An Audit Report on

Selected Contracts at the Department of Public Safety

May 2016

Report No. 16-023

An Audit Report on

Selected Contracts at the Department of Public Safety

SAO Report No. 16-023
May 2016

Overall Conclusion

The Department of Public Safety (Department) should strengthen its contract monitoring processes. The audit of two contracts identified the following (see text box for background information on those contracts):

> **Background Information on the Contracts Audited**
>
> - The fuel card contract enables employees of multiple state agencies to purchase fuel, oil, maintenance and repairs, and roadside assistance. The contract is between U.S. Bank and the Office of the Comptroller of Public Accounts. It began on April 20, 2012, and is scheduled to end on April 30, 2016. In fiscal years 2013, 2014, and 2015, the Department paid the fuel card vendor a total of $54,467,511. As of November 2015, the Department had 4,793 active fuel cards.
> - The Fingerprint Applicant Services of Texas (FAST) contract is for capturing fingerprints for the purposes of conducting criminal history checks. Those checks are generally conducted at the request of a member of the public for employment, licensure, and volunteer activity. The contract is between the Department and MorphoTrust, USA, LLC. It began in June 2015 and is scheduled to end in August 2017. Payment is based on a per-fingerprint fee, and the Department estimates that payments will total $4,200,000 for fiscal year 2016.
>
> Sources: The Office of the Comptroller of Public Accounts, the Uniform Statewide Accounting System, U.S. Bank, and the Department.

Fuel card contract. The Department did not sufficiently review the invoices that the fuel card vendor submitted and, as a result, it paid the fuel card vendor $503,496 more than the invoiced amount during the scope of this audit. After auditors brought this matter to its attention, the Department provided documentation indicating that it had reduced a subsequent payment to the fuel card vendor by $437,423 to begin to address that issue.

In addition, the Department did not adequately monitor its employees' use of fuel cards by reconciling charges that employees self-reported on monthly logs with available data from the fuel card vendor. It also did not implement an alternative process to validate its employees' fuel card charges before it paid the fuel card vendor's invoices. As a result, auditors identified:

- Fuel card charges that employees did not report, including out-of-state fuel card charges that Department employees asserted they did not make.
- Instances in which fuel cards and driver identification numbers (driver IDs) were used by Department employees other than the employees to whom those fuel cards and driver IDs were assigned (including former employees).

The issues above increase the risk that the Department could pay for fuel purchases that do not support state business. The Department should improve fuel card accountability by reconciling logged fuel card charges with data and bank statements available through the vendor's online monitoring tools.

Fingerprint Applicant Services of Texas (FAST) contract. The Department complied with most requirements for planning, procuring, and forming the FAST

This audit was conducted in accordance with Texas Government Code, Sections 321.0131, 321.0132, and 2262.052.

For more information regarding this report, please contact Angelica Ramirez, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

contract with MorphoTrust, USA, LLC. In addition, the Department's payments to the contractor were supported and properly approved. However, the Department should strengthen its monitoring to ensure that the contractor adequately protects clients' personal information and provides quality services that are accessible across the state.

Table 1 presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Subchapters and Related Issue Ratings		
Report Subchapter	Title	Issue Rating [a]
1-A	The Department Did Not Always Apply Rebates and Fraud Credits, Did Not Consider Supervisors' Reviews of Employees' Fuel Card Use Prior to Payment, and Did Not Always Make Payments to the Fuel Card Vendor in a Timely Manner	High
1-B	The Department Did Not Adequately Monitor Employees' Fuel Card Use	High
2-A	The Department Planned, Procured, and Formed the FAST Contract in Accordance with Most Applicable Statutes and Rules	Medium
2-B	The Department Should Strengthen Its Monitoring of the FAST Contract	Medium

[a] A subchapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A subchapter is rated High if the issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A subchapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A subchapter is rated Low if the audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Auditors communicated other, less significant issues in writing to Department management.

Summary of Management's Response

At the end of each chapter in this report, auditors made recommendations to address the issues identified during this audit. The Department generally agreed with the recommendations in this report.

Audit Objective and Scope

The objective of this audit was to determine whether the Department has administered certain contract management functions for selected contracts in accordance with applicable requirements.

The scope of this audit covered two contracts:

- A statewide contract with U.S. Bank for fuel cards.[1] Auditors reviewed the Department's planning for the contract that occurred prior to the fuel card implementation in September 2012 and its monitoring of the contract from September 2012 through August 2015.
- A contract between the Department and MorphoTrust, USA, LLC for FAST. Auditors reviewed contract planning, procurement, formation, and monitoring activities through September 2015.

[1] The Office of the Comptroller of Public Accounts procured that contract on behalf of the Council on Competitive Government.

Contents

Detailed Results

Appendices

Detailed Results

Chapter 1

*The Department Did Not Sufficiently Review Fuel Card Vendor Invoices and Related Payments and Did Not Adequately Monitor **Employees' Fuel Card Use***

The Department of Public Safety (Department) did not sufficiently review the invoices that the fuel card vendor submitted and, as a result, it paid the fuel card vendor $503,496 more than the invoiced amount during the scope of this audit. Specifically, the Department did not consistently apply rebates to its payments or collect refunds for fraudulent charges that the fuel card vendor identified and reported to the Department. After auditors brought this matter to its attention, the Department provided documentation indicating that it had reduced a subsequent payment to the fuel card vendor by $437,423 to begin to address that issue.

