



An Audit Report on

Contract Change Orders and Amendments at the Texas Facilities Commission

In two contracts tested, the Texas Facilities Commission:

- Authorized work to begin and changes to become effective before change orders and/or amendments were executed.
- Missed certain required approvals and contract clauses for some amendments.
- Reported all amendments to the Legislative Budget Board.

Lisa R. Collier, CPA, CFE, CIDA
State Auditor

The Texas Facilities Commission (Commission) had processes and related controls to help ensure that change orders and amendments were administered in accordance with applicable requirements. However, those processes and controls had some weaknesses, and the Commission did not always follow them for the two contracts audited:

- A construction services contract for demolition of a state office building complex with 28 change orders and 3 associated amendments that increased the original contract value by \$2,181,032.
- An elevator maintenance services contract with 6 amendments as of May 2022 that increased the original contract value by \$2,464,160.

- [Background](#) | p. 4
- [Audit Objective](#) | p. 21

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

HIGH

TIMELINESS

The Commission authorized the contractor to proceed with changes to the work before executing formal modifications to the demolition contract, and some amendments to the elevator contract were not executed until after they became effective.

[Chapter 1 | p. 8](#)

MEDIUM

APPROVALS AND REVIEWS

Weaknesses in the Commission's Automated Procurement System and processes for approving and reviewing amendments resulted in the omission of required approvals and essential contract clauses.

[Chapter 2 | p. 13](#)

LOW

REPORTING

The Commission reported all amendments for the two contracts audited to the Legislative Budget Board; however, not all amendments to the elevator contract were reported accurately or timely.

[Chapter 3 | p. 19](#)

For more information about this audit, contact the Audit Manager, Courtney Ambres-Wade, or Lisa Collier, State Auditor, at 512-936-9500.

September 2022 | Report No. 23-002

Summary of Management Response

Auditors made recommendations to address the issues identified during this audit, provided at the end of each chapter in this report. The Commission agreed with the recommendations in this report.

Ratings Definitions

Auditors used professional judgment and rated the audit findings identified in this report. The issue ratings identified for each chapter were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

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.

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.

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

LOW: 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.

For more on methodology for issue ratings, see [Report Ratings](#) in Appendix 1.

Background Information

Descriptions of the two contracts audited and the Commission's change control processes.

Demolition Contract. The Commission entered into a construction services contract with Veit & Company Inc. for demolition of the Garlington Jerome (G.J.) Sutton state office building complex in San Antonio and site restoration services to prepare the land for sale.



