



An Audit Report on

# **Selected Contracts at the Historical Commission**

January 2019

Report No. 19-023



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### Overall Conclusion

The Historical Commission (Commission) complied with some planning, procurement, and formation requirements for the two contracts audited (see text box for information about those contracts). The Commission also adequately performed oversight activities related to the construction progress of the San Felipe Museum contract.

However, the Commission did not consistently require those involved in the evaluation and procurement of the contracts audited to sign conflict of interest forms. In addition, auditors identified other areas in which the Commission should strengthen its contracting processes. Specifically, the Commission should:

- Adequately review the solicitations.
- Comply with public bid opening requirements.
- Ensure that board members completed required contract training.

For both contracts audited, the Commission complied with most contract planning and formation requirements. For example, the Commission received delegation authority from the Office of the Comptroller, involved the appropriate sponsors and staff in the procurements (including the executive director, a contract manager, purchasing personnel, and program staff), selected the appropriate procurement method, and ensured that the statement of work in the solicitation contained all elements required by the *State of Texas Contract Management Guide*.

The Commission adequately monitored the construction of the San Felipe Museum by conducting bi-weekly on-site visits. However, it did not (1) monitor the contractor for compliance with certain contract requirements, (2) ensure that contractor payments were sufficiently supported and accurate, or (3) ensure that the contract manager received the appropriate training and certification. Construction on the Admiral Nimitz Museum had not started as of August 2018;

#### Background Information

Auditors audited two Historical Commission (Commission) construction manager-at-risk contracts for this report:

- **San Felipe Museum contract.** The Commission contracted with Rosenberger Construction, LLC for construction of the San Felipe Museum and associated site improvements at the San Felipe de Austin State Historic Site. The contract began on September 7, 2016, and the total contract amount was \$6.2 million. The Commission paid the contract in full and was performing close out procedures as of July 2018. Construction was completed for this contract.
- **Admiral Nimitz Museum contract.** The Commission contracted with Duecker Construction Company, Inc. for renovations at the Admiral Nimitz Museum. The goals of the renovations were to improve visitor flow and expand the exhibit gallery spaces to support the interpretive program and visitor services. The contract began on December 12, 2017, and the Commission reported on its Web site that the total contract amount was \$3.2 million. The Commission had not made any payments to the contractor as of May 31, 2018.

Sources: The contracts audited, payment data from the Uniform Statewide Accounting System, and other information provided by the Commission.

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 Becky Beachy, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

therefore, auditors did not review the Commission’s compliance with monitoring requirements for that contract.

Table 1 presents a summary of the findings in this report and the related issue rating. (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 <sup>a</sup>
1-A	The Commission Did Not Consistently Require Those Involved in the Evaluation and Procurement of the Contracts Audited to Sign Conflict of Interest Forms	High
1-B	The Commission Did Not Adequately Review the Solicitations for Each Contract Audited to Ensure That the Advertised Cost Estimate <b>Matched the Project’s</b> Objectives and Scope	Medium
1-C	The Commission Complied with Some Procurement Requirements for Both Contracts; However, It Should Strengthen Its Process to Ensure It Complies with All Applicable Requirements	Medium
2	While the Commission Planned and Formed the Selected Contracts in Accordance With Most Applicable Requirements, It Should Strengthen Its Processes	Medium
3	The Commission Adequately Monitored the Construction of the San Felipe Museum; However, It Did Not Perform Certain Required Monitoring Activities	Medium
<p><sup>a</sup> A chapter is rated Priority if the issues identified present risks or effects that if not addressed could critically affect the audited <b>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.</b></p> <p>A chapter is rated High <b>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.</b> Prompt action is essential to address the noted concern and reduce risks to the audited entity.</p> <p>A chapter is rated Medium if the issues identified present risks or effects that if not addressed could moderately affect the audited <b>entity’s ability to effectively administer program(s)/function(s) audited.</b> Action is needed to address the noted concern and reduce risks to a more desirable level.</p> <p>A chapter is rated Low <b>if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(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.</b></p>		

Auditors communicated other, less significant issues separately in writing to **Commission’s** 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 Commission agreed with the recommendations in this report.