In addition, the Department did not adequately monitor its employees' use of fuel cards by reconciling charges that employees self-reported on monthly logs with available data from the fuel card vendor. As a result, the Department was unaware of fuel card charges that employees did not document, including charges that Department employees asserted they did not make.

Following a 2012 internal audit of fuel card use, and in accordance with its own policies, the Department had planned to use data that the fuel card vendor provided to monitor its employees' fuel card charges. However, the Department did not implement that plan, and it did not implement an alternative process to validate its employees' fuel card charges before it paid the fuel card vendor's invoices.

Auditors also identified (1) instances in which fuel cards and driver identification numbers (driver IDs) were used by Department employees other than the employees to whom those fuel cards and driver IDs were assigned (including former employees) and (2) instances in which Department employees did not enter correct vehicle identification numbers at the fuel pump. Sharing fuel cards and driver IDs and entering incorrect vehicle identification numbers reduces accountability for fuel card charges.

Chapter 1-A

The Department Did Not Always Apply Rebates and Fraud Credits, **Did Not Consider Supervisors' Reviews of Employees' Fuel Card** Use Prior to Payment, and Did Not Always Make Payments to the Fuel Card Vendor in a Timely Manner

Chapter 1-A Rating:

High [2]

The Department did not apply rebates and credit card fraud refunds to its payments to the fuel card vendor and, therefore, it paid the fuel card vendor $503,496 more than the invoiced amount during the scope of this audit. After auditors brought this matter to its attention, the Department provided documentation indicating that it had reduced a subsequent payment to the fuel card vendor by $437,423 to begin to address that issue. The Department also incurred penalties because it did not make payments to the fuel card vendor in a timely manner. Additionally, the Department did not incorporate the results of supervisory reviews of employees' fuel card charges into its payment process.

The Department paid the fuel card vendor more than the invoiced amount because it did not adequately review fuel card vendor invoices to ensure that it applied rebates and refunds. The Department did not apply $437,423 in rebates it had earned in accordance with the terms of the fuel card contract. The fuel card vendor identified the rebates on its invoices, but the Department did not deduct those rebates from its payments in 5 (42 percent) of 12 instances in which invoices included rebates.

The Department also did not apply refunds for instances of fraud that the fuel card vendor identified and reported to the Department. The fuel card vendor reported to the Department $68,134 in fraudulent charges that it had detected among charges made between December 2013 and April 2015, and it credited the Department's statement for those charges. However, the Department did not apply $66,073 of those credits to its payments to the fuel card vendor.

The Department did not consistently make payments to the fuel card vendor in a timely manner. The Department did not consistently make payments to the fuel card vendor within 30 days, as required by Texas Government Code, Sections 2251.021 and 2251.025. Specifically, the Department did not make 18 (45 percent) of 40 payments to the fuel card vendor in a timely manner. The Department made those 18 payments between 1 and 366 days late and, as a result, it paid $2,970 in interest penalties on those 18 payments.

The Department did not incorporate the results of supervisory reviews of fuel card use into its payment process prior to making payments. The results of the supervisory reviews of logged fuel card charges (described in more detail in Chapter 1-B

[2] Chapter 1-A is rated as High because it identifies risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concerns and reduce risks to the audited entity.

below) were not a part of the Department's payment process, and the Department did not have an alternative process to validate fuel card charges prior to paying the fuel card vendor's invoices. The Department could use those results to validate individual charges on the invoices it receives from the fuel card vendor.

Recommendations

The Department should:

- Strengthen its review process to ensure that it (1) applies rebates to its payments to the fuel card vendor, (2) obtains refunds for instances of fraud that the fuel card vendor identifies and reports to the Department, and (3) consistently makes payments to the fuel card vendor in a timely manner to prevent incurring interest penalties.
- Develop, document, and implement a process to make payments to the fuel card vendor only for charges that employees have documented and that supervisors have reviewed.

Management's Response

DPS agrees with the recommendations. As accurately pointed out by the auditors, at the time of the audit, the Department had not yet claimed the rebates and refunds identified by the auditors. These amounts do not expire and are available for the Department to claim as a credit at its initiation. Once this issue was identified and researched, the Department claimed the credit against its next payment to the vendor.

Going forward, rebates and refunds for instances of fraud will be deducted from the invoiced amount timely on a manual basis.

DPS has established an agency-wide workgroup to develop procedures for the review of Voyager card user activity in conjunction with Car books.

Title of Responsible Person: Accounts Payable Deputy Administrator

All items by 8/1/2016

Chapter 1-B

The **Department Did Not Adequately Monitor Employees' Fuel Card** Use

Chapter 1-B Rating:

High [3]

The Department did not adequately monitor employees' fuel card use. Specifically, it did not reconcile charges that employees self-reported on monthly logs with available data from the fuel card vendor to verify that those logs were complete.

The Department's policies require that supervisors reconcile their staff's logged charges with the charges that are billed to the Department.[4] Reconciling those logs to the fuel card vendor's data is critical because:

- It would enable the Department to hold employees accountable for fuel card use.
- The fuel card vendor's data is the basis for the monthly invoices that the Department pays.
- It would enable the Department to identify billing errors and fuel card charges that Department employees did not make.