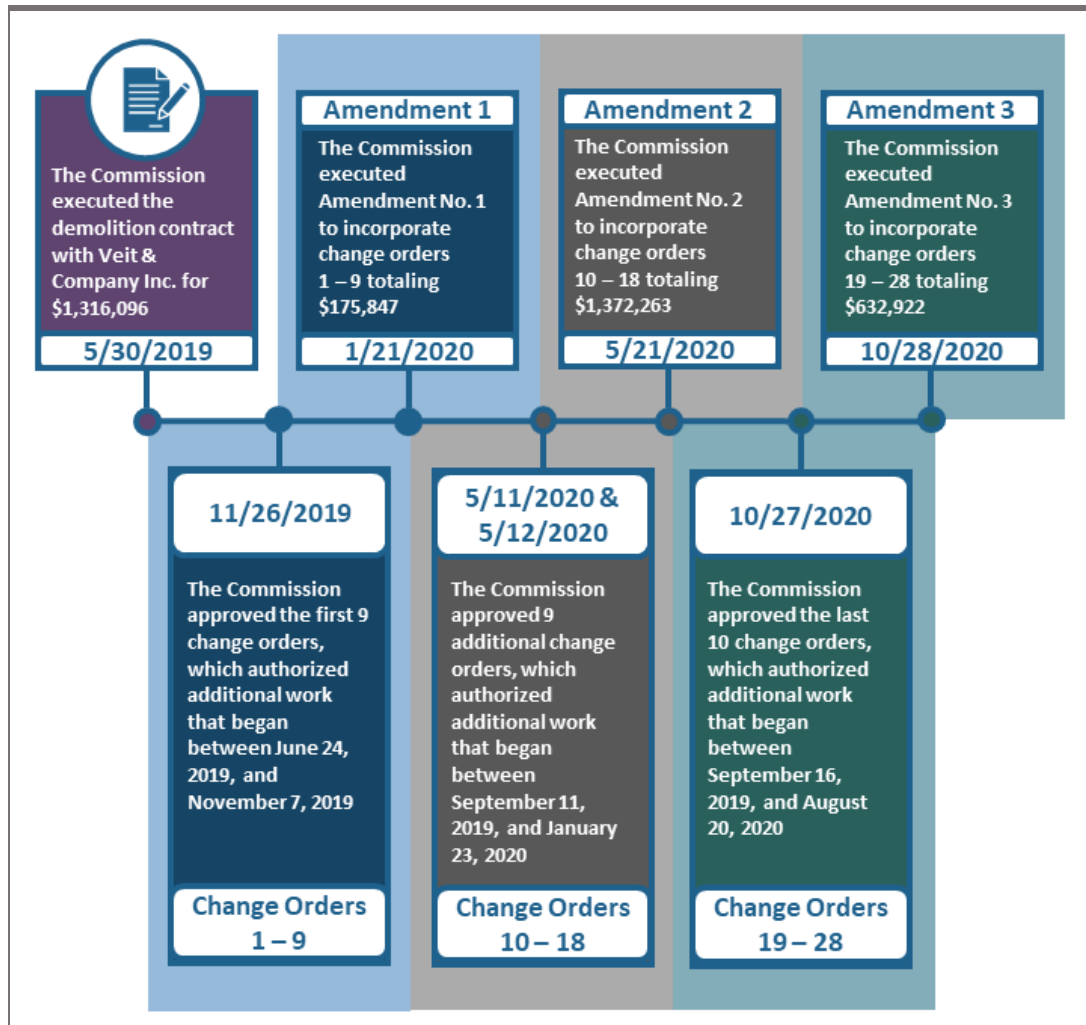
Demolition

The contract had an initial value of \$1,316,096 and was increased by \$2,181,032 through the execution of 28 change orders and 3 associated amendments. Those changes to the work, which increased the total contract value to \$3,497,128, were needed to address items such as unforeseen asbestos abatement; excavation and removal of contaminated soil, followed by filling and compaction of the voids; and additional site security.

Figure 1 on the next page presents the timeline of the contract from execution on May 30, 2019, through the third and final amendment executed on October 28, 2020.

Figure 1

Timeline of the Commission’s Demolition Contract May 2019 through October 2020



Source: The demolition contract documents, including the original contract, change orders and supporting documentation, and amendments.



