



An Audit Report on

**The Texas Multiple Award Schedule
(TXMAS) Contracts Program
at the Office of the Comptroller of
Public Accounts**

October 2016

Report No. 17-010



An Audit Report on

The Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the Comptroller of Public Accounts

SAO Report No. 17-010
October 2016

Overall Conclusion

The Office of the Comptroller of Public Accounts (**Comptroller's Office**) has complied with statutory requirements to base contracts available through the Texas Multiple Award Schedule (TXMAS) contracts program on contracts that other governmental entities have awarded through a competitive process. However, it should strengthen controls over the following aspects of its administration of the TXMAS contracts program to help ensure compliance with other statutes, rules, and policies and procedures:

- Ensuring that TXMAS contracts meet **customers' needs and protect the State's** interests.
- Preventing unallowable purchases through TXMAS contracts, and ensuring that incidental charges associated with TXMAS purchases are appropriate.
- Calculating and collecting the administrative fees and rebates that TXMAS contractors must **pay the Comptroller's Office.**

Background Information

The Legislature created the Texas Multiple Award Schedule (TXMAS) contracts program effective September 1, 2001.

The Office of the Comptroller of Public Accounts (**Comptroller's Office**) oversees the TXMAS contracts program. It bases TXMAS contracts on existing government contracts that were awarded competitively, such as U.S. General Services Administration (GSA) contracts. Of the 597 TXMAS contracts that were active in January 2016, 532 (89 percent) were based on GSA contracts; the remaining 65 (11 percent) were based on contracts that were awarded by other governmental entities.

State agencies and other entities such as local governments can make purchases through TXMAS contracts. From June 2014 through November 2015, there were \$393,372,077 in TXMAS purchases in the **Comptroller's Office's** TxSmartBuy ordering system.

Source: The Comptroller's Office.

As required by Texas Government Code, Section 2155.502, the Comptroller's Office based TXMAS contracts on contracts that the federal government or other governmental entities had previously bid using a competitive process. That is important because it enables state agencies and local governments to purchase directly through TXMAS contracts and reduces their need to plan procurements, solicit bids, evaluate proposals, and develop contracts, which could save them time and money.

However, the Comptroller's Office should strengthen its efforts to ensure that TXMAS contracts meet customers' needs. For example, the Comptroller's Office has not conducted annual studies of state agency purchases required by Texas Government Code, Section 2155.072, to determine whether the State would benefit by adding certain services to statewide contracting programs such as TXMAS. In addition, ensuring that state agencies submit required vendor **performance reports for TXMAS purchases could help the Comptroller's Office** evaluate future contract proposals and assess whether TXMAS contracts meet **customers' needs.**

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

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

The Comptroller's Office should also strengthen its efforts to prevent unallowable purchases through TXMAS contracts and strengthen controls over the incidental charges associated with TXMAS purchases. For example:

- State agencies and certain governmental entities are required to follow Texas Government Code, Chapter 2254, to procure professional and consulting services. The procedures in that statute require awards to be based on factors such as demonstrated competence and vendor qualifications. However, TXMAS contracts are based on competitive awards. Auditors identified 9 state agencies that had ordered \$15,695,081 in professional and consulting services through TXMAS contracts between June 1, 2014, and February 18, 2016.
- Incidental charges associated with TXMAS purchases are intended to be limited to installation, installation parts, inside delivery, or set-up. However, auditors identified inappropriate incidental charges for administrative fees and rebates that TXMAS contractors must pay the **Comptroller's Office, as well as the inappropriate use of incidental charges** for items (such as chairs) that should have been purchased through a **contractor's catalog or contractor price quotes**. Auditors identified instances in which the inappropriate use of incidental charges reduced the **State's rebate revenue and resulted** in overcharges to customers.

While the Comptroller's Office is not statutorily required to monitor how customers use TXMAS contracts, it has the information necessary to do so and has begun to make efforts to ensure that customers use TXMAS contracts appropriately.

In addition, the Comptroller's Office should strengthen controls to ensure that the sales information on which it bases invoices for administrative fees and rebates is complete. It also should consistently send delinquency notifications to TXMAS contractors that do not pay administrative fees and rebates in a timely manner and, when necessary, prevent those contractors from selling items through TXMAS contracts.

It is important to note that the TXMAS contracts program is one of the multiple contracting programs **in the Comptroller's Office's TxSmartBuy ordering system**. This audit focused only on the TXMAS contracts program.

Auditors communicated other, less significant issues to the Comptroller's Office in writing.

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 Chapters and Related Issue Ratings		
Chapter	Title	Issue Rating ^a
1	The Comptroller’s Office Based TXMAS Contracts on Other Competitively Bid Contracts, But It Should Strengthen Efforts to Ensure That TXMAS Contracts Meet Customers’ Needs and Protect the State’s Interests	Medium
2	The Comptroller’s Office Should Strengthen Its Efforts to Prevent Unallowable Purchases Through TXMAS Contracts and Strengthen Controls Over the Incidental Charges Associated with TXMAS Purchases	High
3	The Comptroller’s Office Should Strengthen Controls Over Its Calculation and Collection of Administrative Fees and Rebates Associated with TXMAS Purchases	Medium

^a A chapter 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 chapter 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 chapter 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 chapter 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.

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. **Management’s response is** presented in Appendix 6. The **Comptroller’s Office generally agreed to address the** recommendations.

Audit Objective and Scope

The objective of this audit was to determine whether the Comptroller’s Office administers the TXMAS contracts program in accordance with applicable statutes, rules, and Comptroller’s Office policies and procedures.

The scope of this audit covered TXMAS purchases made between June 2014 and February 2016 and TXMAS contracts awarded in fiscal years 2015 and 2016 (through March 2016). The audit scope also included contracts that were active in fiscal years 2015 and 2016 through March 2016.

Contents

Detailed Results

Chapter 1

The Comptroller’s Office Based TXMAS Contracts on Other Competitively Bid Contracts, But It Should Strengthen Efforts to Ensure That TXMAS Contracts Meet Customers’ Needs and Protect the State’s Interests 1

Chapter 2

The Comptroller’s Office Should Strengthen Its Efforts to Prevent Unallowable Purchases Through TXMAS Contracts and Strengthen Controls Over the Incidental Charges Associated with TXMAS Purchases 6

Chapter 3

The Comptroller’s Office Should Strengthen Controls Over Its Calculation and Collection of Administrative Fees and Rebates Associated with TXMAS Purchases..... 13

Appendices

Appendix 1

Objective, Scope, and Methodology 17

Appendix 2

Issue Rating Classifications and Descriptions 22

Appendix 3

Top 15 TXMAS Customers Between June 2014 and November 2015 23

Appendix 4

Top 15 TXMAS Contractors Between June 2014 and November 2015 25

Appendix 5

Total TXMAS Sales by Order Type and Line Item Type Between June 2014 and November 2015 26

Appendix 6

Management’s Response from the Comptroller’s Office..... 27

Detailed Results

Chapter 1

The Comptroller's Office Based TXMAS Contracts on Other Competitively Bid Contracts, But It Should Strengthen Efforts to Ensure That TXMAS Contracts Meet Customers' Needs and Protect the State's Interests

Chapter 1
Rating:
Medium ¹

Texas Multiple Award Schedule (TXMAS) contracts were based on other contracts that were competitively bid. **As required by Texas Government Code, Section 2155.502, the Office of the Comptroller of Public Accounts (Comptroller's Office) based TXMAS contracts on contracts that the federal government or other governmental entities had previously bid using a competitive process (referred to as "base contracts").**

Of the 597 TXMAS contracts that were active in January 2016, 532 (89 percent) were based on U.S. General Services Administration (GSA) contracts; the remaining 65 (11 percent) were based on contracts that were awarded by other governmental entities. According to Federal Acquisition Regulations, all GSA contracts are competitively bid.² In addition, auditors selected a sample of 16 TXMAS contracts awarded between September 1, 2014, and March 7, 2016, and determined that all 7 contracts in that sample that were based on contracts awarded by governmental entities other than the GSA were competitively bid.