## ***Audit Objective and Scope***

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

The scope of this audit covered the Commission's contracting process related to:

- The Commission's contract with Rosenberger Construction, LLC for construction manager-at-risk services for the construction of the San Felipe de Austin State Historic Site Museum and facilities improvements (San Felipe Museum), which was effective September 7, 2016. Auditors reviewed the Commission's processes for contract planning, contract procurement, contract formation, and contract oversight through May 31, 2018.
- The Commission's contract with Duecker Construction Company, Inc. for construction manager-at-risk services for the interior renovation of the Admiral Nimitz Museum at the National Museum of the Pacific War State Historic Site (Admiral Nimitz Museum), which was effective December 12, 2017. Auditors reviewed the Commission's processes for contract planning, contract procurement, and contract formation through the contract award date.

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# Detailed Results

Chapter 1

## ***The Commission Should Strengthen Its Processes to Ensure That Conflict of Interest Forms Are Completed and It Complies with All Applicable Procurement Requirements***

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The Historical Commission (Commission) did not consistently require those involved in the evaluation and procurement of the contracts audited to sign conflict of interest forms. It also did not have a process to identify who should complete a conflict of interest form.

The Commission complied with some applicable statutes and *State of Texas Contract Management Guide* requirements for procurement. Auditors also identified other areas in which the Commission should strengthen its contracting processes, including (1) advertising an accurate cost estimate in the solicitation, (2) complying with public bid opening requirements, (3) defining evaluation criteria for the evaluation team, and (4) having the Commission's board members complete the required training.

Chapter 1-A

The Commission Did Not Consistently Require Those Involved in the Evaluation and Procurement of the Contracts Audited to Sign Conflict of Interest Forms

The Commission ensured that all purchasing staff signed annual conflict of interest forms. In addition, although one evaluation team member signed the nondisclosure form after scoring was completed, the Commission ensured that all evaluation team members signed nondisclosure forms as required (those forms require team members to not disclose details of the proposals being evaluated).

However, for the two audited contracts, the Commission did not require any evaluation team members or members of its governing board to

Texas Government Code,  
Section 2262.004

This section states that before an agency may award a major contract, each of the state agency's purchasing personnel working on the contract must disclose in writing any relationship with the contractor. Purchasing personnel is defined as an employee of a state agency who makes decisions on behalf of the state agency or recommendations regarding (a) contract terms, (b) who is awarded the contract, (c) preparation of a solicitation of the contract, and (d) evaluation of a bid or proposal.

Texas Government Code,  
Section 2261.252

This section states that each state agency employee or official who is involved in procurement or in contract management shall disclose any potential conflict of interest with respect to any contract with a private vendor or bid for purchase of goods or services.

Chapter 1-A  
Rating:  
High <sup>1</sup>

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<sup>1</sup> The risk related to the issues discussed in Chapter 1-A is rated as 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.

sign conflict of interest forms, as required by Texas Government Code, Sections 2262.004 and 2261.252 (see text box).

In addition, the Commission did not have a process in place to identify who should complete a conflict of interest form during the procurement process or throughout the term of the contracts. The Commission has relationships with nonprofit entities that support historical sites. This increases the risk of potential conflicts of interest for certain contracts on those historical sites. Therefore, it is important that the Commission take all steps to identify and address conflicts of interest.

While auditors did not identify any conflicts of interest, the Commission should implement a process to identify who should complete and sign the required conflict of interest form, including Commission employees involved with the contract, the Commission's board members, and external parties. Ensuring that conflict of interest forms are completed by applicable internal and external parties involved in a contract could help the Commission ensure that the procurement process is fair and objective.

#### Recommendations

The Commission should:

- Ensure that (1) all required individuals complete and sign conflict of interest forms and (2) it retains those forms.
- Establish a process to identify, throughout all contract stages, the individuals required to complete and sign a conflict of interest form.

#### Management's Response

*The Texas Historical Commission (THC) agrees with these recommendations. THC will update its procurement checklist procedures to require the lead purchaser and/or contract administrator to confirm that all appropriate agency individuals have been identified who should complete the conflict of interest form, and that those forms are properly signed and retained in the procurement file. THC is also establishing a process to more comprehensively identify those agency employees and Commissioners who should complete the conflict of interest forms prior to the award of an eligible purchase order or contract for goods and services.*

**Person(s) Responsible – THC Contract Administrator**

**Target Implementation Date – January 31, 2019**

The Commission Did Not Adequately Review the Solicitations for Each Contract Audited to Ensure That the Advertised Cost Estimate Matched the **Project's Objectives and Scope**

Chapter 1-B  
Rating:  
Medium <sup>2</sup>

The Commission did not adequately review the solicitations, and as a result, it did not advertise the correct project cost estimate for either contract audited. Adequately reviewing the solicitation prior to its posting could have helped the Commission identify the cost estimate errors and ensure that its solicitations were accurate and supported. Specifically:

- For the Admiral Nimitz Museum contract, the Commission advertised a cost estimate of \$4.0 million, instead of the \$2.4 million that was supported by the project objectives and scope included in the solicitation. The Commission asserted that the cost estimate was developed by external parties.
- For the San Felipe Museum contract, the Commission advertised a cost estimate of \$4.0 million, instead of the \$5.4 million that was supported by the project objectives and scope included in the solicitation.