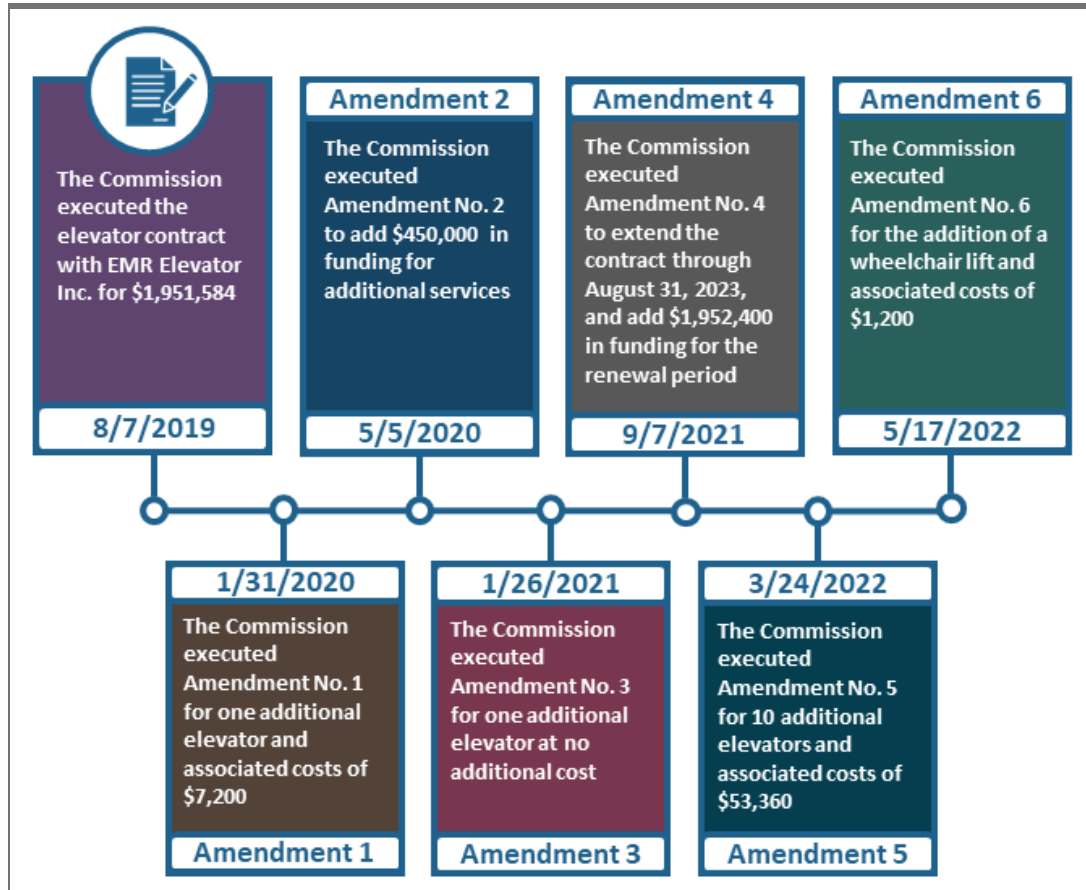
Elevator

Elevator Contract. The Commission contracted with EMR Elevator Inc. for elevator maintenance services for state office buildings and parking garages. The original contract term was September 1, 2019, through August 31, 2021, with a value of \$1,951,584. As of May 17, 2022, the Commission had executed 6 amendments that collectively increased the value to \$4,415,744, including a renewal that extended the contract through August 31, 2023.

Figure 2 presents the timeline of the contract from execution on August 7, 2019, through the sixth amendment, executed May 17, 2022.

Figure 2

*Timeline of the Commission’s Elevator Contract
August 2019 through May 2022*



Source: The elevator contract and amendments.

Change Control Processes. The Commission uses several mechanisms for making written modifications to its contracts:

- **Change orders for construction contracts.** The Commission uses a series of change order forms (A, B, and C) to authorize changes to the work or contract value. For the demolition contract, the Commission periodically incorporated approved change orders into the contract through amendments.
- **Amendments.** The Commission simultaneously processes two forms to review and approve amendments. Requisitions in the Automated Procurement System (APS) are used to approve funding, and contract

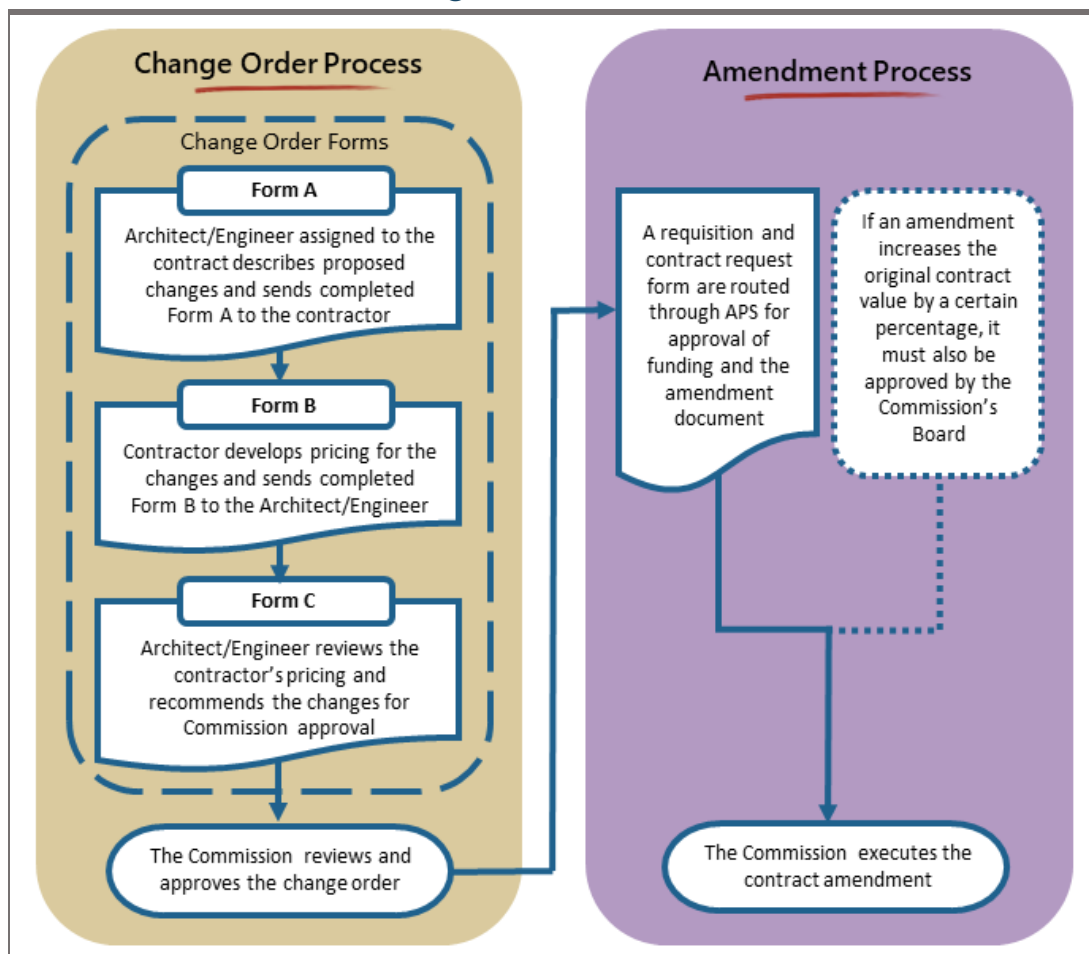
request forms attached to those requisitions are used to approve the amendment document.