Basing TXMAS contracts on other contracts that were competitively bid is important because customers purchase goods or services directly from TXMAS contractors. Being able to purchase directly through TXMAS contracts reduces the need for customers to plan procurements, solicit bids, evaluate proposals, and develop contracts, which could save them time and money.

¹ Chapter 1 is rated Medium because 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.

² Federal Acquisition Regulation 6.102(d)(3) states that "use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 152(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure."

However, the Comptroller's Office should strengthen efforts to **ensure that TXMAS contracts meet customers' needs**. Specifically:

- **Annual Studies.** The Comptroller's Office has not complied with Texas Government Code, Section 2155.072, which requires it to annually study state agency purchases to determine whether the State would benefit by adding certain services to statewide contracting programs such as TXMAS. Conducting those annual studies would help to ensure that TXMAS contracts meet customers' needs.
- **Analysis of Contract Use.** Texas Government Code, Section 2155.002, requires the Comptroller's Office to focus its state purchasing efforts on purchases and contracts that involve "relatively large amounts of money." The State Auditor's Office determined that, of the 597 TXMAS contracts that were active in January 2016, 258 (43 percent) had \$25,000 or less in sales each between June 1, 2014, and February 18, 2016. Within those 258 TXMAS contracts, 171 had no sales during that time period.³

To better focus its resources on contracts involving large amounts of money, the Comptroller's Office should analyze the use of TXMAS contracts to ensure that those contracts meet customers' needs and that it does not expend resources to maintain contracts with little or no use.

- **Analysis of Contractor Performance Information.** Title 34, Texas Administrative Code, Section 20.108(b), requires state agencies to submit vendor performance reports in the Vendor Performance Tracking System (VPTS) for all purchases of \$25,000 or more from contracts administered by the Comptroller's Office (see text box for additional information regarding the VPTS). However, as of February 23, 2016, auditors were able to verify that state agencies had submitted required vendor performance reports for only 54 (5 percent) of the 1,157 TXMAS purchase orders of \$25,000 or more with order and delivery

The Vendor Performance Tracking System (VPTS)

The Comptroller's Office administers the VPTS for use by all customers that make purchases through the TxSmartBuy ordering system. The VPTS provides the state procurement community with a tool for evaluating vendor performance. The VPTS tracks exceptional, satisfactory, and unsatisfactory vendor performance on purchases made through statewide contracts (including TXMAS contracts) in areas such as commodity and service delivery and performance.

The TxSmartBuy Ordering System

The TxSmartBuy ordering system is the Comptroller's Office's Web-based ordering system for statewide contracts (including TXMAS contracts). With the exception of 10 TXMAS contracts (see Chapter 2 for more information), customers are required to make all orders from TXMAS contracts through the TxSmartBuy ordering system.

Source: The Comptroller's Office.

³ The number of contracts with no sales includes contracts awarded between March 2003 and January 2016. The lack of sales early in a contract term may not be an indication that a contract is not or will not be used. For example, 13 of the contracts with no sales first became available to customers between November 2, 2015, and January 6, 2016. Those contracts also may have had sales after February 18, 2016 (the most recent day that the scope of this audit covered).

dates from June 2014 through December 2015.

State agencies may have submitted additional vendor performance reports for TXMAS purchases, but auditors were not able to associate any other vendor performance reports with TXMAS purchase orders in the TxSmartBuy ordering system. State agencies may not always enter TxSmartBuy purchase order numbers into the VPTS because:

- ♦ The VPTS does not have edit checks to ensure that state agencies enter purchase order numbers from the TxSmartBuy ordering system when they submit vendor performance reports for TXMAS purchases.
- ♦ The Comptroller's Office does not have a process for providing state agencies that make offline TXMAS purchases (purchases made outside of the TxSmartBuy ordering system) with TxSmartBuy purchase order numbers that they can enter when they submit vendor performance reports to the VPTS. Of the 1,157 purchase orders discussed above, 166 (14 percent) were offline TXMAS purchases.

It is important that state agencies submit required vendor performance reports because, effective September 1, 2015, Senate Bill 20 (84th Legislature) required state agencies (including the Comptroller's Office) to use the VPTS to determine whether to award a contract to a vendor reviewed in that system.⁴

Ensuring that customers enter TxSmartBuy purchase order numbers in the VPTS would enable the Comptroller's Office to (1) determine whether state agencies submitted required vendor performance reports and (2) associate vendor performance reports with purchases in the TxSmartBuy ordering system and, ultimately, with TXMAS contracts and contractors. The Comptroller's Office could then use vendor performance information from the VPTS to evaluate future contract proposals and assess whether TXMAS contracts meet customers' needs.

In addition, the Comptroller's Office should strengthen certain aspects of the TXMAS contracting program to **ensure that TXMAS contracts protect the State's interests**. Specifically:

- TXMAS contract terms. The Comptroller's Office's standard TXMAS contract includes most of the essential and recommended terms from the *State of Texas Contract Management Guide*; however, it does not include one essential term (force majeure) and one recommended term (deceptive

⁴ That specific requirement was codified in Texas Government Code, Section 2262.055.

trade practices; unfair business practices) that could further protect the State's interests.

In addition, the Comptroller's Office does not amend existing TXMAS contracts when it updates clauses in its standard TXMAS contract. TXMAS contracts may have contract terms as long as 20 years; therefore, it would be prudent for the Comptroller's Office to assess whether any existing TXMAS contracts should be amended when it updates the standard TXMAS contract. Ensuring that active TXMAS contracts contain all applicable essential and recommended terms would help to protect the State's interests.

- TXMAS contractor prices. The Comptroller's Office should strengthen its efforts to ensure that TXMAS contractors charge prices that are within allowable amounts.

TXMAS contractors can charge no more than the base contract price plus 1.5228 percent (the extra percentage is permitted to cover the administrative fee that TXMAS contractors must pay the Comptroller's Office). However, from a sample of 10 items that were available through TXMAS and the GSA, the TXMAS price exceeded the GSA price for 2 (20 percent) items by more than the allowable rate at the time auditors compared those prices. (Those 10 items were part of a random sample of 60 contracts discussed further in Chapter 3). One item (a two-story modular building) was \$28,613 through a TXMAS contract and \$13,048 through the GSA base contract. The other item (caulk) was \$5.43 through a TXMAS contract and \$4.78 through the GSA base contract.