The issues auditors identified below illustrate the importance of monitoring fuel card use.

Department employees did not report all fuel card charges. Auditors identified 14 (23 percent) of 60 randomly selected and 17 (41 percent) of 41 judgmentally selected fuel cards that had charges in the month tested that employees did not self-report on monthly logs, as required by the Department's policy. (See text box for more information on the samples selected.) The number of charges that individual sampled employees did not report on their monthly logs ranged from 1 to 44, and they totaled $52,011.[5]

The Department asserted that several of the unreported charges discussed above resulted from

Auditors' Sampling of Fuel Card Charges

Random sample. Auditors randomly selected 60 fuel cards and months from Department divisions responsible for 98 percent of fuel card charges. That sample was designed to be representative of the Department's fuel card use.

Judgmental sample. Auditors used professional judgment to select a risk-based sample of 41 fuel cards using analytical procedures. Those procedures identified many charges with risk indicators such as fuel card use while an employee was on leave, out-of-state and weekend fuel card charges, and use of vehicle identification numbers associated with sold vehicles. The sampled items were a subset of the fuel cards that were identified through analysis as having high-risk characteristics.

Sample to identify duplicate charges. Auditors used professional judgement to select 10 sets of charges that had characteristics of duplicate charges. The 10 sampled sets of charges were selected from a large set of potential duplicate charges.

[3] Chapter 1-B is rated as High because it identifies risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concerns and reduce risks to the audited entity.

[4] The *State of Texas Contract Management Guide* also requires that type of review to ensure that the contractor is billing only for goods or services that an agency receives.

[5] $38,514.49 of that amount was missing from a single sampled flight log.

employees making oversights or failing to report charges because they had lost receipts. In addition, the Department asserted that its employees did not make $8,427 of the unreported charges discussed above, including repeated, high-dollar charges for diesel fuel in Florida and California. However, the Department was not aware of those charges until auditors brought them to its attention. Therefore, the Department did not seek a refund for those charges from the fuel card vendor.[6]

The Department made payments for duplicate charges. Auditors identified 8 duplicate fuel card charges totaling $617 from a sample of 10 potential duplicate sets for which the Department paid (see text box on previous page for more information on the sample selected).

Department employees used fuel cards and driver IDs that were not assigned to them. Auditors identified fuel cards and driver IDs that were assigned to 11 former Department employees and that were used after their employment had ended. For 10 of the 11 former employees, the Department was able to provide evidence that current employees incurred the associated charges. For the remaining former employee's card, the Department could not explain one charge.

In addition, for five judgmentally selected fuel cards tested, charges were incurred by a Department employee other than the employee to whom the Department had issued the fuel card or driver ID. It is important that only the employee to whom a card or driver ID is issued make charges using that fuel card or driver ID, because sharing fuel cards and driver IDs diminishes accountability for charges.

Department employees entered incorrect information at the fuel pump when they made fuel card charges. For a total of 17 (42 percent) of 41 judgmentally selected and 8 (13 percent) of 60 randomly selected fuel cards tested, Department employees entered incorrect vehicle identification numbers at the fuel pump when they made fuel card charges. For example, some of the vehicle identification numbers entered were associated with sold or destroyed vehicles. Entering correct vehicle identification numbers increases accountability for fuel card charges and provides the Department with better information to manage its fleet.

Unlogged fuel card charges impair the Department's ability to manage and report on the cost of its fleet. The Department uses its employees' monthly logs to compile information for managing and reporting on its fleet of vehicles. Therefore, unlogged fuel card charges (such as those discussed above) result in

[6] One of the fuel cards associated with those charges was canceled by the fuel card vendor immediately following the unreported charges. The other two fuel cards associated with those charges have expired.

incomplete fleet information, which diminishes the value of that information for managing and reporting on the fleet.

The Department did not implement its planned monitoring procedures for fuel cards, which weakened its controls over fuel card use. The Department did not implement all of the monitoring procedures it developed during its planning for the fuel card contract. Implementing those procedures would strengthen accountability for fuel card use. For example:

- The Department did not implement its plan to reconcile employees' monthly logs with available data from the fuel card vendor. In 2012, the Department's internal auditor reported to management that the Department was not using fuel card data or bank statements to monitor fuel card use. In preparing for a new contract for fuel cards, the Department planned to use online monitoring tools the fuel card vendor offered to reconcile its employees' logged charges to the records of charges from the fuel card vendor. However, the Department never implemented that plan, and few Department employees had access to the online monitoring tools.

- The Department did not thoroughly and consistently follow its existing fuel card monitoring procedures. Specifically, the Department did not ensure that supervisors consistently reviewed monthly logs. Signatures indicate that the Department's supervisors reviewed most of the employee monthly logs sampled; however, the monthly logs for 8 (20 percent) of 41 judgmentally sampled fuel cards and 3 (5 percent) of 60 randomly selected fuel cards did not have signatures indicating supervisory review. Additionally, monthly logs did not always list all users of the vehicles or accurately document the reason for the vehicles' use, even when they were signed by a supervisor. For example, one sampled monthly log listed the reason for use as "routine patrol" when the user was attending training outside of Texas. Inconsistent and insufficient supervisory review of logs decreases accountability for fuel card use and increases the risk that potential fuel card misuse could go undetected.

