

December 9, 2020

These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on December 9, 2020 at 125 E. 11th Street, Austin, Texas 78701. The meeting convened at 10:01 a.m. with the following members present:

Texas Transportation Commission Audit Subcommittee:

Laura Ryan Commissioner, Audit Subcommittee Chair
Alvin New Commissioner, Audit Subcommittee Member

Administration Staff:

Benito Ybarra Chief Audit and Compliance Officer
Jeff Graham General Counsel
Rich McMonagle Chief Administrative Officer
Bill Hale, P.E. Chief Engineer
Quincy Allen, P.E. Director of District Operations
Michael Lee, P.E. Director of Engineering & Safety Operations

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 8:46 a.m. on December 1, 2020, as required by Government Code, Chapter 551, referred to as "The Open Meetings Act."

ITEM 1. Meeting Guidelines

The meeting began with the Chief Audit and Compliance Officer Benito Ybarra providing instruction and guidance on procedures for the meeting.

ITEM 2. Consider the approval of the Minutes of the September 23, 2020, Audit Subcommittee meeting

This item was presented by Laura Ryan, Audit Subcommittee Chair. Commissioner New made a motion to approve, Commissioner Ryan seconded the motion. The audit subcommittee approved the minutes of the September 23, 2020 Audit Subcommittee meeting by a vote of 2 - 0.

ITEM 3. Independent Auditor's Report

This item was presented by Kevin Smith, Audit Partner, Crowe LLP. Mr. Smith reviewed a preliminary summary for fiscal year 2020 audit. Mr. Smith covered the deliverables of the audit, due by December 20, 2020 to the Texas State Auditor's Office. The audit report of independent auditor on internal control over financial reporting and on compliance and other matters based on the audit of financial statements performed in accordance to Government Auditing Standards. The audit report will contain reports on Texas Department of Transportation, Texas Mobility Fund, Central Texas Turnpike System and Grand Parkway Transportation Corporation. Two issues were noted as deficiencies and will be discussed during executive session under Government Code Section 551.076 and Government Code Section 551.089. Mr. Smith discussed the required communication with those charged with governance including the auditor's responsibility, planned scope and timing of the audit, significant or unusual transactions, significant accounting policies in controversial or emerging areas, accounting estimates, auditor judgements about qualitative aspects of significant accounting practices, corrected and uncorrected misstatements and other communications. Mr. Smith discussed corrected (identified by management or Crowe during the process) and uncorrected misstatements categorizing them by fund and corrected or uncorrected and the net impact. Mr.

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Smith thanked staff for cooperation during the unique challenges faced during the COVID-19 pandemic. Commissioner New commented on the reference to COVID-19 and asked if the external auditor noted any disruptions in the current TxDOT audit processes due to the pandemic. Mr. Smith clarified that he was referencing slight delays due to staff transitioning to remote working and the global impact of the pandemic. He reassured that TxDOT was meeting audit expectations.

Commissioner Ryan requested further clarification on the corrected and uncorrected misstatements, summarizing that each line in the spreadsheet is a fund, but the amounts on each line are totaled together. Mr. Smith spoke in detail to each fund and provided assurance that the current uncorrected misstatements were being addressed.

ITEM 4. Compliance Division Update

Compliance Program Effectiveness

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander began the discussion covering the fiscal year 2020 compliance program assessment noting the TxDOT compliance program contains all elements identified in the U.S. Sentencing Commission Guidelines, the dedicated commitment from TxDOT Senior Leadership to the compliance program, and the alignment between the Human Resources Compliance Divisions. Director Alexander went on to highlight the numerous fiscal year 2020 Compliance Program Accomplishments split into seven categories, touching on COVID challenges and adjusting to remote working and doing virtual employee outreach. She finished this presentation covering allegation and investigation trends; notably, the 37% of allegations were from internal referral and 73% of substantiated investigations were from internal referrals. These increased percentages demonstrate the increased trust in TxDOT's reporting mechanisms and commitment to accountability. Commissioner Ryan inquired if Director Alexander had data to support that the notable increase in allegations is in middle management and is the concern for relation or lack of trust in specific locations or is it random.