In addition, approval from the Commission’s Board is required when amendments increase the value of the original contract by certain percentages. To obtain that approval, staff include the amendment as an item on an open meeting agenda for consideration and action by the Board.

Figure 3 provides an overview of the Commission’s processes for executing change orders and amendments.

Figure 3

The Commission’s Change Order and Amendment Processes



Sources: The Commission’s change order forms and the *TFC Contract Manual*.



HIGH

Chapter 1 Timeliness

The Commission had processes and controls for making written modifications to its contracts. However, it did not ensure that (1) change orders for the demolition contract were approved before the work began or that (2) amendments to the elevator contract were executed (i.e., signed) before they took effect.

The Commission authorized work to begin and changes became effective before change orders and/or amendments were executed.

Change Orders and Amendments for the Demolition Contract. To avoid delays in demolishing the G.J. Sutton state office building complex, the Commission authorized the contractor to proceed with changes to the work before formal modifications to the contract were executed. The Commission informally approved most changes to the work with the understanding that change orders would follow.



Demolition

The Commission ultimately processed 28 change orders; however, those change orders were not executed until between 19 and 407 days (or an average of 172 days) after the associated work began.¹ Subsequently, the Commission incorporated those change orders into the contract through 3 amendments, which were not executed until 211, 253, and 408 days (or an average of 291 days) after the associated work began.

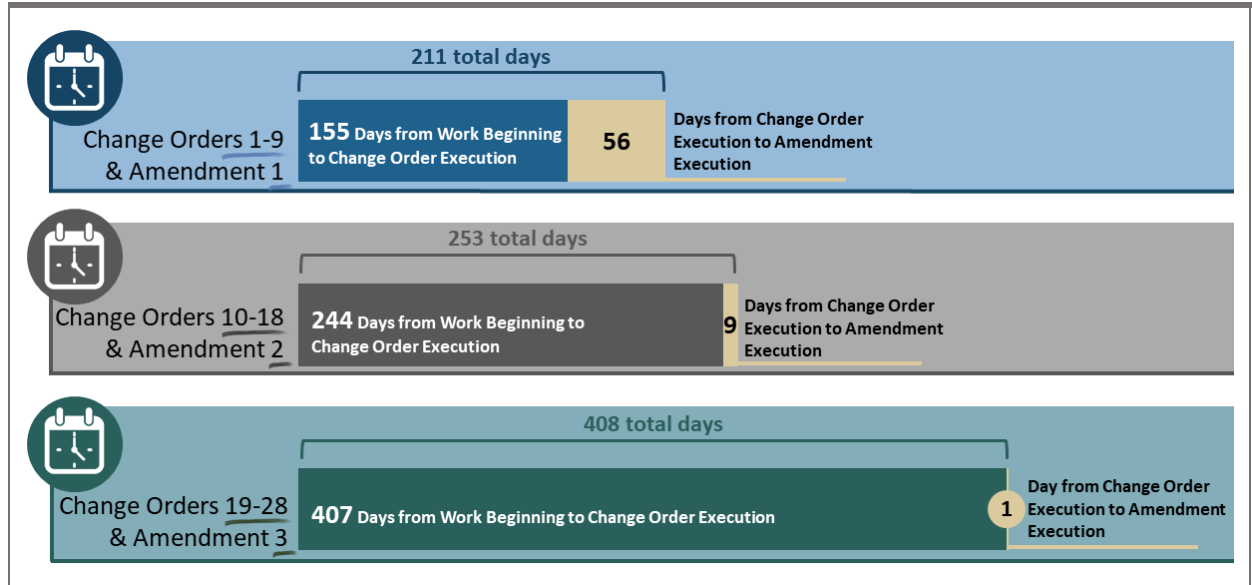
For each group of change orders, Figure 4 on the next page shows the number of days between when work associated with each group of change orders