Recommendations

The Comptroller's Office should:

- Develop and implement processes for (1) conducting statutorily required studies and (2) analyzing TXMAS contract use to determine whether TXMAS contracts are meeting customers' needs and whether it should continue to maintain TXMAS contracts with little or no use.
- Monitor TXMAS purchases to ensure that customers submit required vendor performance reports.
- Ensure that state agencies have purchase order numbers that they can enter when they submit vendor performance reports to the VPTS.
- Enhance controls in the VPTS to ensure that state agencies are required to enter purchase order numbers that can be associated with a TXMAS

contract when they report vendor performance information for TXMAS contracts in the VPTS.

- Include all applicable essential clauses required by the *State of Texas Contract Management Guide* in TXMAS contracts, and document its rationale for excluding any applicable recommended clauses specified in the *State of Texas Contract Management Guide* from TXMAS contracts.
- Assess the adequacy of the terms in active TXMAS contracts and evaluate whether to amend those contracts when it updates the terms in the standard TXMAS contract.
- Develop and implement a process to monitor TXMAS contractors' prices to help ensure that they do not exceed the prices in the base contracts by more than the allowable amount.

The Comptroller's Office Should Strengthen Its Efforts to Prevent Unallowable Purchases Through TXMAS Contracts and Strengthen Controls Over the Incidental Charges Associated with TXMAS Purchases

Chapter 2
Rating:
High ⁵

While all state agencies that make purchases through TXMAS contracts have a responsibility to comply with procurement laws and ensure that purchases are in the best interests of the State, the Comptroller's Office is in a unique position to ensure that customers use TXMAS contracts appropriately.

Texas Government Code, Chapter 2155, requires the Comptroller's Office to develop a schedule of multiple award contracts and adopt rules to implement the provisions of that statute. While that statute does not require the Comptroller's Office to (1) ensure that contractors and customers comply with the requirements associated with TXMAS contracts or (2) monitor how customers use TXMAS contracts, the Comptroller's Office has the information necessary to do so and has begun to make efforts to ensure that customers use TXMAS contracts appropriately.

As discussed below, the Comptroller's Office should strengthen those efforts, particularly in (1) preventing unallowable purchases made through TXMAS contracts, (2) strengthening controls over the incidental charges associated with TXMAS purchases, and (3) ensuring that contractors submit product catalogs.

The Comptroller's Office should strengthen its efforts to prevent customers from making unallowable purchases through TXMAS contracts.

Unallowable purchases of professional or consulting services through TXMAS contracts. State agencies and certain governmental entities are required to follow Texas Government Code, Chapter 2254, to procure professional and consulting services in accordance with the procedures in that statute. Those procedures require awards for professional and consulting services to be based on factors such as demonstrated competence and vendor qualifications. However, TXMAS contracts are based on competitive awards.

⁵ Chapter 2 is rated High because 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.

The Comptroller's Office has placed information on the TxSmartBuy ordering system that reminds contractors and customers of the statute regarding the procurement of professional and consulting services. However, between June 1, 2014, and February 18, 2016, 9 state agencies still placed \$15,695,081 in orders for professional and consulting services through TXMAS contracts.⁶

Although certain types of governmental entities may be allowed to procure professional and consulting services through TXMAS contracts, awarding TXMAS contracts for those services increases the risk that customers could make unallowable purchases. Therefore, the Comptroller's Office should assess whether it should continue to offer TXMAS contracts for professional and consulting services. It should also evaluate whether it should implement additional controls to prevent state agencies from purchasing professional and consulting services through any TXMAS contracts.

Unallowable purchases of other goods or services through TXMAS contracts. The Comptroller's Office complied with the requirement in Texas Government Code, Chapter 2155, that prohibits it from awarding contracts for certain goods and services (see text box for additional details).

Prohibitions on
Goods and Services Offered
Through TXMAS Contracts

The Comptroller's Office may not award a contract if the goods and services provided by that contract are:

- Available from only one vendor.
- Telecommunications services, facilities, or equipment.
- Commodity items as defined by Texas Government Code, Section 2157.068(a).
- Engineering services as defined by Texas Occupations Code, Section 1001.003.
- Architectural services as defined by Texas Occupations Code, Section 1051.001.

Source: Texas Government Code, Chapter 2155.

However, auditors identified 4 customers that still purchased \$13,724 of those prohibited goods and services through TXMAS contracts between June 1, 2014, and February 18, 2016. Those customers made purchases through valid TXMAS contracts, but the specific goods and services they purchased were not listed in those TXMAS contracts (for example, those customers made unallowable telecommunications purchases from a TXMAS contract for equipment rentals and made unallowable engineering services purchases from TXMAS contracts for equipment).

Purchases made through unallowable methods. The *State of Texas Procurement Manual* requires customers to make TXMAS purchases through the TxSmartBuy ordering system. However, the Comptroller's Office authorized certain contractors to make offline sales (sales made outside of the TxSmartBuy ordering system that the Comptroller's Office subsequently uploads to the TxSmartBuy ordering system) through 10 TXMAS contracts.

⁶ Of that \$15,695,081, state agencies purchased \$6,739,384 (43 percent) through TXMAS contracts that specifically offered professional and consulting services as defined in Texas Government Code, Chapter 2254. Although the TXMAS contracts associated with the remaining \$8,955,697 (57 percent) did not specifically offer professional and consulting services as defined in Texas Government Code, Chapter 2254, state agencies were still able to acquire professional and consulting services through those TXMAS contracts.

Auditors determined that, between June 2014 and November 2015, customers made \$24,027,387 in offline purchases through 129 TXMAS contracts for which contractors were not authorized to make offline sales. That amount represented 28 percent of the \$86,757,238 in total offline sales in the TxSmartBuy ordering system for that time period. The \$86,757,238 in total offline sales in the TxSmartBuy ordering system represented 22 percent of the \$393,372,077 total TXMAS sales in the TxSmartBuy ordering system for that time period. (See Appendix 5 for additional information on TXMAS sales during that time period.)

When purchases are made through the TxSmartBuy ordering system, that system records more detailed information regarding purchases than is recorded for offline sales. For example, the sales reporting template that the Comptroller's Office developed for offline sales:

- Records only (1) a single description for all charges included on a purchase order and (2) the total amounts of incidental charges and all other charges on the purchase order.
- Does not require contractors to report delivery dates.
- Is not designed to record whether customers made purchases through a contractor or the contractor's dealer.⁷

In addition, TXMAS contractors are not required to submit copies of the price quotes they provide to customers when they report offline sales (the price quotes may include specific descriptions of the goods and services ordered).

Having more detailed information regarding offline purchases could help the Comptroller's Office:

- Ensure that customers use TXMAS contracts appropriately.
- Determine whether state agencies submitted required vendor performance reports (as discussed further in Chapter 1).
- Monitor payments in the Uniform Statewide Accounting System (USAS) to identify unreported offline sales (as discussed further in Chapter 3).

Because of the issues involving offline sales, it is important for the Comptroller's Office to ensure that customers make purchases through

⁷ For offline sales, the contractor is responsible for reporting to the Comptroller's Office, regardless of whether the customer made the purchase through the contractor or one of its dealers. However, the Comptroller's Office's offline sales reporting template does not include a field for contractors to identify purchases made through their dealers. As a result, the Comptroller's Office may not have the information that would enable it to monitor and compare sales with payments in the Uniform Statewide Accounting System.

TXMAS contracts only (1) by using the TxSmartBuy ordering system or (2) by making offline purchases through TXMAS contractors that are authorized to make offline sales.