The Department did not have a process to document and review certain types of fuel card charges. The Department allows employees to use fuel cards for charges coded as "gas cans" or "other," but the Department does not require employees to associate those charges with a specific vehicle. As a result, employees do not report those charges on their monthly logs. Because the Department does not require employees to report those types of charges, those charges are not subject to supervisory review. Therefore, the use of those codes increases the risk of fraud and misuse of the fuel cards.

The Department did not designate a contract manager for the fuel card contract, enforce fuel card limits, or ensure that all fuel card users understood its fuel card use policy.

Designating a contract manager could have helped the Department detect risks in the Department's fuel card use and more consistently apply controls to mitigate those risks. Additionally, assigning a primary contact to coordinate between the Department and the fuel card vendor could have enabled the Department to maximize the benefits of using the available online monitoring tools.

The Department also did not appropriately enforce its policy limits on the number and dollar amount of fuel card charges for some of its fuel card users.[7] That occurred because the limits in the Department's policy were lower than the limits that the Department actually allowed on some of its individual fuel cards or because some individual fuel cards had no limits. As of November 2015, the fuel card vendor's report on card limits showed that the Department had 4,793 active fuel cards; 1,416 (30 percent) of those fuel cards, outside of the Aviation and Operations Support Division[8], had individual limits that exceeded the limits in the Department's policy or had no limits. The Department was unable to provide documented justification for allowing individual fuel card limits that exceeded the limits in its policy or for not placing limits on fuel cards. In addition, auditors analyzed fuel card use from September 2012 through August 2015 and determined that there appeared to be little business need for exceeding policy limits outside of the Aviation and Operations Support Division. Not enforcing policy limits on fuel cards creates unnecessary risk for the Department and increases the potential for relatively higher amounts of fraud and fuel card misuse.

Additionally, the Department did not maintain fuel card use agreements for 33 (42 percent) of the 79 employees tested. The Department's policy requires employees to sign those agreements attesting that they understand and will abide by the Department's fuel card rules and policies.

Recommendations

The Department should:

- Develop, document, and implement a process to review available data from the fuel card vendor to validate fuel card charges.

---

[7] The Department's policy set the fuel card charge limits at 5 charges per day; $500 in charges per day; $2,500 in charges per week; and $10,000 in charges per billing cycle month.

[8] The Aviation and Operations Support Division uses fuel cards to purchase fuel for aircraft, and it routinely exceeds the fuel card limits.

- Require its employees to enter accurate driver IDs and vehicle identification numbers at the fuel pump when they make fuel cards charges.

- Destroy fuel cards and cancel driver IDs when individuals' employment ends.

- Designate a contract manager for the fuel card contract.

- Consistently enforce policy limits on the number and dollar amount of fuel card charges and document justifications for exceptions to the policy limits.

- Consistently enforce its policy requiring fuel card users to complete fuel card use agreements.

Management's Response

DPS agrees with the recommendations and has already implemented some of the recommendations.

DPS has established an agency-wide workgroup to develop procedures for the review of Voyager card user activity in conjunction with Car books.

DPS is currently reissuing Voyager cards for a new Voyager account, and through that process DPS is strictly enforcing policy limits and requiring new fuel card use agreements.

Title of Responsible Person: Accounts Payable Deputy Administrator

All items by 8/1/2016

Chapter 2

The Department Planned, Procured, and Formed the FAST Contract in Accordance with Most Applicable Statutes and Rules, But It Should Strengthen Its Monitoring Processes

The Department complied with most applicable statutes and rules for planning, procuring, and forming its Fingerprint Applicant Services of Texas (FAST) contract. However, it should strengthen its monitoring to ensure that the contractor adequately protects clients' personal information and provides quality services that are accessible across the state. Not adequately monitoring the contract increases the risk that the Department may not be aware of potential contractor issues and may be unable to take corrective action when necessary.

Chapter 2-A

The Department Planned, Procured, and Formed the FAST Contract in Accordance with Most Applicable Statutes and Rules

Chapter 2-A Rating:

Medium [9]

The Department procured the FAST contract in accordance with most planning, procurement, and contract formation requirements. Specifically, it:

- Performed a preliminary risk assessment to determine the level, type, and amount of management, oversight, and resources necessary for the contract, as required by the *State of Texas Contract Management Guide*.[10]
- Effectively planned the contract by developing a detailed statement of work, as required by the *State of Texas Contract Management Guide*.[11] The statement of work described vendor qualifications, best value criteria, reporting requirements, quantifiable goals, and defined deliverables.
- Required vendors to include historically underutilized business (HUB) subcontracting plans in their proposals, as required by Texas Government Code, Section 2161.252.

Contract Planning, Procurement, and Formation/Rate/Price Establishment

- Planning - Identify contracting objectives and contracting strategy.
- Procurement - Fairly and objectively select the most qualified contractors.
- Contract Formation/Rate/Price Establishment - Ensure that the contract contains provisions that hold the contractor accountable for producing desired results, including all relevant terms and conditions, and establish processes that are cost-effective and aligned with the cost of providing goods and services.

Source: *State of Texas Contract Management Guide*, version 1.13.