Director Alexander noted that she has data showing it is management issues, and they are able to refer these matters to district management and Human Resources Division to coordinate on appropriate actions needed. Regarding retaliation fears and allegations, Director Alexander reaffirmed Commissioner Ryan's assessment that more training is needed at the supervisory level across the agency. Commissioner Ryan recommended that the Compliance Division to work with Human Resources Division to provide trainings.

Summary of Investigations – Fiscal Year 2021, First Quarter

This item was presented by Kristin Alexander, Director of the Compliance Division. The first quarter of fiscal year 2021 showed a decrease in new investigations from fiscal year 2020 fourth quarter; but an increase in the number of received allegations, the increase related to management issues and not fraud, waste, or abuse of TxDOT resources. The number of substantiated cases remained at 40%. Significant investigations included the falsification of materials testing results by a third party which was referred to the sanctions committee. Third-party violations were the highest category with two substantiated investigations and 5 unsubstantiated investigations. The other categories included misuse of state resources, conflict of interest, other policy violations, asset misappropriation and falsification of government records. In response to Commissioner Ryan's request from the September 23, 2020 meeting, the Compliance Division has begun tracking control and compliance recommendations from both substantiated and unsubstantiated investigations. For the first quarter of fiscal year 2021, investigation cases have led to 13 control and compliance recommendations, 5 of which focused on conflict of interest. The Compliance Division will work on a new outreach campaign related to conflict of interest, with a special focus on relationships between supervisors and subordinates.

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Traffic Safety Grants (TRF) – Pre-Award Review

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander discussed the results which identified risks for the Fiscal Year 2021 sixteen prospective grant recipients. The Compliance Division made entity-specific recommendations to the Traffic Safety Division (TRF) for each of the prospective grant recipients. Director Alexander emphasized annual traffic safety pre-award reviews provide assurance to TxDOT that prospective grant recipients are equipped to administer a federal grant. Commissioner Ryan asked how TxDOT provides training or communicates requirements needed to get a grant. Director Alexander answered that TRF performs outreach and provides specialists from their Division to monitor and provide technical assistance.

Also, requirements and program information are posted and discussed during outreach. Chief Ybarra remarked that during the EY External Assessment (presented September 23, 2020) one recommendation was for the function to perform more proactive engagements contributing to the TxDOT mission and this engagement adheres to that specific recommendation.

ITEM 5. Internal Audit Division Update

a. Management action plan (MAP) follow-up status

This item was presented by Craig Otto, Director of the Internal Audit Division. Director Otto wanted to highlight critical information regarding the first quarter. The slide presented showed a slight up-tick in closed MAPs (124 closed) due to additional staff resources on the engagements. For past-due MAPs the Internal Audit Division has worked with the TxDOT personnel to help them close risk gaps and learn what recommendations need to evolve, based on changing conditions. Overall, for Fiscal Year 2021 is focused on thirty-two MAP follow-up engagements with a total of 49 management action plans. Commissioner New appreciates the flexibility and professionalism of the Internal Audit Division but would like to emphasize the importance that the personnel need to understand the importance of closing open MAPs. Director Otto noted that his staff does continue to work in a professional manner, and his staff stresses the urgency of addressing risks. Commissioner Ryan agreed with Commissioner New's assessment. Commissioner Ryan stressed the need for open communication between the audit client and the internal audit staff; she also reminded Director Otto that if the issue is a needed resource, then those needs should be elevated to Chief Ybarra and to Executive Director James Bass. Director Otto responded discussing the controls aspect as well as resources, and commended TxDOT leadership for being good stewards; as well as helping the Internal Audit Division understand necessary needs. Chief Ybarra joined the conversation discussing risk rating of outstanding MAPs and comparison of the cost to mitigate the risk versus the cost to the agency to continue with the risk still present. Chief Ybarra reviews all past due items and based on his professional opinion he only elevates outstanding MAPs to the Audit Subcommittee that propose a higher risk to the agency.