The Comptroller's Office should strengthen controls over the incidental charges associated with purchases made through TXMAS contracts.

According to the *State of Texas Procurement Manual* and the Comptroller's Office's instructions for ordering from TXMAS contracts through the TxSmartBuy ordering system, incidental charges are intended to be limited to installation, installation parts, inside delivery, or set-up. However, auditors identified inappropriate incidental charges. Specifically:

- **Inappropriate use of incidental charges to cover contractors' administrative fees and rebates.** Of 11,796 TXMAS purchase orders with incidental charges between June 1, 2014, and February 18, 2016, that auditors analyzed, 656 (6 percent) of the incidental charges totaling \$176,025 were for the administrative fees that the contractors must pay the Comptroller's Office. However, TXMAS contractors are required to include the administrative fee in the price of the good or service; therefore, administrative fees should not appear as discrete incidental charges (see text box for more information on administrative fees and rebates). Within those 656 incidental charges, auditors also identified 51 incidental charges totaling \$91,053 for administrative fees that exceeded the allowable 1.5228 percent rate for those fees. As a result, those contractors overcharged customers by at least \$608.

Administrative Fees and Rebates

The Comptroller's Office charges contractors with statewide contracts a 1.5 percent administrative fee on all orders. The Comptroller's Office allows contractors to charge up to an additional 1.5228 percent fee on every line item on a purchase order to recover that cost. The Comptroller's Office collects the administrative fee to recover the cost of developing and maintaining the TxSmartBuy ordering system.

Texas Government Code, Section 2155.510, allows the Comptroller's Office to collect a rebate from TXMAS contractors. The Comptroller's Office charges TXMAS contractors 0.73875 percent on all orders, less incidental charges. Those rebates go to General Revenue.

Sources: The Comptroller's Office and the Texas Government Code.

In analyzing the 11,796 TXMAS purchase orders with incidental charges and offline sales reports, auditors also identified 27 incidental charges that covered the rebates the TXMAS contractors must pay the Comptroller's Office. However, TXMAS contractors are not allowed to increase contract prices to cover the cost of those rebates. As a result, those contractors overcharged customers by at least \$9,410.

- Inappropriate use of incidental charges for items that should have been purchased **through a contractor's catalog or price quotes**. Based on the items that should comprise incidental charges, those charges should not represent a significant portion of a purchase order. According to the Comptroller's Office, incidental charges should not exceed 50 percent of the total purchase order amount. However, of the 11,796 TXMAS purchase orders

with incidental charges, auditors identified 78 TXMAS purchase orders with incidental charges that represented more than 50 percent of the total purchase order amount (for 15 of those 78, incidental charges represented 100 percent of the total purchase order amount).

Auditors sampled 64 of the 78 purchase orders discussed above and determined that \$218,170 (66 percent) of the \$329,054 in incidental charges on those purchase orders should have been made directly through contractors' catalogs or through price quotes (and not through incidental charges). For example, one purchase order included 24 incidental charges totaling \$3,806 for chairs, which represented 85 percent of the total purchase order amount of \$4,493.

Ensuring that incidental charges are used appropriately is important because the Comptroller's Office does not include incidental charges in the sales information it uses to calculate the rebates that TXMAS contractors must pay. Therefore, including inappropriate items in incidental charges could reduce the State's rebate revenue. Auditors estimated that the Comptroller's Office did not invoice TXMAS contractors for at least \$2,912 in rebates associated with the \$394,195⁸ in inappropriate incidental charges discussed above.

In addition to the \$394,195 in inappropriate incidental charges discussed above, auditors identified \$167,376 in incidental charges, a portion of which could have been inappropriate and could have reduced the State's rebate revenue. Auditors were not able to determine the amount of rebates that the Comptroller should have collected on those incidental charges because (1) they included both appropriate and inappropriate incidental charges or (2) the purchase orders and price quotes lacked sufficient detail to determine the specific goods and services that those incidental charges covered.

The Comptroller's Office should strengthen its efforts to ensure that contractors submit product catalogs.

The *State of Texas Procurement Manual* requires TXMAS contractors to submit product catalogs.⁹ However, in a random sample of 60 TXMAS contracts that were active in January 2016, only 20 (33 percent) offered individual catalog items for purchase. Of the remaining 40 contracts, 37

⁸ The \$394,195 amount is the sum of the \$176,025 in inappropriate incidental charges for administrative fees and the \$218,170 in inappropriate incidental charges for items that should have been purchased directly through contractor catalogs or price quotes.

⁹ The Comptroller's Office recognizes that not all contractors, such as service providers, will have a product catalog and that it may not be feasible for all contractors to provide their complete catalogs; however, the Comptroller's Office encourages contractors to include their most popular items in their catalogs in the TxSmartBuy ordering system.

offered customers only the opportunity to request a price quote from the contractor and 3 did not offer catalog items or price quotes.

When TXMAS contractors do not offer individual items through catalogs, that increases the risk that inappropriate purchases could be made. The use of contractor price quotes also can obscure what customers are purchasing and the associated purchase prices, which makes it difficult for the Comptroller's Office to determine whether customers are making allowable purchases and being charged the correct prices. When a customer uses a contractor price quote, the quantities, descriptions, and prices for multiple charges included in that price quote are combined into a single charge on the purchase order in the TxSmartBuy ordering system. While customers have the option of attaching price quote documents when they place orders through the TxSmartBuy ordering system, they are not required to do so.

Recommendations

The Comptroller's Office should:

- Assess whether it should continue to offer TXMAS contracts for professional and consulting services, and evaluate whether it should implement additional controls to prevent state agencies from purchasing professional and consulting services through any TXMAS contract.
- Strengthen controls to prevent customers from using TXMAS contracts to purchase prohibited goods and services, such as telecommunications and engineering services, specified in Texas Government Code, Chapter 2155, or to detect such purchases.
- Monitor to ensure that customers make purchases through TXMAS contracts only (1) by using the TxSmartBuy ordering system or (2) by making offline purchases through TXMAS contractors that are authorized to make offline sales.
- Consider requiring contractors to report more detailed information for offline sales.
- Monitor TXMAS purchases to ensure that incidental charges are used only for appropriate purposes.
- Monitor the administrative fees that TXMAS contractors charge to ensure that those fees do not exceed the maximum amounts allowable.
- Monitor TXMAS contractor prices to ensure that they do not include recovery of rebates that contractors must pay.

- Develop and implement processes to increase contractors' compliance with the requirement in the *State of Texas Procurement Manual* that contractors submit product catalogs.
- Encourage customers to make as many purchases as possible through contractors' catalogs.
- Consider requiring contractors and customers to submit copies of all contractor price quotes.

The Comptroller's Office Should Strengthen Controls Over Its Calculation and Collection of Administrative Fees and Rebates Associated with TXMAS Purchases

Chapter 3
Rating:
Medium ¹⁰

The Comptroller's Office sends invoices to TXMAS contractors for the administrative fees and rebates they owe (see Chapter 2 for additional information on administrative fees and rebates). As of February 19, 2016, the Comptroller's Office had invoiced TXMAS contractors \$2,160,043 for rebates and \$6,067,770 for administrative fees on TXMAS sales in the TxSmartBuy ordering system between June 1, 2014, and February 18, 2016.