[9] Chapter 2-A is rated as Medium because it presents risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concerns and reduce risks to a more desirable level.

[10] *State of Texas Contract Management Guide*, version 1.12.

[11] *State of Texas Contract Management Guide*, version 1.12.

- Obtained an exemption from the requirement to use the Department of Information Resources' cooperative contracts program to procure information technology services, as required by Title 1, Texas Administrative Code, Section 212.10.

- Advertised the solicitation on the *Electronic State Business Daily* for at least 21 days, as required by Texas Government Code, Section 2155.083.

- Included in the contract all essential and recommended contract clauses from the *State of Texas Contract Management Guide*.[12] Those clauses help protect the State's interests.

- Included in the contract a requirement for the contractor to use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all persons employed, as required by Executive Order RP-80.

- Complied with the requirement in Texas Government Code, Section 2054.008, to report the contract to the Legislative Budget Board.

- Ensured that the Department's purchaser for the contract (1) met training and certification requirements, as required by Texas Government Code, Section 2155.078, and (2) completed an annual conflict of interest statement in the fiscal year in which the Department procured the contract, as required by the *State of Texas Procurement Manual*.

- Obtained (1) approval of the contract from Department management and (2) review of the contract by Department legal staff, as required by the Department's policy.

However, auditors identified certain weaknesses in the Department's contracting processes. Specifically, the Department did not verify that the contractor to which it awarded the contract had submitted audited financial statements with its proposal, as required by the solicitation. Instead, the Department decided to use a separate report to assess the contractor's financial viability.

In addition, the Department received only one proposal, and it did not document (1) that it had re-reviewed the solicitation for unduly restrictive requirements or (2) the feedback it had received from vendors about its proposed solicitation, as required by *State of Texas Contract Management Guide*.[13] Receiving only one bid could indicate that the solicitation included unduly restrictive requirements that could unfairly limit competition and reduce the opportunity to obtain best value. The Department asserted that

[12] *State of Texas Contract Management Guide*, version 1.13.

[13] *State of Texas Contract Management Guide*, version 1.12.

it received only one bid because of the compensation associated with the contract. Specifically, Texas Human Resources Code, Section 80.001, states that a law enforcement agency may charge a fee not to exceed $10 to have a fingerprint record made; those fees are the contractor's sole compensation under the contract.

The Department also did not score the one proposal it received in a manner consistent with the evaluation criteria it published in the solicitation, as required by the *State of Texas Contract Management Guide*.[14] It is important to post solicitations containing the final proposal evaluation criteria to ensure fairness and because changing that criteria could adversely affect the selection of a contractor.

Recommendations

The Department should:

- Verify receipt of all documents requested in its solicitations and request only documents that it needs.
- Document its review of solicitations for restrictive requirements, discussions with prospective vendors about proposed solicitations, and the reasons it does not reissue solicitations to which it does not receive multiple proposals.
- Score proposals consistent with the evaluation criteria it publishes in solicitations.

Management's Response

DPS agrees with the recommendations:

- *Because MorphoTrust represented the official documents provided as the audited financial statements multiple times in their response, the purchaser identified them as such in their evaluation. Now that the requirement for an opinion is understood, we will document this in our files as a lessons learned so that it is noted that we need to adjust our procedures to validate Audited Financial statements using our subject matter experts in Finance and Internal Audit, or some other method, should a future solicitation require this information.*
- *The Request for Offer for FAST was written as an open and competitive solicitation. During the pre-proposal conference, a few vendors expressed*

[14] *State of Texas Contract Management Guide*, version 1.13.

concern about the Texas Human Resources Code, Section 80.001 which capped the contract compensation for an amount not to exceed $10 per fingerprint. The vendors discussed that any vendor other than the incumbent would be required to make a hefty investment upfront, and would have to recoup its initial investment over the life of the contract. P&CS did not re-review the solicitation for any additional requirements, nor did P&CS contact any potential respondents to determine why they did not submit a response since the solicitation was written to allow for competition. It can be theorized that Vendors did not respond because the compensation could not exceed $10, per statute.

P&CS will enhance its procedures to review solicitations for restrictive requirements, discuss with prospective vendors why they did not respond to the solicitation, and document the reasons why a solicitation is either reissued or not in the future if only a single response is received.

- *Since MorphoTrust was the only response received, the agency attempted to perform due diligence by having the procurement staff evaluate the response for responsiveness and by having the technical evaluation team evaluate that the response met the technical requirements. The technical evaluation team did leverage score sheets in order to conduct this evaluation; however, a final score sheet based on the weights published in the solicitation was not applied because there were no other responses to compare the score to. As such, DPS agrees the FAST solicitation was scored in a manner that was inconsistent with the evaluation criteria it published in the solicitation. Because it is not mandated as a requirement, it has not been P&CS practice to conduct a final score when a single response is received, but we are in the process of updating our internal procedures to require that we do so in the future as a best practice.*

Title of Responsible Person: Procurement & Contract Services Director

All items by 4/18/2016

Chapter 2-B

The Department Should Strengthen Its Monitoring of the FAST Contract

Chapter 2-B Rating:

Medium [15]

The Department should strengthen its monitoring of the FAST contract to ensure that the contractor adequately protects clients' personal information, provides quality services that are accessible across the state, and complies with its HUB subcontracting plan. Not adequately monitoring the contract increases the risk that the Department may not be aware of potential contractor issues and may be unable to take corrective action when necessary. The Department should also ensure that it makes payments to the contractor in a timely manner.

