority incurring construction expenses. The Department relinquished any further discretionary control over the funds and, therefore, did not monitor the Central Texas Authority's use of these funds.

After transferring these funds, the Department changed the funding source of a portion of the \$52 million grant from state funds to federal funds. The Department did not notify the Central Texas Authority of this change, which created potential accounting and reporting issues for the use of these funds.

Chapter 3-A

The Department Effectively Monitors Reimbursements of Authorities' Expenditures

The Department reimbursed four authorities \$17.5 million from September 2003 through April 2007 (see Table 3). Auditors randomly selected and tested a sample of 29 payments that were approved by the Department totaling \$900,000. All of these payments were accurate, properly authorized, and appropriate.

Table 3

Department Toll Equity Awards				
Award Date	Authority	Amount of Award	Type of Award	Amount Reimbursed as of April 2007
May 2003	Central Texas Authority	\$12,700,000 ^a	Toll Equity Grant	\$12,700,000
February 2005	Central Texas Authority	52,000,000 ^b	Toll Equity Grant	N/A ^c
December 2005	Alamo Regional Mobility Authority	1,000,000	Toll Equity Loan	528,800
January 2006	Alamo Regional Mobility Authority	7,500,000	Toll Equity Loan	2,836,200
March 2006	North East Texas Regional Mobility Authority	12,250,000	Toll Equity Loan	1,483,900
August 2006	Cameron County Regional Mobility Authority	21,600,000	Toll Equity Loan	0
Totals		\$107,050,000		\$17,548,900

Department Toll Equity Awards				
Award Date	Authority	Amount of Award	Type of Award	Amount Reimbursed as of April 2007
<p>^a The \$12.7 million toll equity grant to the Central Texas Authority was for project planning and engineering. The \$52 million award is primarily for construction financing.</p> <p>^b The Central Texas Authority's February 2005 award had an initial grant of \$52 million and potential additional awards of \$13 million. This award could total \$65 million. Auditors were unable to determine how much of these funds have been spent by the Central Texas Authority (see Chapter 3-B).</p> <p>^c This grant was transferred to the Central Texas Authority as a means of attracting bond financing and not as a reimbursement of expenses.</p>				

Sources: Financial agreements between the authorities and the Department, Department accounting records, and authorities' financial records and reports.

The Department effectively reviewed authorities' requests for reimbursement to ensure that costs were allowable and reasonable. For example, the Department reimbursed the Central Texas Authority \$12.7 million for expenses related to the construction of the 183A Toll Road. However, the Department rejected \$152,400 in reimbursements sought by the Central Texas Authority, including:

- \$5,200 for ineligible expenses
- \$147,200 for expenses in excess of the \$12.7 million grant the Department awarded the Central Texas Authority in May 2003.

In September 2004, the Department's internal audit function audited expenditures related to the \$12.7 million toll equity grant awarded to the Central Texas Authority. That audit did not identify any misuse of Department funds. However, the internal audit report stated that the Department did not reference a cost standard to use as guidance for defining eligible expenses for reimbursement. The report noted that not using such a cost standard would hamper the Department's ability to show costs were unreasonable. Future financial assistance agreements contained an attachment describing reimbursable costs.

The Department does not monitor the \$52 million toll equity grant it awarded to the Central Texas Authority.

The Department relied on the Central Texas Authority's internal controls for assurance that funds were being spent appropriately. The Department transferred all grant funds to the bond trustee on the day that the Central Texas Authority issued its bonds, relinquishing any further discretionary control over the funds. The Department considered the funds to be expended when it transferred them to the trustee.

The Department receives monthly reports from the Central Texas Authority that describe the progress of construction on the 183A Toll Road, including

the total billing for design and construction. These reports do not provide specific information on how the grant funds were expended. The Central Texas Authority is required to submit a final financial report comparing planned project costs to actual project costs to the Department by January 31, 2012.

Recommendation

The Department should require its grant recipients to maintain transaction-level expenditure information and to report how grant funds are spent.

Management's Response

The Department agrees with this recommendation and will include such a provision in future agreements. It should be noted that the grant to the CTRMA was to complete the bond financing for the 183A project and the grant funds were deposited with the trustee to be combined with bond funds. The funds held by the trustee are only released upon receipt of a certification of the expense by the General Engineering Consultant.

Chapter 3-B

The Department Should Ensure That It Complies with Federal Rules for Managing Federal Funds

The Department changed the funding source for \$21.6 million of a \$52 million grant to the Central Texas Authority from state highway funds to Federal Aid Highway Program funds.¹⁰ This funding change is permissible under federal law. However, the Department did not notify the Central Texas Authority that it would be receiving federal funds as a result of this funding change.

The Central Texas Authority's accounting system does not distinguish how funding from different sources is expended for road construction. Because the Central Texas Authority cannot determine the funding source that pays for expenditures, there is no audit trail to show how and when grant funds are spent. As a result, the Central Texas Authority can not accurately report on its use of federal funds in building the 183A Toll Road as required by U.S. Office of Management and Budget *Circular No. A-133*.

¹⁰ This federal grant, also known as a Highway Planning and Construction Grant, is funded through the Federal Highway Administration.

Recommendations

The Department should:

- Take steps to ensure that federal funding of authorities complies with federal rules by:
 - ♦ Notifying its grant recipients of changes in funding sources.
 - ♦ Requiring grantees to implement sufficient accounting controls to ensure they are able to account separately for funds provided by the Department.

The Central Texas Authority should:

- Ensure its accounting system creates an audit trail for each major funding source from the receipt of funds to the use of these funds.
- Establish policies that designate the order and proportionality with which source funds are spent.

Management's Response from Department

The Department agrees with these recommendations and will notify future grant recipients of any changes in funding sources, and require grantees to separately account for funds provided by the Department.