The Commission's policies and procedures state only that the appropriate staff should approve a request for proposal prior to posting a solicitation, but they do not define which staff are required to do this. This increases the risk that (1) solicitations may not be adequately reviewed and (2) errors may not be identified and corrected. Not identifying the incorrect cost estimates in the posted solicitations for the two contracts audited could have hindered competitive bidding.

#### Recommendations

The Commission should develop and implement a documented process for reviewing solicitations. That process should include:

- Verifying that cost estimates are supported by the project's final objectives and scope.
- Describing who should perform reviews of solicitations prior to their posting.

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<sup>2</sup> The risk related to the issues discussed in Chapter 1-B is rated as Medium because they present risks or results 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.



## Management's Response

*THC agrees with these recommendations. Before a solicitation is posted, the draft RFP will be reviewed by the Project Manager, Procurement lead and the agency Contract Administrator to confirm the most current cost estimates. If the project cost estimate or scope is changed, the Project Manager will review the change and notify agency procurement staff and executive management of potential impacts and risks associated with the change. Changes will be reviewed by the responsible Division Director, Deputy Executive Director, and depending on scope change, the THC Executive Director to determine the need to modify the solicitation. Agency procurement procedures will be updated to reflect these processes.*

**Responsible Party – THC Contract Administrator/Division Project Manager**

**Target Implementation Date – January 31, 2019**

Chapter 1-C

The Commission Complied with Some Procurement Requirements for Both Contracts; However, It Should Strengthen Its Process to Ensure It Complies with All Applicable Requirements

Chapter 1-C  
Rating:  
Medium<sup>3</sup>

The Commission complied with some contract procurement requirements for both audited contracts, such as posting both solicitations to the *Electronic State Business Daily* and using the evaluation criteria that was included in the solicitations.

For both contracts audited, the Commission had weaknesses in its procurement processes related to opening solicitation bids, providing guidance to evaluation team members, and ensure that its board members obtain required contract training. Specifically:

- Public bid opening. While the solicitations for each of the audited contracts contained both a time and place for a public bid opening, the Commission did not conduct one for either contract. For construction manager-at-risk contracts, Texas Government Code, Section 2269.253(f), requires state agencies to publicly open each solicitation response and disclose the respondent's name, as well as all fees and prices, for each proposal. Not having a public bid opening can impede the competitive bidding process.

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<sup>3</sup> The risk related to the issues discussed in Chapter 1-C is rated as Medium because they present risks or results 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.

- Guidance for evaluation criteria. The Commission used the evaluation criteria posted in the solicitation to score the vendor proposals for both audited contracts. However, while it had broadly defined evaluation categories, it did not have detailed guidance on how the evaluation team should score each category, such as the factors to consider, to help ensure consistency. Not establishing a clear, defined method of scoring evaluation criteria increases the risk that evaluators are not using the same guidelines to score vendor proposals.
- Contract Training. The Commission did not ensure that its board members obtained the contract training required by Texas Government Code, Section 656.053.<sup>4</sup> When the Commission executed the San Felipe Museum contract, 5 (50.0 percent) of the 10 board members had not completed the required contract management training. For the Admiral Nimitz Museum contract, 5 (55.6 percent) of the 9 board members had not completed the required contract training prior to contract execution.

#### Recommendations

##### The Commission should:

- Develop and implement a process for public bid openings that incorporates statutory requirements.
- Clearly define evaluation criteria, including requirements for each criteria category and the scoring methodology in the guidance it provides to evaluation team members.
- Ensure that all board members complete required training prior to contract execution.

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<sup>4</sup>Texas Government Code, Section 2262.0535, which was in effect at the time the Commission procured the San Felipe Museum contract, was redesignated as Texas Government Code, Section 656.053, effective September 1, 2017.