¹ A similar issue was identified in *An Audit Report on Deferred Maintenance Projects at the Texas Facilities Commission* (SAO Report No. 20-042, August 2020).

began and when those change orders were executed, along with the additional days until the associated amendments were executed.

Figure 4

Timeline of Change Orders and Amendments for the Demolition Contract



Source: Change orders for the demolition contract.

The lag between work beginning and change order execution was exacerbated because the Commission did not approve individual change orders once the architect/engineer assigned to the contract recommended them for approval. Instead, the Commission approved groups of change orders once it was ready to incorporate them into the contract through an amendment. That approach to executing amendments was not consistent with the terms of the contract, which specified that change orders would be further documented through amendments at a certain frequency and when certain value thresholds were met (see text box for more information on those requirements). For example, 9 of the change orders exceeded 6 percent of the original contract value of \$1,316,096, and the architect/engineer recommended one or more change orders for approval during 5 of the 6 quarters following contract execution.

Amendment Requirements for the Demolition Contract

The contract required that change orders would be further documented through amendments:

- When single change orders exceeded 6 percent of the original contract amount or the aggregate previous change order value exceeded 25 percent of the original contract amount.
- Periodically and no less frequently than quarterly.

Source: The demolition contract.



Amendments to the Elevator Contract. The Commission did not execute 4 (67 percent) of 6 amendments to the elevator contract until after they became effective. Those 4 amendments were executed between 6 and 152 days after the effective dates stated in the amendments. See Figure 5 for the effective dates and execution dates for each amendment.

Figure 5

***Amendment Effective and Execution Dates
for the Elevator Contract***

Amendment	Amendment Effective Date ^a	Amendment Execution Date ^b	Days Between Effective and Execution Date
No. 1	9/1/2019	1/31/2020	152
No. 2	5/5/2020	5/5/2020	0
No. 3	1/1/2021	1/26/2021	25
No. 4	9/1/2021	9/7/2021	6
No. 5	3/24/2022	3/24/2022	0
No. 6	5/1/2022	5/17/2022	16

^a The amendment effective date is the effective date that was stated in the amendment.
^b The execution date is the date that the amendment was signed by the last party to the contract.

Source: The amendments to the elevator contract.

Per state requirements² and the Commission’s policies, contractors should not begin working on changes until modifications are fully executed. Commission policy also requires the date an amendment becomes effective to be consistent with the date it was executed. These requirements are important because authorizing work to begin and changes to become effective before modifications are fully executed could complicate the resolution of any disagreements that might arise.

² The *State of Texas Procurement and Contract Management Guide*, Versions 1.0 – 2.1, and the *2015 Uniform General Conditions for Construction Contracts*.

Recommendations

The Commission should ensure that modifications to its contracts:

- Are executed prior to authorizing work to begin.
- Are executed in accordance with the terms of its contracts.
- Do not become effective until they are executed.

Management's Response

1. The Commission should ensure that modifications to its contracts:
 - a. Are executed prior to authorizing work to begin.
 - b. Are executed in accordance with the terms of its contracts.
 - c. Do not become effective until they are executed.

Management Response:

Agree

- a. Facilities Design and Construction Division (FDC) will ensure change orders for contracts are approved prior to the work beginning by implementing a control to obtain change order approval notification on each contract.
- b. FDC executed amendments that were not consistent with the terms of the contract by using change orders in specific instances. Contract language has historically been very specific to each contract for change orders and amendments. FDC will provide recommendations for updates to contract clauses to specify the timing and frequency for change orders and amendments to General Counsel Division for review, due diligence and acceptance. FDC will include language in change order documents that prohibits work from being performed until the change order is approved. FDC will examine any other active lump sum construction contracts of this type to conform change requirements to a defined process that will ensure appropriate

approval and execution of change order prior to performance of the work and that changes are reported timely to TFC's procurement division and procurement database.