Management's Response from the Central Texas Authority

Agree. The funds will be maintained in separate accounts in the future. CTRMA's external financial auditors have completed the single audit requirement of the grant and they reported no instances of noncompliance and no deficiencies in internal controls.

The Department Should Ensure That Petitions Submitted to the Commission to Create Authorities Contain All Required Information

The Commission is empowered by statute to authorize the formation of an authority by counties or certain cities that request permission to do so. The Commission's process for authorizing the creation of authorities complies with the requirements in statute and the Texas Administrative Code, Chapter 26. However, three of seven petitions approved by the Commission that auditors reviewed did not contain one or more of the elements required by the Texas Administrative Code. The Department could improve this process by publishing more detailed criteria and examples of the type of materials that must be included in petitions to form authorities that will meet the intent of the law.

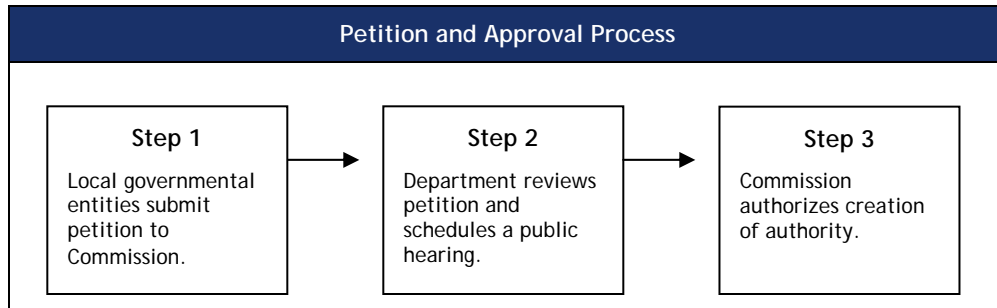
Counties wishing to create an authority must submit a petition to the Commission. Title 43, Texas Administrative Code, Chapter 26, requires petitions to form an authority to include:

- An adopted resolution from the commissioners court of each county indicating its approval of the regional mobility authority's creation.
- A description of how the regional mobility authority would improve mobility in the region.
- An explanation of how the project or system of projects will be consistent with the Texas Transportation Plan and the metropolitan transportation plan developed by the metropolitan planning organization for the affected area.
- The names and addresses of individuals or organizations known to be opposed to any element of the project or system of projects, and a description of any known controversies concerning the project or system of projects.
- A preliminary financing plan for the project or system of projects that includes an estimate of total cost and proposed financing, if available to the petitioner.
- A brief description of any other transportation projects under consideration for development by the regional mobility authority.
- The representation criteria and appointment process for board members.

The Department schedules a public hearing after it has reviewed a petition to ensure that it is complete. The Department then addresses public comments submitted during the hearing, and it makes a recommendation to the

Commission, which authorizes the petitioning counties to create an authority through a “Minute Order” (see Figure 1).

Figure 1



Source: Department of Transportation *Regional Mobility Authority Handbook*.

Petitions to establish authorities do not contain all required information: Three of seven (43 percent) approved petitions creating an authority¹¹ reviewed by auditors did not adequately address all required elements. Specifically:

- Description of opposition. The petitions to form the Camino Real Regional Mobility Authority and North East Texas Regional Mobility Authority stated there was opposition to the creation of the authorities. However, neither petition included the names and addresses of individuals and organizations known to oppose the projects. Including this data in the petitions could enable Commission members or other public officials to contact these individuals to gain additional information regarding their concerns.
- Financial plans. The Alamo Regional Mobility Authority’s financial plan, submitted as part of its petition, did not contain information on the estimated cost of the projects or estimates of funding from potential sources, even though the petition stated that general estimates of costs and potential sources of funds had been developed.

In addition, the Grayson County Authority’s financial plan did not list specific details about sources of funding and project costs. However, there was no indication that more detailed information was available to the authority.

The Commission does not provide clear criteria for some petition elements. Petitions are required to provide a brief description of any known environmental, social, economic, or cultural resource issues. The Camino Real Regional Mobility Authority’s petition stated that “some preliminary environmental concerns have been identified.” However, the petition did not contain any

¹¹ The Sulphur River Regional Mobility Authority was in the petitioning process during audit fieldwork. Therefore, its petition was not available to test.

details of these concerns, and the document stated elsewhere that the petitioners were unaware of any environmental factors that would preclude completion of the proposed projects. Conversely, the Central Texas Authority's petition contained detailed discussions of environmental concerns.

The Department lacks documented criteria establishing a minimum time period during the petitioning process for receiving written public responses to the creation of a new authority. It also lacks forms, checklists, or written guidelines to assist entities seeking to form authorities. The Department's *Regional Mobility Authority Handbook* contains a bulleted list of required data, but it contains little specific instruction on how the data should be presented in a petition. The Department's internal audit office made a similar observation in 2006.

Recommendations

The Department should:

- Ensure petitions contain all required information before submitting them to the Commission.
- Expand the description of required data in its *Regional Mobility Authority Handbook*. The handbook should be revised to:
 - ♦ Clearly state what information must be included in the summary of environmental issues.
 - ♦ Specify a format for documenting a project's preliminary financing plans.
 - ♦ Contain a checklist for prospective authorities to fill out as they prepare petitions.
 - ♦ Document the minimum time period for receiving written public responses regarding the creation of an authority.

Management's Response

The Department agrees with the Recommendations. The current RMA brochure (September 2007) has been updated to provide additional contact information as well as updated procedural requirements as recommended. Those updates will be revisited to ensure current/adequate information is incorporated to include details of what should be included in the summary of environmental issues along with a quality control checklist for the petition contents to be used by the petitioner and Department reviewers, examples and details of a project's preliminary financing plan, and a recommended minimum time period for written public response after the public hearing.