## **Management's Response**

### **Recommendation**

*The Commission should:*

- *Develop and implement a process for public bid openings that incorporates statutory requirements.*

### **Management Response:**

*THC agrees with the recommendation and conducts public bid openings on all eligible solicitations for goods and services. THC accurately posted the time and place of the bid opening in the solicitations for both contracts audited, and procurement staff verbally confirmed that no vendors chose to attend these bid openings; however, THC did not formally document either bid opening meeting since no vendors chose to attend. THC procedures now require both agency staff and vendors who are present at the bid opening to sign the Public Bid Opening Attendance Sheet before bids are opened. At the end of the bid opening, the lead purchaser will sign, and date/time-stamp the bid opening document and retain with the procurement file. The THC Contract Administrator or designee will also review the Public Bid Opening Sheet and acknowledge compliance by signing the Solicitation Compliance Checklist.*

**Person(s) Responsible – Contract Administrator**

**Target Implementation Date – Implemented December 1, 2018**

*The Commission Should:*

- *Clearly define evaluation criteria, including requirements for each criteria category and the scoring methodology in the guidance it provides to evaluation team members.*

### **Management Response:**

*Although evaluation criteria were included in the contract solicitations and provided to evaluators, THC agrees with the recommendation that more detailed guidance would be beneficial and should be provided to assist evaluators in scoring to help ensure consistency throughout the process. Depending upon the complexity of the procurement, the lead purchaser will coordinate a more detailed criteria evaluation walkthrough with subject matter experts to clarify evaluation criteria and conduct question/answer sessions related to the evaluation process. Upon final review and tabulation*

*of the results, the lead purchaser will reconcile evaluation scores to ensure consistency in the application of evaluation criteria.*

***Person(s) Responsible – Contract Administrator***

***Target Implementation Date – January 31, 2019***

*The Commission Should:*

- *Ensure that all board members complete required training prior to contract execution.*

***Management Response:***

*The THC agrees with the recommendation to ensure all Commissioners complete required Contract Training. All new Commission Members as part of their initial briefing and orientation will be provided information on Texas Government Code 656.053 regarding required contract training. Upon notification to the THC Contract Administrator of a new Commissioner appointment, the Contract Administrator will forward the registration link for the required training and follow up with the Commissioner within 30 days to verify completion and receipt of the Contract Training completion certificate.*

***Person(s) Responsible – Contract Administrator***

***Target Implementation Date – January 15, 2019***

## ***While the Commission Planned and Formed the Selected Contracts in Accordance With Most Applicable Requirements, It Should Strengthen Its Processes***

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Chapter 2  
Rating:  
Medium <sup>5</sup>

For both contracts audited, the Commission complied with most contract planning and formation requirements. For example, the Commission received delegation authority from the Office of the Comptroller, involved the appropriate sponsors and staff in the procurements (including the executive director, a contract manager, purchasing personnel, and program staff), selected the appropriate procurement method, and ensured that the statement of work in the solicitation contained all elements required by the *State of Texas Contract Management Guide*.

The Commission also included all of the essential clauses required by the *State of Texas Contract Management Guide* for both contracts audited. The Commission also ensured that the required personnel, according to Commission policies and procedures, reviewed and approved the contracts. In addition, the Commission had chosen an appropriate, cost-effective payment methodology for both contracts. However, the Commission should (1) strengthen the development of its contracts to ensure that it includes all significant specifications in the executed contract and (2) require contractors to submit a Certificate of Interested Parties to the Texas Ethics Commission prior to signing a contract.

The Commission should modify its contracts for each project to address the specific contract scope and objectives and include all significant specifications in the executed contract.

The Commission uses the construction manager-at-risk contract template developed by the Texas Facilities Commission; however, the Commission did not consistently modify that template to ensure that the final, executed contract addresses each contract's specific needs, such as the intended scope, objectives, and specific performance measures for the contract. In the Requests for Proposal (RFP) for the two contracts audited, the Commission included those specific items; however, the Commission did not include in the final executed contracts those specific items or language that incorporated the RFP into the contract. Other examples of weak formation practices identified in the final executed contracts audited include inconsistent references, strike-through text, and outdated and not applicable references to systems and processes. Those weaknesses increase the risk of the Commission entering into a contract that does not meet its goals and

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<sup>5</sup> The risk related to the issues discussed in Chapter 2 is rated as Medium because they present risks or results 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.

objectives. They may also limit the Commission's ability to enforce the contract if there is a disagreement or misinterpretation of the contract.

The Commission should ensure that contractors complete the Certificate of Interested Parties prior to signing the contract as required by the Texas Government Code.