The Comptroller's Office bases the invoice amounts on contractors' sales to TXMAS customers. However, the Comptroller's Office should **strengthen controls to ensure that the sales information on which it bases invoices for administrative fees and rebates is complete**. Specifically:

- Ensuring that contractors report all offline TXMAS sales that should be included in the calculation of administrative fees and rebates. For the 10 TXMAS contracts for which contractors were authorized to make offline sales, the contractors did not submit at least 31 (21 percent) of 146 required monthly offline sales reports due for the months of June 2014 through November 2015 or report to the Comptroller's Office that they made no sales during that time. When contractors do not report offline sales, the Comptroller's Office is unable to include those sales in the information it uses to calculate administrative fees and rebates.

To address the risk of unauthorized, offline TXMAS sales that are not reported, the Comptroller's Office has begun developing a list of contractors that are at risk of making unauthorized, offline TXMAS sales. As a result of that effort, the Comptroller's Office confirmed that three contractors made unauthorized, offline TXMAS sales and then obtained sales reports from those contractors. Implementing a process to analyze and determine whether to maintain TXMAS contracts with little or no use (as discussed in Chapter 1) could encourage contractors to report all offline sales.

In addition, auditors determined that, for one contractor on the Comptroller's Office's list discussed above, between June 2014 and November 2015, no TXMAS orders were recorded in the TxSmartBuy ordering system, but \$55,394 in payments were coded as TXMAS

¹⁰ Chapter 3 is rated Medium because 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.

purchases from that contractor in USAS. That could indicate that the contractor made unauthorized, offline TXMAS sales.

- Promptly including all known offline TXMAS sales in the calculation of administrative fees and rebates. For 156,807 (82 percent) of 192,349 TXMAS offline sales made between June 2014 and November 2015, more than 121 days had passed between the date of the purchases and the date the Comptroller's Office included those purchases in the sales information it used to calculate administrative fees and rebates.

In addition, as of May 2016, the Comptroller's Office had not included at least 44 offline sales reports it had received from TXMAS contractors within the sales information it used to calculate administrative fees and rebates. Specifically, the Comptroller's Office had not included:

- Any offline sales reports for December 2015 through February 2016, including the 26 offline sales reports that 9 contractors authorized to make offline sales during those months had submitted.
- Fifteen other offline sales reports that were due from contractors authorized to make offline sales between June 2014 and November 2015.
- Offline sales reports from the three contractors the Comptroller's Office confirmed made unauthorized offline sales.

Not including offline sales in the calculation of administrative fees and rebates in a timely manner delays the collection of revenue owed to the State.

The Comptroller's Office should **consistently send delinquency notifications** to TXMAS contractors that do not pay administrative fees and rebates in a timely manner and, when necessary, **prevent those contractors from selling items through TXMAS contracts**. Specifically:

- Sending delinquency notifications. As of May 5, 2016, \$339,101 in administrative fees and rebates that TXMAS contractors owed the Comptroller's Office were overdue by 60 to 644 days.

The Comptroller's Office's process was to send TXMAS contractors delinquency notices when invoices for administrative fees and rebates became 60 days overdue and also when they became 90 days overdue. However, the Comptroller's Office did not always follow its process. Auditors used professional judgment to select a sample of 359 invoices that, as of May 5, 2016, were overdue by more than 60 days (those

invoices were associated with 60 TXMAS contractors) and determined the following:

- The Comptroller's Office had not sent TXMAS contractors delinquency notices for 188 (52 percent) of those 359 invoices that had become 60 days overdue. For the remaining 171 invoices, the Comptroller's Office took an average of 185 days after the invoices became 60 days overdue to send the 60-day delinquency notices.
- The Comptroller's Office had not sent TXMAS contractors delinquency notices for 258 (82 percent) of the 313 invoices that had become 90 days overdue. For the remaining 55 invoices, the Comptroller's Office sent 1 90-day delinquency notice early, and it took an average of 157 days after the invoices became 90 days overdue to send the 90-day delinquency notices for the other 54.

Collection rates increased when the Comptroller's Office sent delinquency notices to contractors. For the 171 sampled invoices for which the Comptroller's Office sent at least one delinquency notice, the Comptroller's Office collected \$127,407 (74 percent) of \$172,835 due from contractors. However, it collected only \$1,630 (4 percent) of \$36,905 from contractors to which it had not sent delinquency notices as of May 31, 2016.

- Preventing contractors that do not pay administrative fees and rebates from selling items through TXMAS contracts. In July 2015, the Comptroller's Office disabled the catalogs in the TxSmartBuy ordering system for 33 TXMAS contractors that had not paid the administrative fees and rebates they owed to prevent those contractors from selling items through their TXMAS contracts.

As a result of that effort, as of June 2, 2016, the Comptroller's Office had collected \$200,779 (96 percent) of the \$210,057 that those contractors owed. Implementing that control as a standard part of its collection process could help the Comptroller's Office collect overdue amounts.

Recommendations

The Comptroller's Office should:

- Monitor to ensure that TXMAS contractors that are authorized to make offline sales submit required offline sales reports in a timely manner.

- Continue to develop and implement processes to identify unreported TXMAS offline sales, such as monitoring payments in USAS to identify unreported offline sales.
- Monitor to ensure that it promptly includes all known offline TXMAS sales in the information it uses to calculate administrative fees and rebates.
- Consistently follow its delinquency notification process for TXMAS contractors that do not pay administrative fees and rebates on time.
- Continue to implement other methods to collect overdue administrative fees and rebates from TXMAS contractors.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Office of the Comptroller of Public Accounts (Comptroller's Office) administers the Texas Multiple Award Schedule (TXMAS) contracts program in accordance with applicable statutes, rules, and Comptroller's Office policies and procedures.

Scope

The scope of this audit covered TXMAS purchases made between June 2014 and February 2016 and TXMAS contracts awarded in fiscal years 2015 and 2016 (through March 2016). The audit scope also included TXMAS contracts that were active in fiscal years 2015 and 2016 through March 2016.

Methodology

The audit methodology included reviewing criteria relevant to the TXMAS contracts program; interviewing Comptroller's Office staff; testing contract files; analyzing contract sales, billing, and performance data; and testing automated controls in the TxSmartBuy ordering system and the Vendor Performance Tracking System.

Data Reliability and Completeness

TxSmartBuy Ordering System

To determine the reliability of the TXMAS contract, sales, and billing data from the TxSmartBuy ordering system, auditors (1) reviewed the queries that the Comptroller's Office used to extract data from that system; (2) analyzed the data extracted from that system for accuracy, reasonableness, and completeness; and (3) tested the Comptroller's Office's process for uploading offline sales to that system.

Auditors identified several limitations and reliability issues related to the TXMAS data in the TxSmartBuy ordering system and the TXMAS contract and sales data extracted from that system. For example, auditors identified invalid and missing contract numbers in the population of TXMAS contracts from the TxSmartBuy ordering system. Auditors also identified the following issues related to purchase order information in the TXMAS sales data from the TxSmartBuy ordering system:

- Duplicate line items on purchase orders and one duplicate purchase order.
- Invalid customer names.
- Missing vendor identification numbers, order dates, contract numbers, contract types, and customer names.
- Incorrect contractor names, contract numbers, and display descriptions.