The Central Texas Authority Should Further Improve Its Contracting Practices

Since its formation in 2002, the Central Texas Authority has improved certain aspects of its contracting practices, such as procurement and selected contract provisions. However, other contract provisions pertaining to contractor compensation need to be strengthened. In addition, the Central Texas Authority needs to develop, document, and implement policies and procedures for reviewing invoices submitted by its contractors.

Central Texas Authority's Payments to Contractors

The Central Texas Authority outsources its construction functions and certain administrative tasks to minimize its need for full-time staff. As of July 2007, the Central Texas Authority paid contractors \$198.6 Million to build the 183A Toll Road. Auditors reviewed and tested selected contracts using the *State of Texas Contract Management Guide* as criteria. These contracts included:

- **A general engineering consultant.** A service contract was awarded in 2003 to provide oversight of the other contractors involved in building the Central Texas Authority's road projects. These responsibilities included reviewing road design, inspecting construction work, and conducting an initial review of construction invoices. Payment was based on direct labor, allocated overhead, and a fixed profit percentage. The Central Texas Authority had paid this contractor \$27.5 million as of July 2007.
- **A design-build construction contractor.** A comprehensive development agreement was awarded to this contractor in 2004 to design and build the 183A Toll Road. The contract is a lump-sum agreement that can be modified through change orders. As of July 2007, this contractor had received \$163.6 million of the \$171.8 million contract.
- **A toll system integrator.** A contract was awarded in 2005 to this contractor to ensure that toll collection software used by the Central Texas Authority can communicate with the statewide toll collection system (TxTag). Toll system integration ensures that customers, who purchase electronic toll transponders from any tolling entity in Texas, can use these transponders on the 183A Toll Road. The toll system integrator had received \$7.5 million of the \$8.8 million contract as of July 2007.

Chapter 5-A

The Central Texas Authority Has Improved Its Procurement Process

Since its creation in 2002, the Central Texas Authority has improved its procedures for selecting vendors. The Central Texas Authority evaluated a general engineering consultant contract, which was the first major contract that it awarded, on five criteria, based on a 50-point scale (see text box for more information about Central Texas Authority's contractors). Documentation of the selection process consisted of a one-page, hand-written scoring matrix. Definitions of the scoring criteria and the identity of the persons scoring the proposal were not documented.

In contrast, a design-build comprehensive development agreement for the 183A Toll Road, which was signed in 2004, was evaluated on 10 criteria, based on a 100-point scale. The Central Texas Authority used defined scoring criteria to evaluate bidder proposals, and each selection committee member completed a scoring sheet. In addition, the Central Texas Authority documented how it determined the best value proposal.

A 2005 contract with a toll system integrator also included 10 scoring criteria similar to those used for the comprehensive development agreement. Results of the proposal evaluation were adequately documented.

The Central Texas Authority could not provide evidence that it consistently posted contract solicitations, such as requests for proposals or announcements of contract awards, on its Web site. The Central Texas Authority's policies suggest posting information about contracts on its Web site as a courtesy. Retaining documentation of key postings provides evidence that postings were made.

Recommendations

The Central Texas Authority should:

- Ensure that contract solicitations and awards are posted on its Web site and documented.
- Maintain copies of screen shots of its Web site postings with other contract procurement documentation.

Management's Response

- Ensure that contract solicitations and awards are posted on its Web site and documented.

CTRMA has posted all solicitations on its Web site, but has not documented this action by retaining a copy of the Web site posting. CTRMA will document all future postings by printing and retaining a copy of the screen.

- Maintain copies of screen shots of its Web site postings with other contract procurement documentation.

Agree. CTRMA has initiated a procedure to maintain copies of procurement postings.

Chapter 5-B

The Central Texas Authority Has Opportunities to Strengthen Its Contracts

Overall, the contracts that auditors tested between the Central Texas Authority and its consultants or contractors contained terms and conditions that protected the Central Texas Authority's interests. Six contracts from September 2003 through October 2006 representing approximately \$206.9 million,¹² or 95 percent of the Central Texas Authority's projected contract expenditures of \$216.7 million, were selected for testing. The contracts were examined to determine whether provisions recommended by the *State of Texas Contract Management Guide* (State Contract Guide) were included in the contracts. Although the Central Texas Authority is not required to follow the State Contract Guide, auditors used this document as criteria to test the Central Texas Authority's contracts.

¹² This is based on "Not to Exceed" and "Lump Sum" amounts in the individual contracts and work authorizations.

Central Texas Authority contracts address most of the key recommended contract provisions.

Standard Contract Provisions

The *State of Texas Contract Management Guide* lists 15 standard provisions that should be included in all contracts. These are:

- Introduction.
- Scope of work.
- Contract duration.
- Consideration/Price.
- Specifications.
- Assignment.
- Dispute resolution.
- Contractor responsibilities.
- Damage claims.
- Insurance.
- Default.
- Right to audit.
- Payment.
- Independent contractor.
- Termination.

Source: *State of Texas Contract Management Guide*, Appendix 9.

Auditors identified 15 standard contract provisions from the State Contract Guide. These provisions include scope of work, contractor responsibilities, and payment (see text box for complete list). Of the six contracts tested, 80 of 96 (83 percent) of the standard provisions were present in the contracts.¹³ All contracts tested contained 12 of the 15 standard provisions. Three of the standard provisions—dispute resolution, assignment of subcontractors, and default—were missing or misstated in one or more of the contracts. Specifically:

- Four of the six contracts tested, including the general engineering consultant contract, did not include a dispute resolution provision.
- The design-build construction contract did not require the contractor to obtain the Central Texas Authority’s written approval prior to hiring subcontractors.

The Central Texas Authority needs to amend its contract with its general engineering consultant to effectively control salary rates.

Direct salary charges. The salary schedule included with the Central Texas Authority’s contract with its general engineering consultant provides an “average rate” paid to classes of employees (such as engineers) and does not impose a maximum rate that may be billed for classes of employees.