The Commission did not ensure that contractors submitted a Certificate of Interested Parties to the Texas Ethics Commission prior to executing the audited contracts, as required by Texas Government Code, Section 2252.908(d). The Certificate of Interested Parties identifies the individuals who have a controlling or intermediary interest in its business to the Texas Ethics Commission. The Commission communicated the requirement to the contractors after the execution of the contracts. As a result, the San Felipe Museum contractor completed the Certificate of Interested Parties approximately five months after the contract was signed, and the Commission received the form from the Admiral Nimitz Museum contractor approximately one month after the contract was signed. In addition, for the Admiral Nimitz Museum contract, the contractor did not complete all the required sections in the form, including the date the form was signed.

The Commission did not have a process in place to verify that contractors submit a Certificate of Interested Parties to the Texas Ethics Commission before the execution of a contract. Not ensuring that the form is completed before the execution of the contract could increase the risk that the Commission may be contracting with a vendor that has a conflict of interest.

#### Recommendations

The Commission should:

- Ensure that each final and executed contract includes all expectations and specific requirements for the contracted goods or services.
- Develop and implement a process to verify that contractors submit a complete Certificate of Interested Parties to the Texas Ethics Commission prior to execution of a contract.

## **Management's Response**

### **Recommendations**

*The Commission should:*

- *Ensure that each final and executed contract include all expectations and specific requirements for the contracted goods or services.*

### **Management Response:**

*THC agrees with this recommendation. THC utilizes a best practices Construction Manager-at-Risk (CMAR) template that is also used by the Texas Facilities Commission. We have updated that template to eliminate non-essential specifications, non-applicable references, and have customized it to more effectively meet THC's unique requirements.*

**Person(s) Responsible – Contract Administrator**

**Target Implementation Date – January 31, 2019**

*The Commission Should:*

- *Develop and implement a process to verify that contractors submit a complete Certificate of Interested Parties to the Texas Ethics Commission prior to execution of a contract.*

### **Management Response:**

*THC agrees with this recommendation that the agency implement a process to verify that contractors timely submit and file a Certificate of Interested Parties with the Texas Ethics Commission prior to contract execution. THC implemented a process that ensures no contract is signed until the Certificate of Interested Parties is filed by the prospective contractor. This process has been incorporated as part of THC's Solicitation Compliance Checklist. The awarded vendor has 30 days from the notification of intent to award to file the required certificate with the Texas Ethics Commission. The THC's Solicitation Compliance Checklist is reviewed and signed by the Contract Administrator at the end of the procurement cycle, prior to final approval and execution of the contract.*

**Person(s) Responsible – Contract Administrator**

**Target Implementation Date – December 1, 2018**

## ***The Commission Adequately Monitored the Construction of the San Felipe Museum; However, It Did Not Perform Certain Required Monitoring Activities***

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Chapter 3  
Rating:  
Medium <sup>6</sup>

The Commission adequately performed oversight activities related to the construction progress of the San Felipe Museum contract. However, the Commission did not (1) monitor the contractor for compliance with certain contract requirements, (2) ensure that contractor payments were sufficiently supported and accurate, or (3) ensure that the contract manager received the appropriate training and certification. Construction on the Admiral Nimitz Museum had not started as of August 2018; therefore, auditors did not review the Commission's compliance with monitoring requirements for that contract.

The Commission adequately monitored the construction of the San Felipe Museum contract.

The Commission adequately monitored the construction of the San Felipe Museum by conducting bi-weekly on-site visits. During the site visits, the Commission staff, contractor, and the architect/engineer reviewed various areas including (1) the construction at the site, (2) the construction permits and approvals, (3) the construction logs, and (4) the payment requests. In addition, documentation for each site visit included the intended work to be completed within a certain timeframe and the responsible party. The site visit documentation included weather delays, subcontractor's status and potential noncompliance, potential issues and challenges with construction, drawings expectations, updates on construction logs and payment vouchers, and discussion and approvals of construction changes.

The Commission did not monitor the contractor to ensure compliance with subcontractor bidding requirements **for all of the contract's major work** elements.

Texas Government Code, Section 2269.255, requires the construction manager-at-risk contractor to publicly advertise for bids or proposals and receive bids for all subcontractor work conducted for major elements. Although the Commission's contract aligned with those requirements, the Commission did not ensure the contractor complied with this statutory and contract requirement. Not monitoring the competitive bid process increases the risk that the Commission may not be receiving the best bids, which can increase the total cost of the contract.