Auditors used (1) data extracted from the TxSmartBuy ordering system, (2) data from NetSuite (the back end of the TxSmartBuy system), and (3) data provided by the Comptroller's Office to correct and complete the TXMAS contract and sales data extracted from the TxSmartBuy ordering system. Auditors determined that the data in and extracted from the TxSmartBuy ordering system was sufficiently reliable for purposes of this audit.

However, there is a risk that the data in the TxSmartBuy ordering system and the data extracted from that system that auditors used was incomplete or contained inaccurate information. For example, as discussed in Chapters 2 and 3, customers may have made offline sales that contractors have not reported to the Comptroller's Office, and offline sales may not accurately reflect the contractor or dealer that sold the goods and services.

Contracts Log

To determine the reliability of the data from the Comptroller's Office's contracts log (a list of all TXMAS contracts the Comptroller's Office awarded), auditors reviewed key fields in that log for accuracy and completeness and compared the contracts in that log to the contracts in the TxSmartBuy ordering system. The contracts log excluded some TXMAS contracts that were awarded, and it included some TXMAS contracts that were not awarded. It also contained duplicate and incorrect contract numbers. After correcting those issues, auditors determined that the data in the contracts log was sufficiently reliable for the purposes of this audit.

Vendor Performance Tracking System

To determine the reliability of data from the Vendor Performance Tracking System, auditors (1) reviewed the query the Comptroller's Office used to extract data from that system; (2) analyzed the data for accuracy, reasonableness, and completeness; and (3) tested automated controls in that system. Auditors determined that the data in that system was sufficiently reliable for purposes of this audit.

Uniform Statewide Accounting System (USAS)

Auditors extracted TXMAS expenditure data from USAS and relied on previous State Auditor's Office audit work to determine that the USAS data was sufficiently reliable for the purposes of this audit.

Sampling Methodology

Auditors selected:

- A nonstatistical, random sample of 16 TXMAS contracts from the population of 79 TXMAS contracts that were awarded between September 1, 2014, and March 7, 2016.
- A nonstatistical, random sample of 60 TXMAS contracts from the population of 597 TXMAS contracts that were active as of January 11, 2016.

Additionally, auditors analyzed the population of TXMAS purchase orders created between June 1, 2014, and February 18, 2016, to identify purchase orders with incidental charges that represented more than 50 percent of the total purchase order amount; auditors used professional judgment to select a sample of 64 of those 78 purchase orders. Auditors also used professional judgment to select a sample from the population of invoices that were overdue by more than 60 days as of May 5, 2016. The sample included 359 invoices and 1 correcting invoice associated with 60 contractors.

The sample items described above were not necessarily representative of the population; therefore, it may not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- TXMAS contract files.
- TXMAS contract offer packet review workbook.
- TXMAS standard contract terms and conditions.
- TXMAS contractor catalogs, contractor price quotes, and purchase orders in the TxSmartBuy ordering system.
- TXMAS offline sales reports.
- TXMAS offline sales reporting tracking workbook.
- The aging schedule the Comptroller's Office used for administrative fee and rebate invoices and delinquency notices.

- Information on the Comptroller's Office's Web site.

Procedures and tests conducted included the following:

- Interviewed Comptroller's Office staff to gain an understanding of processes for awarding and monitoring TXMAS contracts.
- Analyzed and tested a sample of TXMAS contracts to determine whether they met program requirements.
- Analyzed the population of active TXMAS contracts and compared that population to sales in the TxSmartBuy ordering system.
- Compared TXMAS purchases in the TxSmartBuy ordering system to vendor performance reports to determine whether state agencies submitted required vendor performance reports.
- Reviewed the TXMAS contract standard terms and conditions to determine whether they included all appropriate clauses to protect the State's interests.
- Tested a sample of active TXMAS contracts to determine whether contractors charged prices that were allowable.
- Analyzed TXMAS purchases in the TxSmartBuy ordering system and tested a sample of those purchases to determine whether (1) customers made allowable purchases and used incidental charges appropriately and (2) contractors charged customers for allowable items and charged prices that were allowable.
- Reviewed the Comptroller's Office's processes for collecting, tracking, and monitoring offline TXMAS sales, and analyzed offline TXMAS sales data.
- Reviewed the Comptroller's Offices' processes for calculating and collecting administrative and rebate fees.
- Observed and tested automated processes in the TxSmartBuy ordering system for calculating administrative fees and rebates, uploading offline sales, and uploading contractors' catalogs.

Criteria used included the following:

- Texas Government Code, Chapters 2155, 2254, and 2262.
- Title 34, Texas Administrative Code, Chapter 20.

- *State of Texas Procurement Manual, 2012 version.*
- *State of Texas Contract Management Guide, versions 1.13 and 1.14.*
- *State of Texas Cooperative Purchasing Manual.*
- *TxSmartBuy Online Ordering System User Guide, August 2014.*
- TXMAS quote processing instructions.
- TXMAS offline sales report template.
- TXMAS standard contract terms and conditions.
- TXMAS contract offer packet instructions.

Project Information

Audit fieldwork was conducted from January 2016 through September 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:

- Tessa Mlynar, CFE (Project Manager)
- Matt Owens, CFE (Assistant Project Manager)
- Pamela A. Bradley, CPA
- Teri Incremona
- Brenda Zamarripa, CGAP
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- James Timberlake, CIA, CFE (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; noncompliance with 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.

Top 15 TXMAS Customers Between June 2014 and November 2015

Texas Government Code, Sections 2155.504 and 2155.202, and Texas Local Government Code, Chapter 271, authorize state agencies¹¹ and other entities to purchase goods and services through Texas Multiple Award Schedule (TXMAS) contracts. Examples of entities other than state agencies that can purchase goods and services through TXMAS contracts include local governments, mental health and mental retardation community centers, assistance organizations, and child care providers that participate in the State of Texas Cooperative Purchasing Program.

Between June 2014 and November 2015, state agencies made the majority of the purchases from TXMAS contracts. Specifically, state agencies made at least \$218,884,707¹² (56 percent) of the \$393,372,077 in total TXMAS purchases during that time period.

Table 3 presents the 15 customers with the most TXMAS purchases between June 2014 and November 2015.

Table 3

15 Customers with the Most TXMAS Purchases Between June 2014 and November 2015		
Customer	Dollar Amount of Purchases	Percent of Total Purchases
Department of Transportation	\$ 58,517,355	15%
Cancer Prevention and Research Institute of Texas	13,321,305	3%
Harris County Mental Health and Mental Retardation	12,696,635	3%
Bexar County	12,258,589	3%
Parks and Wildlife Department	9,144,623	2%
The University of Texas System	8,691,974	2%
Texas State University	8,550,494	2%
Alamo Community College District	8,218,765	2%
Department of Public Safety	7,198,930	2%
Department of State Health Services	6,549,596	2%
The University of Texas Medical Branch at Galveston	6,484,229	2%
City of Houston	6,026,178	2%

¹¹ Texas Government Code, Section 2151.002, defines a state agency as: (1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute; (2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or (3) a university system or an institution of higher education as defined by Section 61.003, Texas Education Code, except a public junior college.

¹² The amount of state agency purchases excludes (1) \$1,305,853 in purchases made by river authorities because those entities are not specifically included in the definition of a state agency in Texas Government Code, Section 2151.002, and (2) \$52,500 in purchases for which the TxSmartBuy ordering system did not contain sufficient information for auditors to determine whether those purchases were made by state agencies or other entities.