> **Contract Monitoring**
>
> The purpose of contract monitoring is to help ensure that the contractor performs all duties in accordance with the contract and for the Department to be aware of and address any developing problems or issues. Contract monitoring helps to ensure that contract requirements are satisfied, services are delivered in a timely manner, and that the financial interests of the Department are protected, as described in the *State of Texas Contract Management Guide*.
>
> Source: *State of Texas Contract Management Guide*, version 1.13.

The FAST contract audited was executed on June 5, 2015, for services to commence beginning September 1, 2015. Although the scope of the audit of the FAST contract ended September 30, 2015, the issues discussed below involve matters that were significant when services commenced.

The Department did not adequately monitor the contractor's compliance with contract requirements related to data security. The Department performed a risk assessment to determine which elements of the FAST contract it would monitor, but that risk assessment did not include monitoring of contract requirements regarding data security. Not monitoring compliance with data security requirements increases the risk that clients' personal information may not be adequately protected and could be misused. Specifically, the Department did not:

- Perform criminal history background checks on all contractor employees who worked on the contract. Specifically, the Department did not have criminal history background checks for 8 (27 percent) of 30 contractor employees tested. The Department relies on the contractor to notify it of new contractor employees.
- Verify that the contractor complied with data encryption requirements. However, the contractor informed auditors about the specific encryption modules it used, and auditors verified that those modules met contract encryption requirements.

[15] Chapter 2-B is rated as Medium because it presents risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concerns and reduce risks to a more desirable level.

- Verify that the contractor trained its employees on handling personally identifiable information.

- Verify that the contractor obtained a required test of FAST. (To minimize the risk of public exposure, this report does not include details on the required test. Auditors provided the Department with additional information on that issue in writing.)

The Department did not adequately monitor the quality and accessibility of the **contractor's** FAST services. The Department adequately monitored the contract requirement that the data the contractor transmitted was in a useable format. However, it did not ensure that:

- The contractor complied with a requirement that individuals must not have to travel more than 50 miles to the nearest fingerprinting location. Specifically, auditors identified seven planned locations in the contractor's proposal that the Department did not list as active, and the Department did not have a schedule for when the contractor would open those locations. As a result, individuals in some areas of the state may still need to travel more than 50 miles to receive FAST services.

- The contractor complied with fingerprint rejection rate requirements.[16] The Department could not provide support showing that the information that it used to calculate the rejection rate was complete. In addition, the Department's calculation of one rejection rate erroneously included fingerprints not associated with the contract; which inaccurately reduced the rejection rate. Auditors recalculated the rejection rate using reports from the Department's Automated Fingerprint Identification System database and, based on those reports, determined that the contractor complied with the rejection rate requirements.

- It formally documented and tracked complaints in a systematic manner that would enable it to identify problems that clients experience with FAST service delivery.

Not sufficiently monitoring compliance with location and rejection rate requirements and not tracking complaints increases the risk that the contractor may not provide quality services that are accessible across the state.

The Department did not verify that the contractor complied with its HUB subcontracting plan. The contract requires the contractor to implement its HUB subcontracting plan. In addition, Texas Government Code, Section 2161.253, requires the Department to audit the contractor's compliance with its HUB

[16] According to the Department, a fingerprint can be rejected because of factors such as an individual's age or exposure to chemicals.

subcontracting plan. Not monitoring the contractor's compliance with its HUB subcontracting plan increases the risk that the contractor may not make a good-faith effort to comply with HUB requirements, which could adversely affect achievement of the State's goals to use HUBs.

The Department properly approved payments to the FAST contractor, but it did not make those payments in a timely manner. All five payments that the Department made to the contractor for services provided in September 2015 were supported and properly approved. In addition, the Department maintained segregation of duties for its processing of payments. However, the Department did not make those five payments within 30 days, as required by Texas Government Code, Sections 2251.021 and 2251.025. The Department made all five payments between 1 and 24 days late and, as a result, it paid $950 in interest penalties.

Recommendations

The Department should:

- Enhance its risk assessment process and consider data security when determining what to monitor for the FAST contract.
- Develop and implement a process to determine when the FAST contractor hires new employees, and perform a fingerprint-based background check on all contractor employees who work on the contract.
- Verify that the FAST contractor complies with data encryption requirements.
- Verify that the FAST contractor has properly trained its employees on handling personally identifiable information.
- Verify that the FAST contractor obtains the required test of FAST.
- Work with the FAST contractor to develop and implement a plan for opening the remaining fingerprinting locations.
- Verify the information that it uses to assess the FAST contractor's compliance with rejection rate requirements to ensure that information is complete and accurate.
- Develop, document, and implement a process to track and evaluate complaints regarding the FAST contractor.
- Verify that the FAST contractor complies with its HUB subcontracting plan.

- Strengthen its review process to ensure that it makes payments to the FAST contractor in a timely manner to prevent incurring interest penalties.