- c. General Counsel Division will ensure that the Contract Manual is updated to denote effective date and execution date. In addition, the Contract Manual will delineate processes addressing any variance between execution and effective dates.

Responsible Parties: General Counsel, Deputy Executive Director, Director of Project Management

Anticipated Implementation Date: 9/1/2023

MEDIUM

Chapter 2

Approvals and Reviews

The Commission obtained all required approvals for the change orders for the demolition contract. However, it did not obtain all required approvals or accurately complete certain review processes for the nine amendments tested.

Amendments for both contracts audited were missing certain required approvals, and the Commission's Automated Procurement System has weaknesses.

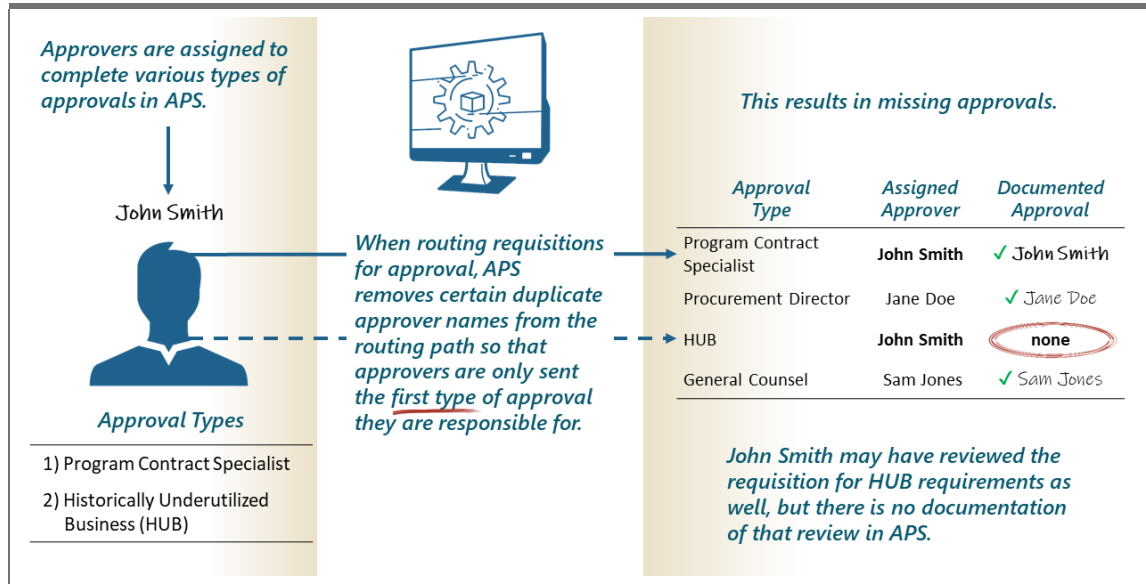
Requisition Approvals. For 7 (78 percent) of 9 amendments tested, requisitions used to approve funding were missing one or more required approvals. The approvals were missing due to (1) manual errors made when initiating requisitions and setting up approvers for the contracts audited and (2) weaknesses in the design of the routing path in the Automated Procurement System (APS), discussed in further detail below.

APS Approval Routing Path. APS routes requisitions for approvals based on (1) approvers established by the procurement division and (2) rules programmed into the system. However, when an approver is responsible for reviewing more than one aspect of a requisition, APS is programmed to route it to them for only the first type of required approval that appears in the routing path. As a result, the intended approver is not informed that they are responsible for multiple reviews, and there is no documentation indicating that all required approval types occurred.

Figure 6 on the next page depicts how requisitions are routed based on the programming in APS. In this example, APS has not asked John Smith to provide the second type of approval for which he is responsible.

Figure 6

Example of Intended and Actual Routing in APS



Sources: APS and the Commission.

Additionally, if a request to remove an approver from the routing path for a specific requisition is granted, APS does not keep a record of that exception or require any justification. Without a record of exceptions and justifications, other approvers may not know that an approval they rely upon was not completed, and the Commission may not be able to determine whether exceptions were intentional or appropriate.

Board Approvals. Similar to an issue identified in a prior audit report³, the Commission did not consistently follow its policies for obtaining its Board’s approval of amendments. Five of the nine amendments tested required the approval of the Commission’s Board. However, the Commission did not obtain Board approval for 2 (40 percent) of the 5 applicable amendments tested (Amendment No. 5 and Amendment No. 6 to the elevator contract).