15 Customers with the Most TXMAS Purchases Between June 2014 and November 2015		
Customer	Dollar Amount of Purchases	Percent of Total Purchases
Department of Criminal Justice	5,833,583	2%
The University of Texas at Dallas	5,521,792	1%
The University of Texas at Austin	5,336,153	1%
Total for top 15 customers	\$174,350,201	44%
Total for all other customers	\$219,021,876	56%
Total for all customers	\$393,372,077	100%

Source: Purchase information in the TxSmartBuy ordering system as of February 18, 2016, for purchases that customers made through the TxSmartBuy ordering **system and for offline purchases that the Comptroller's Office** uploaded to the TxSmartBuy ordering system.

Top 15 TXMAS Contractors Between June 2014 and November 2015

Table 4 presents the 15 contractors with the most sales on their Texas Multiple Award Schedule (TXMAS) contracts between June 2014 and November 2015.

Table 4

15 Contractors with the Most Sales on Their TXMAS Contracts Between June 2014 and November 2015			
Contractor	Description of Products or Services	Dollar Amount of Sales ^a	Percent of Total Sales
Grainger Industrial Supply	Industrial supplies and equipment, janitorial supplies and equipment	\$ 53,532,230	14%
McKinsey & Company, Inc.	Consulting services	26,281,333	7%
Kofile Preservation, Inc.	Record preservation	19,730,836	5%
Steelcase, Inc.	Office furniture	15,025,458	4%
The HON Company	Special use furniture	14,862,097	4%
SRA International, Inc.	Mission-oriented business integrated services	13,188,368	3%
Kellogg Brown and Root	Job order contracting	12,451,826	3%
National Office Furniture	Office furniture	9,938,265	3%
The Sherwin-Williams Company	Hardware superstore	9,498,101	2%
Home Depot U.S.A., Inc.	Hardware	9,346,634	2%
Allsteel Inc.	Office furniture	7,844,596	2%
The Boston Consulting Group	Program and project management	6,751,325	2%
Southwest Desert Builders	Job order contracting	5,910,009	2%
SpawGlass Contractors, Inc.	Job order contracting	5,853,583	1%
Haworth, Inc.	Office furniture	5,199,474	1%
Total for top 15 contractors		\$215,414,135	55%
Total for all other contractors		\$177,957,942	45%
Total for all contractors		\$393,372,077	100%
^a The dollar amount of sales includes any sales made through dealers on the contractors' TXMAS contracts.			

Source: Sales information in the TxSmartBuy ordering system as of February 18, 2016, for sales made **through the TxSmartBuy ordering system and for offline sales that the Comptroller's Office uploaded to the TxSmartBuy ordering system.**

Total TXMAS Sales by Order Type and Line Item Type Between June 2014 and November 2015

Table 5 summarizes (1) the amounts of Texas Multiple Award Schedule (TXMAS) sales made through the TxSmartBuy ordering system and offline and (2) the types of charges between June 2014 and November 2015.

Table 5

TXMAS Sales Between June 2014 and November 2015		
Type of Sale and Charge Type	Dollar Amount of Sales	Percent of Total Sales
Online Sales:		
Price Quotes	\$ 246,687,366	63%
Catalog Items ^a	46,940,336	12%
Incidental Charges	12,987,137	3%
Subtotal for Online Sales	\$306,614,839	78%
Offline Sales: ^b		
Purchase Order Amounts	\$86,289,219	22%
Incidental Charges	468,019	0%
Subtotal for Offline Sales	\$86,757,238	22%
Total Sales	\$393,372,077	100%
^a Includes additional charges associated with specific catalog items, such as predefined charges or options that increase or decrease the price of a catalog item. ^b There are only two possible types of charges for offline sales: purchase order amounts and incidental charges. The information provided for an offline sale purchase order amount is insufficient to determine whether it is a price quote and/or a charge related to a catalog item.		

Sources: Sales information in the TxSmartBuy ordering system as of February 18, 2016, for sales made through the TxSmartBuy ordering system and for offline sales that the Comptroller's Office uploaded to the TxSmartBuy ordering system.

Management's Response from the Comptroller's Office



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

October 6, 2016

Tessa Mlynar
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

Dear Ms. Mlynar:

Enclosed is our response to your findings from the State Auditor's Office draft report on an Audit of the Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the Comptroller of Public Accounts received on Sept. 21, 2016.

We welcome the opportunity to present our management response to the recommendations made in your draft report.

We appreciate the work performed by you and your audit team. Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Reissig".

Mike Reissig
Deputy Comptroller

Enclosure

cc: Robert Wood, Associate Deputy Comptroller, Operations and Support
Cheryl P. Scott, Director of Internal Audit

Comptroller.Texas.Gov

**Comptroller's Office Management Response to SAO Draft Report Received September 21, 2016
An Audit of the Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the
Comptroller of Public Accounts**

Management Response for Chapter One, "The Comptroller's office based TXMAS contracts on other competitively bid contracts, but it should strengthen efforts to ensure that TXMAS contracts meet customer's needs and protect the state's interests.":

The Statewide Procurement Division (SPD) will quarterly sample TXMAS sales data for analysis. Contracts falling below \$25,000 in annual sales will be terminated to reduce resources expended to maintain contracts which provide little value to the state. Conversely, contracts with high dollar usage will be evaluated for potential development of statewide term contracts with SPD.

When an agency uses a contract offered by TXMAS, the agency is required to submit a vendor performance report using the Comptroller's Vendor Performance Tracking System (VPTS). Although the audit finds compliance issues with the submission of vendor performance reports by state agencies, vendor performance reporting compliance is the responsibility of the agency making the purchase because that agency has direct knowledge of compliance. Training and reference material provided by SPD highlights this requirement for state purchasers. To further address this issue, the TxSmartBuy system will be modified to notify anyone who makes a qualifying purchase of the reporting requirement 10 days after receipt of deliverables. SPD will continue to encourage compliance amongst state agencies through outreach and education.

The audit also identifies issues with linking TxSmartBuy purchase orders to vendor performance reports. It is important to note that agencies may utilize their internal purchase order numbers, particularly in the case of offline sales. In such an instance, there would be no purchase order number within TxSmartBuy to associate with a given vendor performance report. However, the VPTS requires the purchaser to select from various types of contracts, including TXMAS, when filling out the report. This would identify a particular VPTS report as being associated with a TXMAS contract. Finally, vendor performance reports are completed for myriad purchases, including those made outside of contracts on the TxSmartBuy system. VPTS is designed to serve all types of purchases, not just those made through TxSmartBuy.

For contracts made available on TxSmartBuy, SPD charges contractors an administrative fee which covers the cost of maintenance of the system. Vendors are allowed to add 1.5228% to the base contract price for each item to cover the administrative fee; however the audit identified instances of overcharging. SPD will audit item prices on TXMAS contracts to identify and discourage overcharging by vendors. New contracts and contracts that are amended will have a random sample of items reviewed for accurate pricing. Existing contracts will be selected for audit based on top-grossing sales, history of pricing errors, and frequency of previous audits. If SPD discovers overcharging by a contractor, their contract will be subject to termination.

Lastly, TXMAS boilerplate terms and conditions were identified as lacking a recommended and an essential clause from the Texas Contract Management Guide. It is SPD's belief that other clauses within the base contract and the TXMAS terms and conditions would have adequately protected the state.