Management's Response

DPS generally agrees with the recommendations and has already implemented some of the recommendations. However, as the effective date of the contract was September 1, 2015, DPS management would like to note that the SAO recommendations reflect contract monitoring for a one month period during the initial month of the life of the contract - a new contract the Department had with an established vendor. Because contract monitoring is an ongoing exercise throughout the life of the contract, there are many additional monitoring activities that will continue to be performed throughout the life of the contract.

- *DPS believes the first recommendation regarding the risk assessment process is not germane to this audit. The Department performed a risk assessment to determine the risk classification for the contract and to determine the appropriate level of management and oversight (as per CPA's Contract Management guidelines). This assessment also provides insight into high level risk elements that should be considered. Furthermore, a Contract Monitor Schedule was developed once the contract was awarded. This tool provides the actual breakdown of which items or elements of the contract need to be monitored based on both the risk assessment and actual contract deliverables and clauses. This document should include any data security components identified in the contract itself.*

  As an added precaution for the agency, P&CS will also include a specific risk factor related to security as part of the risk assessment as well.

- *DPS will develop a process for the FAST contractor to provide the names of all employees with access to CJI data on a no less than monthly basis. Crime Records will cross reference those names with AFIS/CCH to ensure they have had the appropriate fingerprint based background check performed.*

- *DPS will employ the same encryption verification methodology utilized by our CJIS security compliance auditors. The FAST contractor will be required to provide the FIPS 140-2 certifications for the encryption products utilized to facilitate FAST communications.*

- *DPS has reviewed and approved the current training material utilized by the FAST contractor to instruct employees regarding the proper handling* *of personally identifiable information. The FAST contractor is required to submit any changes to the training material to the department for approval prior to implementing the change. FAST contractor employees are trained prior to being exposed to personally identifiable information.*

- *DPS completed the required system vulnerability scan on February 7, 2016.*

- *CRS is in the process of acquiring a radius map for the current locations of the FAST sites. If it is determined that the FAST contractor does not have adequate coverage, staff will work with the FAST contractor to develop an implementation schedule to bring FAST location coverage into compliance with the contract. The location of FAST sites is dynamic and the department will monitor any changes in site locations to ensure the FAST contractor maintains the required statewide coverage.*

- *To monitor compliance, the department initially used a database that tracked applicant fingerprint submissions to the department from all sources. DPS has subsequently been able to monitor compliance utilizing a database that is able to separate transaction by source. The clear separation of transactional fingerprint data by submitting source allows the department to completely and accurately monitor the performance of the FAST contractor.*

- *While DPS received and adjudicated complaints associated with the FAST contractor, the complaints were resolved in an informal manner. DPS is currently creating a complaint tracking log that will be able to record information about the complaint to include the date of the complaint, type of complaint and how the complaint was resolved as well as the date of resolution. The information in the log will allow the department to efficiently and effectively track and evaluate complaints regarding the FAST contractor.*

- *The PAR forms for the FAST Contract are due by the 5th of every month. The HUB program office has requested the PAR forms from the Contractor to gain immediate compliance. The HUB Program will enhance its tracking and monitoring of contracts with a contract value of $100k or more.*

- *The Finance Division will work with the Law Enforcement Services Division to ensure timely payments to the FAST contractor.*

Titles of Responsible Persons: Law Enforcement Services Deputy Administrator, Procurement & Contract Services Director, and the Assistant Director of Finance.

All items by 8/01/2016

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Department of Public Safety (Department) has administered certain contract management functions for selected contracts in accordance with applicable requirements.

Scope

The scope of this audit covered two contracts:

- A statewide contract with U.S. Bank for fuel cards.[17] Auditors reviewed the Department's planning for the contract that occurred prior to the fuel card implementation in September 2012 and its monitoring of the contract from September 2012 through August 2015.

- A contract between the Department and MorphoTrust, USA, LLC for the Fingerprint Application Services of Texas (FAST). Auditors reviewed contract planning, procurement, formation, and monitoring activities through September 2015.

Methodology

The audit methodology consisted of gaining an understanding of the Department's contracting processes for the selected contracts; collecting and reviewing the selected contracts and the related procurement documentation, financial information, and monitoring tools; conducting interviews with Department staff; reviewing statutes, rules, Office of the Comptroller of Public Accounts requirements, and Department policies and procedures; and performing selected tests and other procedures.

The selection methodology for the contracts audited was based on contract dollar amount, the type of contract, and recent audit coverage.

Data Reliability and Completeness

Auditors used expenditure information in the Uniform Statewide Accounting System (USAS) and personnel information from the Uniform Statewide Payroll/Personnel System and relied on previous State Auditor's Office audit

[17] The Office of the Comptroller of Public Accounts procured that contract on behalf of the Council on Competitive Government.

work to determine that data was sufficiently reliable for the purposes of this audit.

Auditors determined that fuel card information and fuel card transaction data provided by the fuel card vendor was sufficiently reliable for the purposes of this audit by comparing that data to the Department's payments and verifying that the fuel card vendor complied with payment card industry data security standards.

Sampling Methodology

Fuel Card Contract. To test the Department's fuel card use agreements and the completeness and accuracy of employees' fuel card monthly logs and the Department's fleet database, auditors selected a stratified, nonstatistical, random sample of fuel cards and months. The sample was stratified based on fuel card charges by Department division and was designed to be representative of the population. Results may be projected to the population, but the accuracy of the projection cannot be measured.