³ See *An Audit Report on Deferred Maintenance Projects at the Texas Facilities Commission* (SAO Report No. 20-042, August 2020).

Amendments to both contracts were within scope, but essential clauses were not incorporated into the demolition contract.

Scope Review. A prior audit⁴ identified several instances where the scope of the amendment differed significantly from the scope of the original contract because the Commission did not have a process to verify that the scope of amendments aligned with the original solicitation and contract. Currently, the procurement and legal services divisions are responsible for verifying that changes are within the scope of the original solicitation and contract as part of their reviews and approvals of amendments. The amendments to both contracts audited were within the scope of the original solicitations and contracts. However, to further strengthen its processes as recommended in the prior audit, the Commission should still update the *TFC Contract Manual* to reflect this current process and provide guidance on how to review amendments to ensure that they align with the original scope of services.

Review for Essential Clauses. The Commission did not consistently ensure that new essential clauses were incorporated into contracts when they were amended for other reasons. After the two contracts audited were executed, the *State of Texas Procurement and Contract Management Guide* was revised to require several new clauses (see text box for more information on those revisions). Five new clauses applicable to the elevator contract were incorporated through amendments. However, the new *Cybersecurity Training* and *Human Trafficking Prohibition* clauses were not incorporated into the demolition contract through any of the three amendments to that contract, which were all executed in 2020, after the requirement that those two clauses be included became effective on September 5, 2019.

Texas Required Contract Clauses

The *State of Texas Procurement and Contract Management Guide* identifies essential provisions that agencies must include in their contracts to protect the interests of the State.

Version 1.2 of the Guide, effective September 5, 2019, added four essential clauses and Version 2.0 of the Guide, effective October 27, 2021, added seven essential clauses.

Sources: *State of Texas Procurement and Contract Management Guide*, Versions 1.2 and 2.0.

⁴ See *An Audit Report on Deferred Maintenance Projects at the Texas Facilities Commission* (SAO Report No. 20-042, August 2020).

Recommendations

The Commission should:

- Strengthen its process for setting up approvers in the Automated Procurement System.
- Ensure that all proper approvals are obtained and documented in accordance with its policies and procedures. Specifically:
 - Evaluate whether programming and controls in the Automated Procurement System can be modified and strengthened so that all required approvals, or exceptions and justifications, are recorded in the system.
- Update the *TFC Contract Manual* to reflect and provide guidance on its process for verifying that each amendment's scope of services falls within the scope of the original contract and solicitation.
- Ensure that it follows its review process for ensuring that new essential clauses are incorporated into amendments.

Management's Response

2. Strengthen its process for setting up approvers in the Automated Procurement System.

Management Response:

Agree

In FY23, TFC will be transitioning to CAPPS Financial system with a Go Live date of 9/1/2023. CAPPS financials will replace APS. TFC will focus on ensuring that the weaknesses identified during this audit will be addressed during the implementation of the new system.

Responsible Party: Procurement Director

Anticipated Implementation Date: 9/1/2023

3. Ensure that all proper approvals are obtained and documented in accordance with its policies and procedures. Specifically: evaluate whether programming and controls in the Automated Procurement System can be modified and strengthened so that all required approvals, or exceptions and justifications, are recorded in the system.

Management Response:

Agree

In FY23, TFC will be transitioning to CAPPs Financial system with a Go Live date of 9/1/2023. CAPPs financials will replace APS. TFC will focus on ensuring that the weaknesses identified during this audit will be addressed during the implementation of the new system. In the interim, we will discuss how these can best be addressed without major programming changes to APS during the transition period.

Responsible Party: Procurement Director

Anticipated Implementation Date: 9/1/2023

4. Update the TFC Contract Manual to reflect and provide guidance on its process for verifying that each amendment's scope of services falls within the scope of the original contract and solicitation.

Management Response:

Agree

General Counsel Division will include language in the Contract Manual to ensure that all divisions seek confirmation from the Procurement Director if the scope of a requested amendment potentially falls outside the scope of the solicitation or the underlying contract.

Responsible Party: General Counsel

Anticipated Implementation Date: 9/1/2023

5. Ensure it follows its review process for ensuring new essential clauses are incorporated into amendments.

Management Response:

Agree

General Counsel will include language in the Contract Manual that requires any statutorily required provision adopted by the agency is added to a contract when the contract is next amended or if an amendment is not anticipated within six (6) months of the required addition by administrative action (i.e., without the need for a Contract Request Form).