The contract does not contain language that describes how to apply the average salary rate to the amounts billed by the general engineering consultant. Additional issues with monitoring salary schedules are discussed in Chapter 5-C.

Overhead rates. Provisions for the general engineering consultant’s subconsultants’ overhead rates do not ensure effective control of these costs. The Central Texas Authority’s contract with its general engineering consultant does not require that subconsultant contracts base their compensation on the Federal Acquisition Regulation audited overhead rates.¹⁴ Instead, the contract allows subconsultants to use their own overhead rates, including unaudited overhead rates. These audited overhead rates are required of commercial organizations contracting for highway projects that receive federal funds.

Auditors examined nine subconsultant contracts, and only one used a Federal Acquisition Regulation audited overhead rate for the period in which the subconsultant provided services to the Central Texas Authority. Six contracts embedded their overhead rate and profit rate into their employee wage rates so that the overhead rate could not be determined.

¹³ The 6 contracts were tested for 15 terms each; however, the term “specifications” did not apply to 4 contracts for services.

¹⁴ The subconsultant contracts also could use the general engineering consultant’s overhead rate in the absence of an audited rate.

Recommendations

The Central Texas Authority should:

- Consider following the applicable contracting guidelines set forth in the State Contract Guide.
- Amend its contract with its general engineering consultant to:
 - ♦ Create a salary rate schedule that includes a range of salary rates for each general engineering consultant job class. The top salary rate on the schedule should be the maximum rate that can be charged for that job class.
 - ♦ Require that subconsultant service contracts use an audited Federal Acquisition Regulation rate, if available; or use the general engineering consultant's audited rate.

Management's Response

- Consider following the applicable contracting guidelines set forth in the State Contract Guide.

CTRMA is not covered by the legal statute that set up the State Contract Management Guide. Nevertheless, CTRMA follows many of the contracting guidelines included in the Guide. State agencies are required to include dispute resolution clauses in their contracts because there is a required statutory procedure that must be followed to resolve contract claims against the state. (Ch. 2260 of the Government Code). CTRMA is not a state agency and does not have the benefit of a specific statutory dispute resolution process. Additionally, a dispute resolution clause may not always be in CTRMA's best interest since the right to pursue litigation for non-performance by contractors may be the most effective tool against a breach of contract. CTRMA will review the guidelines to see if there are additional provisions that may be appropriate for CTRMA to utilize.

- Amend its contract with its general engineering consultant to create a salary rate schedule that includes a range of salary rates for each general engineering consultant job class. The top salary rate on the schedule should be the maximum rate that can be charged for that job class.

Each quarter, the general engineering consultant (GEC) submits a quarterly work authorization that includes the general job classes of employees and the applicable salary rate. CTRMA is invoiced for employees that are under those job classifications at the employee's actual rate times the number of hours worked on CTRMA projects. No overtime

premium is paid. CTRMA has requested that job classifications from the work authorizations be included on future invoices.

The average rate is used for planning purposes to determine the amount of the quarterly work authorization that is approved by the CTRMA Board. Since the contract is for five (5) years, the work authorizations represent a quarterly review of billing rates.

- *Amend its contract with its general engineering consultant to require that subconsultant service contracts use an audited Federal Acquisition Regulation rate, if available; or use the general engineering consultant's audited rate.*

Many smaller contractors do not have audited Federal Acquisition Regulation (FAR) rates. CTRMA reviews and checks the rates for reasonableness. In future contracts, CTRMA will specify the use of the FAR rate, by sub-contractors to the GEC, and determine whether the GEC's FAR rate or a reasonable substitute will be used.

Chapter 5-C

The Central Texas Authority Could Improve Its Review of Invoices from Its General Engineering Consultant

The Central Texas Authority has informal procedures for reviewing invoices from its general engineering consultant; however, it lacks documented policies and procedures for reviewing these invoices. Auditors noted that:

- The review process does not use a checklist that documents the source and nature of any corrections made.
- Two of three invoices reviewed did not contain evidence of review by the Central Texas Authority's director of engineering.
- Invoice request changes to the general engineering consultant are made by staff using Post-It Notes that are attached to the invoices.

This lack of documented policies and procedures may have contributed to the following issues with payments to the general engineering consultant.

- The general engineering consultant billed the Central Texas Authority for classes of employees that are not on the salary rate schedule. Auditors reviewed 3 of 47 invoices submitted to the Central Texas Authority by the general engineering consultant. For the 3 invoices auditors tested, 176 of 272 (65 percent) billed labor costs were for classes of employees that were not included in the salary rate schedule. The payments associated with these 176 billed labor costs totaled \$207,000.

- The Central Texas Authority's review of subconsultant invoices did not address the fact that most subconsultants did not use federally required audited overhead rates to bill for their services, as discussed in Chapter 5-B. These federally required rates provide the contracting entity a method for containing costs and avoiding fraud.

Key contract documents are not located on site at the Central Texas Authority's headquarters. Auditors observed that the Central Texas Authority did not have an on-site central repository that contains all contract documents. Certain records were maintained off-site with the Central Texas Authority's contractors, including the general engineering consultant and the outside legal counsel. For internal management and general accountability purposes, all contract documents should be maintained on site. It is unclear whether the Central Texas Authority incurs charges from its contractors to access these records.

Recommendations

The Central Texas Authority should:

- Develop formal policies, procedures, and checklists to document the review of invoices.
- Amend its contract with its general engineering consultant to:
 - ♦ Require the salary rate schedule to include all job classes to be billed.
 - ♦ Deny payment of salaries that:
 - Exceed the maximum allowable salary rates on the salary schedule,
 - or
 - Are for job classes not on the approved rate schedule.
 - ♦ Include provisions requiring the periodic updating of the salary rate schedule.
- Maintain its key contract documents on site, where they are readily accessible over the life of the contract.

Management's Response

- Develop formal policies, procedures, and checklists to document the review of invoices.