**Comptroller's Office Management Response to SAO Draft Report Received September 21, 2016
An Audit of the Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the
Comptroller of Public Accounts**

However, the TXMAS terms and conditions have been updated to include a force majeure clause and a deceptive trade/unfair business practices clause. All existing TXMAS contracts will be reviewed and updated with the new boilerplate terms and conditions, where applicable.

Responsible Party:

Director of Statewide Procurement

Expected Implementation Date:

December 31, 2016

Management Response for Chapter Two, "The Comptroller's office should strengthen its efforts to prevent unallowable purchases through TXMAS contracts and strengthen controls over the incidental charges associated with TXMAS purchases.":

The audit findings identified professional and consulting services as a part of certain TXMAS contracts. It is SPD's position that the professional or consulting services contracts listed as TXMAS contracts and identified by this audit are allowable in accordance with applicable statutes. Ultimately it is the responsibility of the entity using these professional or consulting services contracts to determine if it is permissible under the entity's enabling authority. Chapter 2155 of the Texas Government Code describes the processes by which the Comptroller is required to procure goods and services on behalf of state agencies, excluding specified professional and consulting services as defined in Chapter 2254 of the Texas Government Code. Separately, two professional services ("architectural services" and "engineering services") may not be listed as a TXMAS contract according to Subchapter I of Chapter 2155 of the Government Code. The Comptroller does not procure TXMAS contracts in the same sense that it procures the goods and services noted in Government Code 2155.001. The TXMAS program develops a schedule of contracts that have been awarded using a competitive process by another governmental entity with its own procurement authority. While the Comptroller cannot procure the professional services excluded in Chapter 2254 of the Government Code under its authority in Section 2155.001, the two professional services categories in TXMAS were excluded because the Legislature understood that TXMAS could include professional services offered by another governmental entity's contract. SPD has assessed the offerings of professional and consulting services on TXMAS. SPD will continue to offer professional services, but has discontinued TXMAS offerings of consulting services.

The audit went on to identify the occurrence of certain unallowable purchases, including the purchase of items not on TXMAS contract, and offline sales from contractors not authorized to accept offline sales. While the TXMAS program does not have control over the occurrence of offline sales, SPD agrees that the prevalence of such reported sales indicates a need for improved communication and enforcement of contract terms and conditions. SPD has improved information provided to purchasers

**Comptroller's Office Management Response to SAO Draft Report Received September 21, 2016
An Audit of the Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the
Comptroller of Public Accounts**

using the TxSmartBuy system, indicating which contracts are, and are not, authorized for offline sales. TXMAS will warn contractors of possible contract termination when caught making unauthorized offline sales and will terminate contracts with repeated offenders. TXMAS will also notify an agency's leadership when purchasers are found to be making unauthorized offline purchases. Ultimately, it is the responsibility of state agency purchasers to refrain from making unauthorized offline purchases.

Also identified was an inappropriate use of incidentals. This issue is multifaceted and it is SPD's position that it should be tackled from various angles. Action has been taken to educate purchasers and contractors through external communication and the use of disclaimers on the TxSmartBuy application. The program is also exploring additional system solutions aimed at reducing the potential for entering as incidentals items that are not truly incidental to the purchase. In January 2016, the system was updated to ensure that Purchase Order Change Notices adjusting the quantity of items do not result in incidental line items exceeding 50 percent of the total purchase amount or \$5000 (whichever is greater), which is consistent with the limitations on incidentals entered in the original purchase order. The audit sample will not reflect the full impact of this change. Additionally, a message will be displayed on the General Contract Information (GCI) page informing purchasers to enter detailed descriptions for all incidental charges. The program will review incidental descriptions and educate those whose entries lack sufficient detail. The program will also look at incidentals for any unallowable charges by contractors to cover rebates paid to the state.

Finally, the audit notes that some contractors are not complying with the Texas Procurement Manual's requirement for the submission of catalogs and more purchasers could be submitting price quotes with their purchase orders on TxSmartBuy. Contractors who do not submit catalogs with their offer packets in a timely manner will be subject to cancellation with a 90-day waiting period for resubmission. The program will also require purchasers to attach their corresponding price quotes to their TxSmartBuy purchase orders, when applicable.

Responsible Party:

Director of Statewide Procurement

Expected Implementation Date:

December 31, 2016

Management Response for Chapter Three, "The Comptroller's office should strengthen controls over its calculation and collection of administrative fees and rebates associated with TXMAS purchases.":

The audit identified delays in the submission of offline sales reports from contractors authorized to make these sales. Some of the delays were a result of the implementation of the TxSmartBuy version 2.0. The system's critical functionality was released in the initial implementation phase and followed by

**Comptroller's Office Management Response to SAO Draft Report Received September 21, 2016
An Audit of the Texas Multiple Award Schedule (TXMAS) Contracts Program at the Office of the
Comptroller of Public Accounts**

the capability to upload offline sales in April 2015. Other identified delays are due to incomplete or incorrect information submitted by contractors. In order to encourage timely submission of offline sales reports, SPD no longer posts catalog information if the contractor has an outstanding request from the division for clarification or correction of information submitted in offline sales reports. Additionally, the TXMAS program is tracking the receipt of offline sales reports and will remove the online catalogs of contractors who are not in compliance. Reporting of offline sales may also be buttressed by more fervent analysis and termination of TXMAS contracts with annual sales under \$25,000.

In the Uniform Statewide Accounting System (USAS), purchase order numbers entered for offline sales are most often an agency's internal purchase order number. While SPD can link purchase order numbers entered correctly in USAS to TxSmartBuy purchase order numbers, the division does not have insight into other purchase order numbers used internally by agencies. Additionally, an agency could be using non-treasury funds or their delegated purchasing authority to make a payment to a contractor who also happens to hold a TXMAS contract, which means that SPD is unable to match USAS expenditures directly to any given offline purchase from a TXMAS contract. Further complicating this issue is the possibility of purchasers selecting incorrect category codes for the purchases they have made. The TXMAS program is working to better educate purchasers on the entry of the appropriate category codes and that offline sales are prohibited unless expressly permitted, to include guidance posted directly on the TxSmartBuy web application.

Delays in the calculation of administrative fees and rebates for offline sales were also identified. Upon receipt of properly submitted sales reports, the data is uploaded and used to calculate fees as quickly as possible, given the limited staff available to perform this task. We expect the implementation of the catalog suspension policy for non-compliance with reporting requirements to significantly improve the timeliness of the offline sales reporting process.

Finally, delinquency in the payment of rebates and administrative fees by TXMAS contractors has also been addressed. SPD now has automated delinquency notices for unpaid rebates and administrative fees, which has improved collections significantly. SPD will continue to monitor suspended contracts and those with overdue invoices. SPD has also implemented an additional control by disabling the catalogs in the TxSmartBuy ordering system for TXMAS contractors that have not paid the administrative fees and rebates they owe, which prevents the contractors from selling their items to state agencies through the TxSmartBuy system.

Responsible Party:

Director of Statewide Procurement

Expected Implementation Date:

December 31, 2016

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

Office of the Comptroller of Public Accounts

The Honorable Glenn Hegar, Comptroller of Public Accounts



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.texas.gov.

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) 936-9500 (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.