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<sup>6</sup> The risk related to the issues discussed in Chapter 3 is rated as Medium because they present risks or results 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.



**The Commission did not always ensure that the contractor payments for the San Felipe Museum were completely supported, accurate, and contained all the required documentation.**

Auditors tested six payment requests that totaled \$3.6 million (58.1 percent) of the \$6.2 million total contract amount and found that the Commission reviewed and approved all the tested payment requests prior to releasing payment to the contractor. In addition, the Commission ensured the total payments did not exceed the total contract amount. Although the Commission's review process included approval from all relevant parties, weaknesses in the design of the review were identified. The Commission's review did not include the following:

- **The Commission did not always ensure that the contractor payments for the San Felipe Museum were sufficiently supported and accurate.** The Commission's review process of the contractor's payment requests did not include a review of the supporting documentation, including subcontractor's payment requests and invoices, to verify that those payment requests and supporting documentation were allowable, appropriate, and supported. The Commission relied on the third-party architect and engineering firm to review the payment requests and supporting documentation. Of the \$3.6 million in the 6 payment requests tested, \$305,443 (8.5 percent) was unsupported. The *State of Texas Contract Management Guide* states that invoices should be reviewed to verify that the contractor's billing coincides with the contract's progress and the contractor is billing only for goods and services received by the state agency. By not adequately reviewing the contractor's payment requests, the Commission may not accurately pay the costs according to contract terms.
- **The Commission did not ensure the San Felipe Museum contractor provided all of the conditional waiver and release forms from subcontractors with each payment request tested.** The San Felipe Museum contract states that the contractor must provide a conditional waiver and release form that complies with Texas Property Code, Section 53.284(b), (see text box) from each subcontractor listed in a payment request. However, the Commission did not adequately review the payment requests to verify compliance with that requirement. Specifically, for the 6 payments tested, there were 38 (44.7 percent) of 85 subcontractors' invoices in the payment requests that had not provided the required conditional waiver and release form. Not ensuring that all required conditional waiver and release forms are completed before issuing a payment

**Conditional Waiver and Release Form**

In the conditional waiver and release form, the signer confirms that all appropriate labor, materials, and other costs related to the payment request have been paid or will be paid with funds from the payment request. A signed conditional waiver and release form helps release the owner, the owner's property, the contractor, and the surety on a payment bond from claims and liens.

Source: Texas Property Code, Chapter 53.

increases the risk that the Commission may be held liable for the contractor's noncompliance.

- The Commission did not ensure that payment requests tested reconciled with the **contractor's Historically Underutilized Businesses (HUB) subcontracting plan and its Progress Assessment Reports**. For the six payment requests tested, the Commission received the required HUB *Progress Assessment Report*; however, the Commission did not verify that the subcontractors included on the report were on the contractor's approved HUB subcontracting plan. Specifically, 15 (46.9 percent) of 32 subcontractors that submitted invoices with the payment requests tested were not included on the approved HUB subcontracting plan. In addition, the Commission did not reconcile the subcontractor amounts reported in the *Progress Assessment Report* to the subcontractors' invoices. For three of the six payment requests tested, the amounts in the *Progress Assessment Reports* differed from the subcontractors' invoices. Those differences ranged from \$14,172 to \$36,703. A reconciliation process could help the Commission verify that contractors are complying with HUB requirements.

The contract manager for the San Felipe Museum contract did not have the appropriate training and certification.

The contract manager for the San Felipe Museum contract did not possess the Certified Texas Contract Manager certification as required by Texas Government Code, Section 656.502. Not having a contract manager with the required certification increases the risk of non-compliance with state contracting laws.

#### Recommendations

The Commission should:

- Ensure that the contractor complies with the subcontractor bidding requirements as stated in the contract.
- Develop and implement a process to review payment requests to ensure that payments are supported, accurate, and allowable by the contract.

- Develop and implement a process to reconcile:
  - ♦ The amounts reported as paid to subcontractors in the *HUB Progress Assessment Reports* with the amounts in the requests for payment that the contractor submits.
  - ♦ The subcontractors reported in the *HUB Progress Assessment Reports* to the subcontractors listed in the approved HUB subcontracting plan.
- Ensure contract managers possess the Certified Texas Contract Manager certification.