There is a formal process in place for Hill Country Constructors that includes a checklist and required approvals for payments to the contractor on the 183A project. It contains corrections that were made to the invoice, and is signed off and stamped by oversight engineers. It is also signed off by the GEC and CTRMA's Chief Financial Officer.

CTRMA agrees that two of three invoices did not contain formal evidence of review and has started a formal process of checklists and comments for invoices. There is now a formal process and a standardized format in place.

- Amend its contract with its general engineering consultant.

Agree

Each quarter, the general engineering consultant (GEC) submits a quarterly work authorization that includes the general job classes of employees and the applicable salary rate. CTRMA is invoiced for employees that are under those job classifications at the employee's actual rate times the number of hours worked on CTRMA projects. No overtime premium is paid. CTRMA has requested that job classifications from the work authorizations be included on future invoices.

The average rate is used for planning purposes to determine the amount of the quarterly work authorization that is approved by the CTRMA Board. Since the contract is for five (5) years, the work authorizations represent a quarterly review of billing rates.

- Maintain its key contract documents on site, where they are readily accessible over the life of the contract.

Agree. CTRMA will review documents that have been moved to storage and maintain key documents on site.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Department of Transportation (Department) has adequate oversight processes and controls in place to ensure that regional mobility authorities (authorities) spend funds in a fiscally responsible manner, including: ensuring reasonable prices for contracted services, ensuring that expenditures are valid and supported, and ensuring that funds will be available to make bond payments on schedule.

Scope

The scope of this audit covered the Department's oversight of authorities between September 2002 and August 2007. In addition, auditors conducted a more detailed review of the Central Texas Regional Mobility Authority because it was the only authority that has completed a transportation project or issued bonds.

Methodology

The audit methodology included collecting information and documentation; performing selected tests and other procedures; analyzing and evaluating the results of the tests; and conducting interviews with elected officials, members of the board for various regional mobility authorities, and management and staff at the Department, the Central Texas Regional Mobility Authority, and the Central Texas Regional Mobility Authority's contractors.

Information collected and reviewed included the following:

- *State of Texas Contract Management Guide*, Texas Facilities Commission (formerly the Texas Building and Procurement Commission), Version 1.3.
- *State of Texas Procurement Manual*, Texas Facilities Commission (formerly the Texas Building and Procurement Commission), August 2007.
- *Construction Contract Administration Manual*, Department of Transportation, November 2005.
- *Regional Mobility Authority Handbook*, Department of Transportation, July 2007.

- *A Special Report—Central Texas Regional Mobility Authority: A Need for a Higher Standard*, Office of the Comptroller of Public Accounts, March 2005.
- Department Internal Audit reports:
 - ♦ *Regional Mobility Authority Function Department-wide Report*, Report Number 1407-5, August 16, 2006.
 - ♦ *Central Texas Regional Mobility Authority US 183-A Turnpike Project*, September 10, 2004.
- Petitions to form a regional mobility authority for all existing authorities.
- Financial assistance agreement for authorities receiving financial assistance from the Department.
- *Official Statement*, Central Texas Regional Mobility Authority, February 16, 2005.
- *Official Statement*, Grayson County, Texas; January 22, 2007.
- Central Texas Regional Mobility Authority's annual financial reports for fiscal years 2003 through 2006.
- Central Texas Regional Mobility Authority's contractor payments.
- *Policies and Procedures Governing Procurements of Goods and Services*, Central Texas Regional Mobility Authority, August 27, 2003.
- Central Texas Regional Mobility Authority's procurement files.
- Regional Mobility Authority contracts with its general engineering consultant, design-build construction contractor, and toll system integrator.
- Department TxTag toll rate schedules and maps.

Procedures and tests conducted included the following:

- Reviewed petitions to form a regional mobility authority.
- Analyzed selected reimbursements to authorities by the Department.
- Analyzed the Central Texas Regional Mobility Authority's financial statements.
- Tested the general engineering consultant's invoices submitted to the Central Texas Regional Mobility Authority.

- Confirmed Central Texas Regional Mobility Authority construction cash draws from private financial institutions.
- Examined the terms and conditions of selected contracts and work authorizations of the Central Texas Regional Mobility Authority.
- Examined the terms and conditions of selected subcontracts and work authorizations of the general engineering consultant.
- Reviewed the Central Texas Regional Mobility Authority's use of its sales tax exemption.
- Analyzed the process and criteria used by the Central Texas Regional Mobility Authority to select vendors.

Criteria used included the following:

- The Texas Constitution, Article 3.
- *Circular No. A-133 Compliance Supplement*, U.S. Office of Management and Budget, March 2004.
- *State of Texas Contract Management Guide*, Texas Facilities Commission (formerly the Texas Building and Procurement Commission), Version 1.3.
- *State of Texas Procurement Manual*, Texas Facilities Commission (formerly the Texas Building and Procurement Commission), June 2003.
- *Construction Contract Administration Manual*, Department of Transportation, November 2005.
- Texas Government Code, Chapter 2156 (Purchasing Methods).
- Texas Transportation Code:
 - ♦ Chapter 201 (General Provisions and Administration).
 - ♦ Chapter 370 (Regional Mobility Authorities).
- Texas Administrative Code:
 - ♦ Title 34, Chapter 3 (Tax Administration).
 - ♦ Title 43, Chapter 26 (Regional Mobility Authorities).
 - ♦ Title 43, Chapter 27 (Toll Projects).

Project Information

Audit fieldwork was conducted from June 2007 through August 2007. This audit was conducted in accordance with generally accepted government auditing standards.