Internal Audit Reports

(1) Local Government Projects Pre-Award

This item was presented by Craig Otto, Director of the Internal Audit Division. This audit reviewed local government (LG) project costs for TxDOT oversight (i.e., direct state cost) are estimated and established in advance funding agreements (AFA). These estimates can lead to an under/over allocation of LG costs that result in TxDOT retaining LG funds in excess of the amount required to oversee the project or requiring the LG to provide additional funds. Internal Auditors identified two

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findings in this audit. First, a documented, standardized district estimation methodology for determining direct state costs does not exist. As a result, variances in these costs can create refunds and/or receivables for the LG with TxDOT. The second finding was that a complete and accurate list of LG projects could not be determined. When comparing data from the enterprise resource planning system (ERP) and TxDOTCONNECT, differences within LG project details (i.e., project status and LG designation) were identified. Of the fifty-three projects reviewed, 18 completed projects were inaccurately reported. Director Otto highlighted the positive that came out of the audit included some districts implementing best practices. These districts implemented consistent reporting and data analysis to track state costs. The Fort Worth District utilized an accounts receivable report to improve communication to help forewarn for overspending. The impact of these implemented best practices show a consistent process and show the other districts ways to do business. The Commissioners had no questions on this audit or the findings but appreciated the focus on identifying best practices/solutions.

(2) Maintenance Project Payment Review and Approval

This item was presented by Craig Otto, Director of the Internal Audit Division. This audit focused on contracted routine maintenance payments made for FY 2020 was \$654.9M and included payment for goods and service such as flex pavement structure repairs, cut and restoration of asphalt pavement, and hot-mix asphalt repairs. Seven of the 25 districts' processes were sampled and evaluated.

The primary finding out of this audit was payments made for contracted routine maintenance work are not sufficiently supported with retained documentation that is reviewed and approved prior to payment.

Director Otto also highlighted best practices. The first best practice included 3 districts utilizing an automated tabulation worksheet to help to help ensure calculations are accurate. In addition, the Bryan District had all documentation in a centralized database. Commissioner Ryan asked for centralized documentation for invoicing and payments at the agency level. Chief Ybarra committed to have discussions and working with the Financial Management Division and the Information Technology Division on this recommendation.

ITEM 6. Executive Session

Pursuant to Government Code Section 551.071, consultation with and advice from legal counsel regarding any item on the agenda; and Government Code Section 551.076 and Government Code Section 551.089 discussion concerning department security audits. 551.074

The audit subcommittee recessed to executive session at 11:07 a.m., and executive session convened at 11:12 a.m.

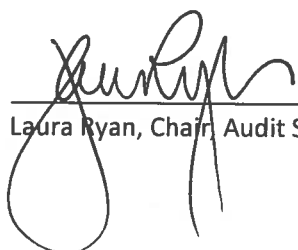
ITEM 7. Performance Evaluation of Chief Audit and Compliance Officer

Commissioner Ryan reconvened the audit subcommittee in open session at 12:30 p.m. She led the discussion by sharing that Chief Ybarra had achieved all Fiscal Year 2020 performance plan criteria; and that for Fiscal Year 2021 the criteria had been updated to include new elements. Due to the financial situation caused by the pandemic, there will not be any compensation rewards this fiscal year, a decision supported by Senior Leadership at TxDOT. Both Commissioners commended Chief Ybarra for his leadership, continued push for development of his staff, and personal drive to continue improving his knowledge and activities. Chief Ybarra thanked the Commission, his Division Directors and support staff for their focus in supporting a strong function.

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Commissioner Ryan adjourned the meeting of the December 9, 2020 Audit Subcommittee at 12:35 p.m.

APPROVED:



Laura Ryan, Chair, Audit Subcommittee