**Management’s Response**

*The Commission should:*

- *Ensure that the contractor complies with the subcontractor bidding requirements as stated in the contract.*

**Management Response:**

*THC agrees with this recommendation. As part of the contract billings review and verification process, financial staff will conduct a review for contractor compliance with subcontractor bidding requirements.*

**Person(s) Responsible – Contract Administrator**

**Target Implementation Date – January 31, 2019**

*The Commission Should:*

- *Develop and implement a process to review payment requests to ensure that payments are supported, accurate, and allowable by the contract.*

**Management Response:**

*THC agrees with this recommendation. Under current construction contracting best practices utilized by THC, construction progress work is reviewed by the agency project manager and a third-party Architect/Engineer (A/E) to validate the work is completed and coincides with the total percentage of payment requested by the contractor. The agency utilizes the Uniform General Conditions (UGC) Article 10, for best practices related to construction contracts, and requires a Schedule of Values, Preliminary Pay Worksheets, Contractor’s Application for Payment, and Certification by the A/E. In accordance with the UGC, the role of the A/E is to review the*

*application for payment and certify that the application is complete and payable. Additionally, as part of the review process, Accounts Payable staff compares ending balances from previous percentage of completion invoices to beginning balances for the current invoice to verify there are no changes to calculations for total project percent completed.*

*Even with these best practices in place, THC will identify and implement additional processes that further improves controls for ensuring that payments are supported, accurate and allowable by the contract.*

*THC agrees that all conditional waivers for subcontractors were not provided by the construction manager-at-risk in one of the contracts reviewed. THC will clarify language in future contracts to emphasize contractor compliance for submission of waivers on any subcontractors used by the Primary contractor. This Waiver compliance review will be included as a component of THC's HUB Progress Assessment Report (PAR) monthly reporting review.*

***Person(s) Responsible – Chief Financial Officer, Project Manager, Contract Administrator and HUB Coordinator***

***Target Implementation Date for Conditional Waivers – January 31, 2019***

*The Commission Should:*

- *Develop and implement a process to reconcile:*
  - ♦ *The amounts reported as paid to subcontractors in the HUB Progress Assessment Reports with the amounts in the requests for payment that the contractor submits.*
  - ♦ *The subcontractors reported in the HUB Progress Assessment Reports to the subcontractors listed in the approved HUB subcontracting plan.*

***Management Response:***

*THC agrees with these recommendations that the agency develop and implement a timelier process to reconcile (1) Historically Underutilized Business (HUB) Progress Assessment Reports (PARs) with the amounts in the requests for payment that the contractor submits, and (2) reconcile the PARs to the HUB Subcontracting Plan.*

*THC will implement a process to test sample monthly PARs throughout the contract lifespan, and request payment information from primary vendors (checks, direct deposit information, and related invoices) that reconcile against a monthly PAR to validate that information is properly recorded.*

*Additionally, THC will develop a process to reconcile PARs against the HUB Subcontracting Plan and conduct a final reconciliation to validate all subcontractors listed on PARs are identified in the final approved HUB subcontracting plan prior to final contract payment and posting to the Vendor Performance Tracking System.*

***Person(s) Responsible – Contract Administrator***

***Target Implementation Date – January 31, 2019***

*The Commission Should:*

- *Ensure contract managers possess the Certified Texas Contract Manager certification.*

***Management Response:***

*THC agrees with this recommendation. THC's project manager responsible for Historic Sites construction solicitations has completed the required Certified Texas Contract Manager Training. In addition, the THC Contract Administrator, with the assistance of the Human Resources Director, will survey agency management annually to identify any additional staff that may require contract management training certification.*

***Person(s) Responsible – Contract Administrator/Human Resources Director***

***Target Implementation Date – January 31, 2019***

# Appendices

Appendix 1

## **Objective, Scope, and Methodology**

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### Objective

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

### Scope

The scope of this audit covered the Commission's contracting process related to:

- The Commission's contract with Rosenberger Construction, LLC for construction manager-at-risk services for the construction of the San Felipe de Austin State Historic Site Museum and facilities improvements (San Felipe Museum), which was effective September 7, 2016. Auditors reviewed the Commission's processes for contract planning, contract procurement, contract formation, and contract oversight through May 31, 2018.
- The Commission's contract with Duecker Construction Company, Inc. for construction manager-at-risk services for the interior renovation of the Admiral Nimitz Museum at the National Museum of the Pacific War State Historic Site (Admiral Nimitz Museum), which was effective December 12, 2017. Auditors reviewed the Commission's processes for contract planning, contract procurement, and contract formation through the contract award date.