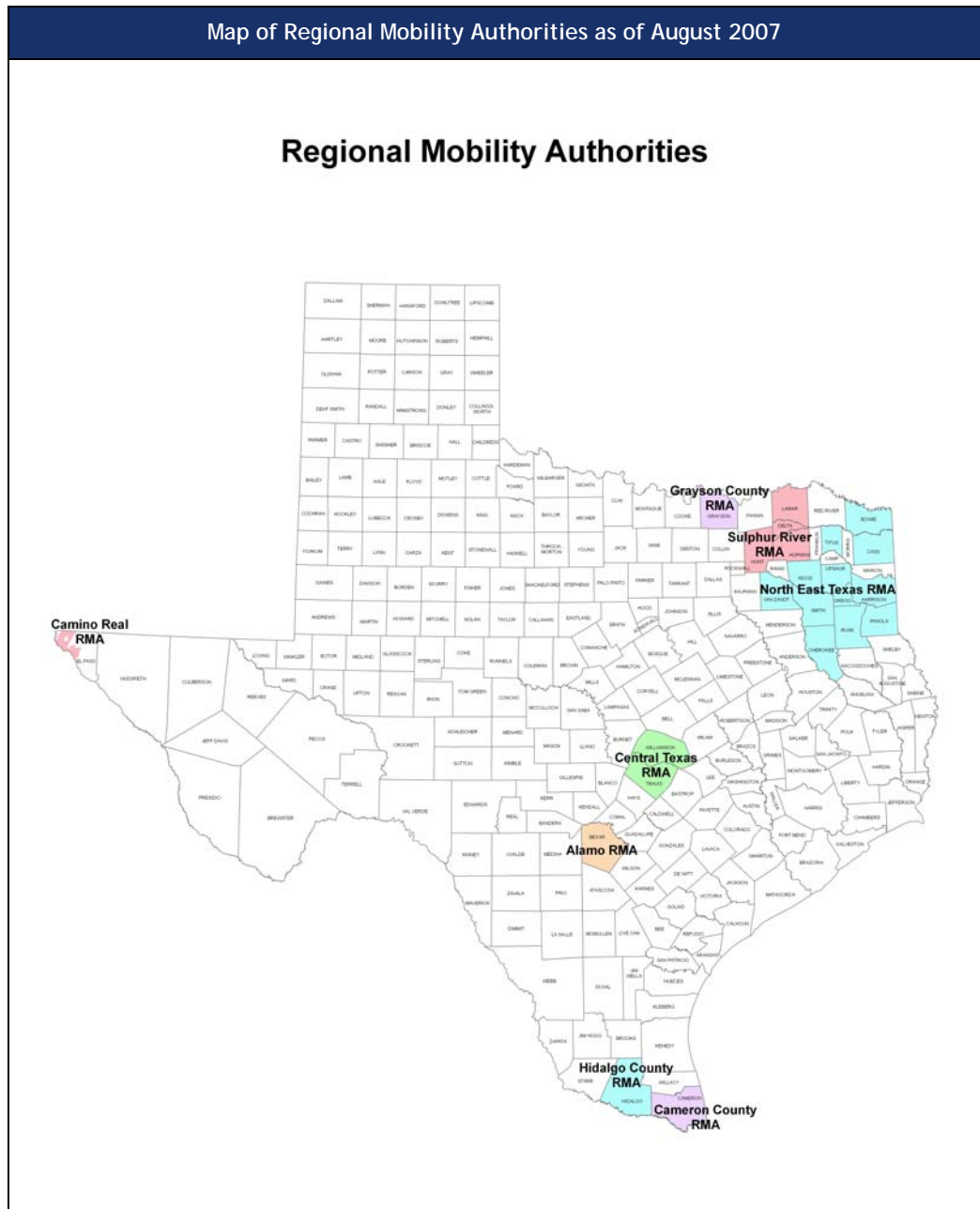
The following members of the State Auditor's staff performed the audit:

- Gregory Scott Adams, CPA, MPA, CGFM (Project Manager)
- Jeff Grymkoski, MA (Assistant Project Manager)
- Annette Banks, MPA, CGAP
- Melissa Dozier
- Mary Goldwater
- Wesley Vaughn Hodgins, CPA
- Sajil Scaria
- Kenneth F. Wade
- Leslie Ashton, CPA (Quality Control Reviewer)
- John Young, CGAP, MPAff (Audit Manager)