In addition, auditors used professional judgment to select a risk-based sample of fuel cards using analytical procedures. Those procedures identified many charges with risk indicators, such as charges that appeared to be duplicated, fuel card use while an employee was on leave, out-of-state and weekend fuel card charges, and use of vehicle identification numbers associated with sold vehicles. The sampled items were a subset of the fuel cards that were identified through analysis as having high-risk characteristics. However, the sampled items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

Auditors used analytical procedures to identify fuel cards and driver identification numbers that were assigned to former Department employees and were used after those individuals' employment ended. Because the analysis required comparison of two data sources, auditors cannot be certain that they identified all instances in which cards assigned to former employees were used after the date those individuals' employment ended. However, auditors tested all instances that they identified.

To review the Department's administration of fuel card charge limits, auditors analyzed transaction and monetary limits for all Department fuel cards from the beginning of the contract through November 2015.

To test the Department's payment of contractor invoices for the fuel card contract, auditors tested all payments made during the audit scope.

FAST Contract. To test contractor deliverables, auditors used professional judgment to select a risk-based sample of contract requirements related to the key goals of the contract. The sampled requirements were not representative of the population and, therefore, it would not be appropriate to project those test results to the population.

To test the Department's background checks of contractor employees, auditors selected a nonstatistical, random sample of contractor employees. The sampled items were not necessarily representative of the population; therefore, it would not be appropriate to project the test results to the population.

To test the Department's payment of contractor invoices for the FAST contract, auditors tested all payments made during the audit scope.

Information collected and reviewed included the following:

- Fuel card and FAST contracts.
- Department policies and procedures, manuals, and monitoring tools.
- Department solicitation and bid documentation, evaluation criteria and documentation, and related supporting documentation.
- Department contract procurement documentation, including planning documentation, approvals, and other supporting documentation.
- Department personnel training and certification records and nondisclosure and conflict of interest forms.
- Reports and spreadsheets that the Department used for monitoring.
- Emails and other documentation that supported the information that Department employees provided during interviews.
- Department contract expenditures from USAS.
- Leave and employment termination data for Department personnel from the Uniform Statewide Payroll/Personnel System.
- Department payment documentation, including contractor invoices, approvals, and other supporting documentation.
- Department fuel card transaction data from the fuel card vendor.
- Employees' fuel card monthly logs for sampled cards and months.

- Information on data encryption and other aspects of data security for the FAST contract.
- Information on the statewide locations for FAST fingerprinting services.
- Public Safety Commission meeting minutes for fiscal year 2015.
- Department contracting review board charter.
- Legislative Budget Board contract database.
- Office of the Secretary of State business registration records.
- Department internal audit reports.
- Prior State Auditor's Office reports.

Procedures and tests conducted included the following:

- Interviewed Department staff.
- Tested selected contract planning, procurement, formation, and monitoring for compliance with the *State of Texas Contract Management Guide, State of Texas Procurement Manual*, Department policies and procedures, and applicable rules and statutes.
- Reviewed applicable conflict of interest and nondisclosure forms.
- Tested fuel card charges to determine whether employees properly disclosed charges and whether supervisors reviewed charges.
- Analyzed fuel card charges for unusual patterns of expenditures and followed up with the Department on a sample of anomalies.
- Analyzed fuel card charges to determine whether individuals used fuel cards after the termination of the employees to whom those cards were assigned.
- Tested payments for selected contracts to determine whether the Department appropriately processed and approved the payments.
- Tested a sample of contract requirements to review the Department's monitoring process.
- Tested access to the fuel card vendor's online monitoring tools.
- Tested fuel card limits for compliance with Department policy.

Criteria used included the following:

- Texas Government Code, Chapters 322, 2054, 2155 through 2157, 2161, 2251, 2252, 2261, and 2262.
- Texas Human Resources Code, Section 80.001.
- Title 34, Texas Administrative Code, Chapter 20.
- Title 1, Texas Administrative Code, Chapter 212.
- Executive Order RP-80.
- *State of Texas Contract Management Guide*, versions 1.12 and 1.13.
- *State of Texas Procurement Manual.*
- Contract terms for selected contracts.
- Department policies and procedures.

Project Information

Audit fieldwork was conducted from August 2015 through March 2016. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

- Lauren Godfrey, CIA, CGAP (Project Manager)
- Scott Boston, MPAff (Assistant Project Manager)
- Scott Armstrong, CGAP
- Joey Fredrick, MAcy
- Jonathon Morris, MBA
- Ashley Rains
- Sherry Sewell, CGAP
- Doug Stearns

- John Zhang, MPA
- Mary Ann Wise, CPA, CFE (Quality Control Reviewer)
- Angelica M. Ramirez, CPA (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgement and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; violation of state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/functions(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could substantially affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could critically affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair
The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Jane Nelson, Senate Finance Committee
The Honorable Robert Nichols, Member, Texas Senate
The Honorable John Otto, House Appropriations Committee
The Honorable Dennis Bonnen, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Department of Public Safety

Members of the Public Safety Commission
Ms. Cynthia Leon, Chair
Mr. Manny Flores
Ms. Faith Johnson
Mr. Steven Mach
Mr. Randy Watson
Mr. Steve McCraw, Director