### Methodology

The audit methodology included gaining an understanding of the Commission's contracting and monitoring processes; collecting and reviewing contract documentation; interviewing Commission staff; reviewing scoring documentation; reviewing site-visit documentation; and reviewing statutes, Office of the Comptroller of Public Accounts' (Comptroller's Office) requirements, and Commission policies and procedures.

The selection methodology for the contracts audited was risk based and considered factors such as contract dollar amount and type of contract.

## Data Reliability and Completeness

The Commission uses the Uniform Statewide Accounting System (USAS) to perform accounting functions. Auditors reviewed USAS vendor payment data from fiscal year 2013 (the planning of the San Felipe Museum) through May 31, 2018. In addition, auditors tested user access and segregation of duties associated with those payments in USAS. Auditors determined that the USAS vendor payment data was sufficiently reliable for the purposes of this audit.

## Sampling Methodology

Auditors selected risk-based samples of payments to the contractor for testing. The sample items were not representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- The Commission's contracts with Rosenberger Construction, LLC and Duecker Construction Company, Inc.
- The Commission's solicitation and bid documentation, evaluation criteria and documentation, and related supporting documentation for the two contracts audited.
- Commission conflict of interest forms and nondisclosure forms.
- Commission personnel and training certification records.
- Documentation supporting oversight activities for payment vouchers, including invoices and review documentation, and site-visit monitoring reports for the San Felipe Museum.
- Commission policies and procedures, including the *Texas Historical Commission Contract Management Handbook*, versions dated May 1, 2016, and November 20, 2017.

Procedures and tests conducted included the following:

- Conducted interviews with Commission staff.
- Tested selected Commission contract planning, procurement, formation, and oversight processes for compliance with the *State of Texas Contract Management Guide*, *State of Texas Procurement Manual*, Commission policies and procedures, and applicable rules and statutes.
- Reviewed procurement documentation to determine whether the solicitations for the contracts were properly posted and advertised, vendor proposals were properly reviewed for responsiveness, bid

proposals were properly completed and scored, and there was proper justification to select the vendors.

- Reviewed contracts to determine whether the Commission included contract terms that were essential and recommended by the *State of Texas Contract Management Guide*.
- Tested conflict of interest forms to identify any potential conflicts of interest and to determine whether potential conflicts of interest were properly disclosed.
- Tested contractor invoices to determine whether they were adequately supported, and contractor invoices were reviewed and approved before payment.

Criteria used included the following:

- Texas Government Code, Chapters 322, 442, 572, 656, 2155, 2156, 2251, 2252, 2261, 2262, and, 2269.
- The General Appropriations Act (84th Legislature).
- *State of Texas Procurement Manual*, versions dated 2012 and 2017.<sup>7</sup>
- *State of Texas Contract Management Guide*, versions 1.15 and 1.16.<sup>7</sup>
- Contract terms for the selected contracts.
- The *Texas Historical Commission Contract Management Handbook*, versions dated May 1, 2016, and November 20, 2017.

## Project Information

Audit fieldwork was conducted from February 2018 through November 2018. 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.

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<sup>7</sup> This publication was in effect during the planning, procurement, and formation of the procurements and contracts audited for this report. In August 2018, it was updated and released as the State of Texas Procurement and Contract Management Guide, current version 1.1.



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

- Lilia C. Srubar, CPA (Project Manager)
- Quang Tran, CFE (Assistant Project Manager)
- Rebecca Franklin, CISA, CGAP, CFE
- Jennifer Fries, M.S.
- Elijah Marchlewski
- Alana Montoro
- Minh Trang
- Dana Musgrave, MBA (Quality Control Reviewer)
- Becky Beachy, CIA, CGAP (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)/function(s) audited <u>or</u> 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 <u>moderately affect</u> 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 <u>substantially affect</u> 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 <u>critically affect</u> 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 Dennis Bonnen, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable John Zerwas, House Appropriations Committee

### Office of the Governor

The Honorable Greg Abbott, Governor

### Historical Commission

#### Members of the Historical Commission

Mr. John L. Nau, III, Chairman

Mr. Earl Broussard

Mr. Jim Bruseth

Ms. Monica Burdette

Mr. John W. Crain

Mr. Garrett Donnelly

Ms. Renee Dutia

Ms. Lilia Garcia

Mr. David Gravelle

Mr. Wallace B. Jefferson

Ms. Laurie Limbacher

Ms. Catherine McKnight

Mr. Tom Perini

Mr. Gilbert E. Peterson

Ms. Daisy Sloan White

Mr. Mark Wolfe, Executive Director



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