Map of Existing Authorities and the 183A Toll Road

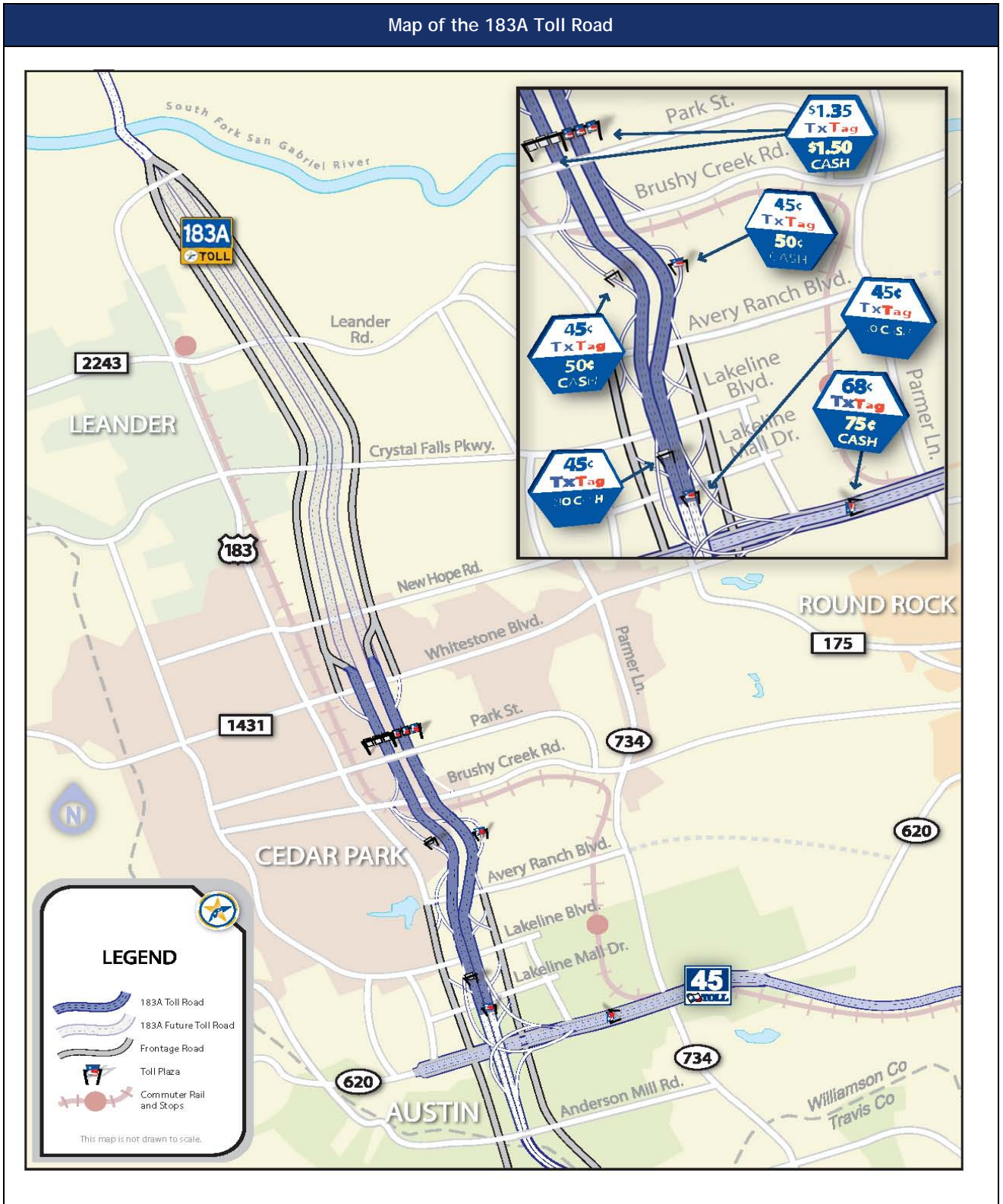
Figure 2 shows existing regional mobility authorities as of August 2007. The 183A Toll Road (see Figure 3) is the only transportation project built to date by a regional mobility authority. The 183A Toll Road was opened in March 2007, after approximately two years of construction.

Figure 2



Source: Texas Legislative Council.

Figure 3



Source: Central Texas Regional Mobility Authority.

A Complete Listing of Eligible Transportation Projects for Regional Mobility Authorities and Bond Payment Responsibilities

Under statute, regional mobility authorities (authorities) are eligible to build the following types of transportation projects:

- Turnpike projects.
- Transportation systems consisting of one or more transportation projects.
- Passenger or freight rail facilities, including:
 - ♦ Tracks.
 - ♦ Locomotives.
 - ♦ Other real and personal property associated with a rail operation.
- A roadway with a functional classification greater than a local road or rural minor collector.
- Ferries.
- Airports.
- Pedestrian or bicycle facilities.
- Intermodal hubs, which are central locations where cargo containers can be easily and quickly transferred between trucks, trains, and airplanes.
- Automated conveyor belts for the movement of freight.
- Border-crossing inspection stations.
- Air quality improvement initiatives.
- Public utility facilities.
- Transit systems.
- Projects and programs listed in the most recently approved state implementation plan for the area covered by the authority.

Table 4 provides information on the state’s eight existing authorities.

Table 4

Boards of Directors for Existing Regional Mobility Authorities			
Regional Mobility Authority	Current Number of Board Members	Needed for Board Actions	Web Site
Alamo Regional Mobility Authority	7	Majority Vote	http://www.alamorma.org/
Cameron County Regional Mobility Authority	7	Majority Vote	http://www.co.cameron.tx.us/ccrma/index.html
Camino Real Regional Mobility Authority (El Paso)	7	Majority Vote	http://www.ci.el-paso.tx.us/muni_clerk/detail.asp?id=84
Central Texas Regional Mobility Authority	7	Majority Vote	http://www.ctrma.org/
Grayson County Regional Mobility Authority	5	Majority Vote	http://www.co.grayson.tx.us/gcrma.htm
Hidalgo County Regional Mobility Authority	7	Majority Vote	http://www.lrgvdc.org/RMA/
North East Texas Regional Mobility Authority	11	Majority Vote	http://www.netrma.org/
Sulphur River Regional Mobility Authority	0 ^a	Majority Vote	No Web site.

^aThe Sulphur River Regional Mobility Authority was approved by the Texas Transportation Commission on June 28, 2007. The member counties have not yet appointed a board.

Source: Authority charters, authority Web sites, and authority bylaws.

Each of the authorities’ founding counties is allowed to appoint two directors. Counties that join after inception are allowed to appoint one director each, and any county in which an operating transportation project is located is allowed to appoint an additional director.¹⁵ Directors can be removed during their terms for reasons that are stated in statute.

Directors must be residents of one of the authority’s member counties. A director cannot be an elected official, an employee of a governmental entity that has any part located within the geographic boundaries of the authority, or an employee of the Department.

¹⁵ This is allowed unless all of the authority’s members’ commissioners courts agree otherwise.

Table 5 lists key events in the development of authorities in Texas.