Responsible Party: General Counsel

Anticipated Implementation Date: 9/1/2023

LOW

Chapter 3 Reporting

The Commission complied with most requirements for reporting amendments.

For both contracts tested, the Commission reported all nine amendments to the Legislative Budget Board as required by the Texas Government Code, Sections 322.020 and 2166.2551, and the General Appropriations Act, Article IX, Section 7.04 (86th and 87th Legislatures).

All three amendments to the demolition contract were reported accurately and within required timeframes.

However, an error made when reporting Amendment No. 4 to the elevator contract resulted in the contract value being underreported by \$122,400 for that amendment and the two subsequent amendments. In addition, the Commission reported Amendment No. 1 to the elevator contract three days later than required. A prior audit report⁵ also identified an issue with the timeliness of reporting.

Recommendation

The Commission should ensure that it reports all contract amendments to the Legislative Budget Board accurately and within required timeframes.

Management's Response

6. The Commission should ensure that it reports all contract amendments to the Legislative Budget Board accurately and within required timeframes.

⁵ See *An Audit Report on Selected Capitol Complex Project Contracts at the Texas Facilities Commission* (SAO Report No. 19-016, December 2018).

Management Response:

Agree

Management Corrective Action:

Procurement will begin running monthly reports to reconcile purchases and contracts and LBB contracts database to ensure timely upload and data entry. With the implementation of CAPPs financials, LBB entries can be automated and procedures will be developed to ensure timely LBB upload and entry in the new system.

Responsible Party: Procurement Director

Anticipated Substantially Completed Date: 10/31/2022

Anticipated Fully Implemented Date: 10/31/2023



Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas Facilities Commission (Commission) has processes and related controls to help ensure that certain contract change orders and/or amendments are administered in accordance with applicable requirements.

Scope

The scope of this audit focused on change orders and amendments made to the following two contracts:

- Construction services related to the demolition of the G.J. Sutton state office building complex in San Antonio. The term of the contract was from May 2019 through December 2021.
- Elevator maintenance services for state office buildings and parking garages. As of May 2022, the term of the contract was September 2019 through August 2023.

The scope also included a review of significant internal control components related to the Commission's contracting processes.

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



- Tessa Mlynar, CIA, CFE (Project Manager)
- Jennifer Fries, MS (Assistant Project Manager)
- Brady Bennett, MBA, CFE, CGAP
- Armando S. Sanchez, MBA
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- Courtney Ambres-Wade, CFE, CGAP (Audit Manager)

Methodology

We conducted this performance audit from March 2022 through September 2022 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. In addition, during the audit, matters not required to be reported in accordance with *Government Auditing Standards* were communicated to Commission management for consideration.

Addressing the Audit Objectives

During the audit, we performed the following:

- Determined whether contract change orders and amendments were processed in accordance with the *State of Texas Procurement and Contract Management Guide*, Versions 1.2 – 2.1; the *2015 Uniform General Conditions for Construction Contracts*; the Commission’s policies and procedures; and the terms of the contracts audited by:
 - Interviewing Commission management and staff to gain an understanding of the Commission’s contract change control processes and the related internal controls.
 - Testing contract change orders and amendments to determine whether:
 - Changes were executed timely.
 - Changes were within the scope of the original solicitation and contract.
 - Changes were reviewed and approved by appropriate staff.
 - Amendments contained required clauses.
- Tested whether amendments were reported to the Legislative Budget Board (LBB) completely, accurately, and within the stipulated timeframes, as required by the Texas Government Code, Sections

322.020 and 2166.2551; the General Appropriations Acts (86th and 87th Legislatures); and the *LBB Contracts Database – Data Guide*.

- Reviewed the approval routing process in the Automated Procurement System (APS) to determine if it was adequately designed and operating effectively.

Data Reliability and Completeness

For requisition data from APS, auditors compared the population of requisitions to contract documents and confirmed the population of requisitions with Commission staff. Auditors determined that the requisition data was sufficiently reliable for the purposes of this audit.

Report Ratings

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.

Appendix 2

Related State Auditor's Office Reports

Report Number	Report Name	Release Date
<u>20-042</u>	<i>An Audit Report on Deferred Maintenance Projects at the Texas Facilities Commission</i>	August 2020
<u>19-016</u>	<i>An Audit Report on Selected Capitol Complex Project Contracts at the Texas Facilities Commission</i>	December 2018



Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Joan Huffman, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas Facilities Commission

Members of Texas Facilities Commission

Mr. Mike Novak, Executive Director



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