Table 5

Key Events in the Development of Regional Mobility Authorities	
Date	Event
June 15, 2001	<p>The Governor signs Senate Bill 342 (77th Legislature, Regular Session), which enables the Commission to create regional mobility authorities. Senate Bill 342 also allows the Department to advance funds to governmental entities without requiring those entities to repay the Department</p> <p>However, Senate Bill 342 cannot go into effect until Senate Bill 4 (77th Legislature, Regular Session) and Senate Joint Resolution 16 (77th Legislature, Regular Session) become law.</p> <ul style="list-style-type: none"> ▪ Senate Bill 4 establishes the Texas Mobility Fund, which allows the Commission to issue bonds on a limited basis for transportation construction and improvements. ▪ Senate Joint Resolution 16 amends the Texas Constitution, Article III, by removing prohibitions against state funding of toll projects. It also allows the Legislature to authorize the Department to pay the costs of toll projects from any available funding source.
June 15, 2001	The Governor signs Senate Bill 4 into law.
November 6, 2001	Voters approved Proposition 15, which is Senate Joint Resolution 16. As a result, Senate Bill 342 and Senate Bill 4 go into effect.
October 31, 2002	The Commission authorizes the creation of the first authority: the Central Texas Regional Mobility Authority by Travis and Williamson counties.
September 1, 2003	<p>House Bill 3588 (78th Legislature, Regular Session), which added Chapter 370 to the Texas Transportation Code, expanded the powers of authorities. Specifically, authorities were given the power to:</p> <ul style="list-style-type: none"> ▪ Condemn property through eminent domain. ▪ Issue revenue bonds. ▪ Enter into comprehensive development agreements with private entities to construct, maintain, operate, extend, or expand transportation projects. However, authorities will be unable to enter into these after fiscal year 2011.
November 8, 2005	Voters reject Proposition 9, which would have increased the term of authority directors from two years to six years.
March 3, 2007	The 183A Toll Road opens. This 11.6-mile road consists of 4.5 miles of tolled expressway and 7.1 miles of untolled access roads. This road is the first transportation project that has been built by an authority and is the only transportation project operated or owned by an authority.
June 11, 2007	Senate Bill 792 (80th Legislature, Regular Session) significantly reduces and makes changes to the ultimate phase out authorities' ability to enter into comprehensive development agreements. Authorities will be unable to enter into comprehensive development agreements after August 31, 2011.

The State is not responsible for authorities' bond payments; however, the Texas Transportation Commission may accept this debt.

The Texas Transportation Code contains provisions that allow authorities to issue bonds to pay the cost of a project. These bonds do not constitute a debt to the State. However, the Department may accept a project from an authority and any outstanding bond obligations.

The Texas Transportation Code allows an authority to transfer a turnpike project that has outstanding bonded indebtedness to the Department if the Texas Transportation Commission (Commission) agrees to the transfer and agrees to assume the outstanding bonded indebtedness. At the time of a conveyance, the Commission shall designate the turnpike project as part of the

state highway system. After the designation, the authority has no liability, responsibility, or duty to maintain or operate the transferred turnpike project.

Texas Transportation Commission and Department of Transportation Oversight of Regional Mobility Authorities

The Texas Transportation Commission (Commission) approves the creation and dissolution of regional mobility authorities (authorities) and gives the Department of Transportation (Department) limited oversight of certain aspects of authorities' operations. The Commission and the Department have significant jurisdiction over the authorities' construction of transportation projects.

The Commission controls limited aspects of authorities' operations.

The Commission has oversight of certain aspects of authorities' operations. Specifically, the Commission has authority to:

- Approve all dissolutions of authorities.
- Order the involuntary dissolution of authorities under certain conditions.
- Approve changes in authority membership.
- Authorize authorities to enter into contracts with Mexico.
- Set minimum audit and reporting requirements for authorities.
- Draft rules to govern the authorities and establish standards for authorities' operations and transportation projects.

The Commission and Department has significant jurisdiction over authorities' construction of most road projects.

Statute and Commission rules give the Commission significant jurisdiction over authorities' transportation projects that connect to state roads and rail. Specifically, authorities must receive Commission or Department approval of:

- A project's start date for construction.
- Project design and engineering during project planning.
- Major revisions to construction contracts of projects that connect to state highways.
- Applications for federal highway or rail funds.

In addition, statute requires the Commission to establish design and construction standards for authority projects that connect to a state highway or rail. The Commission developed these standards and included them in its rules for project approval.

Recent State Auditor's Office Work

Table 6

Recent SAO Work		
Number	Product Name	Release Date
07-555	State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2006	April 2007
07-031	An Audit Report on the Department of Transportation's Reported Funding Gap and Tax Gap Information	April 2007
07-709	A Classification Compliance Review Report on the State's Attorney, Assistant Attorney General, and General Counsel Positions	March 2007
07-018	An Audit Report on the Department of Transportation's Aviation and Metropolitan Transportation Planning Grant Programs	March 2007
07-015	An Audit Report on the Department of Transportation and the Trans-Texas Corridor	February 2007

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Tom Craddick, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Warren Chisum, House Appropriations Committee
The Honorable Jim Keffer, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Department of Transportation

Members of the Texas Transportation Commission

Mr. Richard “Ric” F. Williamson, Chair

Ms. Hope Andrade

Mr. Ned Holmes

Mr. Ted Houghton

Mr. Fred Underwood

Mr. Amadeo Saenz, Jr., P.E., Executive Director

Central Texas Regional Mobility Authority

Board of Directors

Mr. Robert “Bob” Tesch, Chairman

Mr. Robert “Bob” Bennett

Mr. Henry Gilmore

Mr. Lowell Lebermann

Ms. Nikelle Meade

Mr. Jim Mills

Mr. David Singleton

Mr. Mike Heiligenstein, Executive Director



This document is not copyrighted. Readers may make additional copies of this report as needed. In addition, most State Auditor's Office reports may be downloaded from our Web site: www.sao.state.tx.us.

In compliance with the Americans with Disabilities Act, this document may also be requested in alternative formats. To do so, contact our report request line at (512) 936-9880 (Voice), (512) 936-9400 (FAX), 1-800-RELAY-TX (TDD), or visit the Robert E. Johnson Building, 1501 North Congress Avenue, Suite 4.224, Austin, Texas 78701.

The State Auditor's Office is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

To report waste, fraud, or abuse in state government call the SAO Hotline: 1-800-TX-AUDIT.