

These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on May 25, 2022 at 125 E. 11th Street, Austin, Texas 78701. The meeting convened at 10:00 a.m. with the following members present:

Texas Transportation Commission Audit Subcommittee:

Laura Ryan Commissioner, Audit Subcommittee Chair
Robert Vaughn Commissioner, Audit Subcommittee Member

Administration Staff:

Marc Williams, P.E. Executive Director
Benito Ybarra Chief Audit and Compliance Officer
Jeff Graham General Counsel
Rich McMonagle Chief Administrative Officer
Quincy Allen, P.E. Director of District Operations
Lance Simmons, P.E. Director of Engineering and Safety Operations
Mary Anne Griss Chief of Staff
Stephen Stewart Chief Financial Officer
Bob Kaufman Director of Communications and Customer Service
Anh Selissen Chief Information Officer

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:37 p.m. on May 17, 2022, as required by Government Code, Chapter 551, referred to as “The Open Meetings Act.”

Item 1. Safety Briefing

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

Item 2. Consider approval of the Minutes of the February 22, 2022, Audit Subcommittee meeting

This item was presented by Laura Ryan, Audit Subcommittee Chair. Commissioner Robert Vaughn made a motion to approve, Chair Ryan seconded the motion. The audit subcommittee approved the minutes of the February 22, 2022 Audit Subcommittee meeting by a vote of 2 – 0.

Item 3. Compliance Division Update

a. Industry Outreach

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander introduced planned outreach efforts to address the rising trend of third-party violations. A third-party training module is being built to include information about conflicts of interest, revolving door requirements, and other required conduct to do business with TxDOT. The module will also include TxDOT’s expectations, consequences to violations, and internal compliance program best practices. Additionally, this information will be posted on the new TxDOT website for access by all third parties. Director Alexander plans to present at TxDOT conferences, transportation industry conferences, and provide other educational resources to third parties. Outreach to the Texas Chapter of the Associated General Contractors (AGC) of Texas, American Council of Engineering Companies (ACEC), Texas Asphalt Pavement Association (TxAPA) and the Disadvantaged Business Enterprise (DBE) community is being planned. The Chief Audit and Compliance Officer, Benito Ybarra mentioned recent discussions and collaboration with the leadership of the Texas Chapter of the AGC on how to educate their membership on compliance and ethics. Chief Ybarra introduced two members of AGC of Texas’ leadership, CEO Jennifer Woodard and President, David Casteel and asked if they would provide comment. David Casteel mentioned all prospective AGC of Texas board members are required to sign conflict of interest and anti-collusion statements. He expressed support in working with TxDOT to develop training for their members

and offered additional support to help reach non-ACG members also. Chair Ryan expressed appreciation to AGC of Texas for the open arms approach with TxDOT to address the recent rise in violations.

b. Third-Party Risk Management Program

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander began by explaining the wide variety of third parties at TxDOT spanning areas such as highway improvement contracts, negotiated contracts, purchase orders, and design build contracts. Specific measures to address the rise in third-party violations include adding language to TxDOT contracts such as anti-collusion statements, additional references where third parties can find requirements, and required conduct statements requiring acknowledgement. A conduct statement acknowledgement is currently required for paper bids and will soon be required for electronic bids on highway improvement contracts. Grant management is another focus area of the third-party risk management program due to the diverse portfolio of subrecipients receiving funds from TxDOT. Last year, the Texas Administrative Code Rule on grant management was updated to include remedies for non-compliance and there are ongoing efforts to continue manage risks from grant management. Director Alexander reported a document is being developed with best practices on grant management in addition to grant management training for TxDOT staff and subrecipients. Establishing a grant management enterprise workgroup is being explored to support these efforts. Lastly, dashboards are being created to monitor different areas of third-party risk with the goal of using those metrics to inform targeted responses to areas of high risk. Commissioner Vaughn stated it sounds like the program is being built from scratch to which Director Alexander clarified that third-party risk management procedures are being done across the department and this program aims to fine-tune those processes while bringing them together with an agency-wide perspective.

c. Summary of Investigations – Fiscal Year 2022 Q3

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander began by highlighting 22 new investigations during the third quarter: a 35% decrease from the second quarter. The procurement card detection effort did not warrant any further investigations which strongly influenced the decrease in open investigations for the third quarter. A total of 23 cases were closed this quarter with 43% substantiated. Third-party allegations continue to drive investigation numbers with 70% of third-party investigations substantiated during the third quarter. Continued follow through by the districts on the thorough and timely review of vehicle misuse has helped manage the number of allegations in that category. Director Alexander reported one significant investigation from the third quarter involved a conflict of interest between a third-party and a TxDOT supervisor and is being handled through the sanctions and disciplinary action processes. Two other investigations of significance involved prompt pay violations regarding the payment of a sub-contractor with one of the vendors falsifying documents relating to the sub-contractor payment. Both are currently being handled through the sanctions process. An additional investigation of significance included the discovery of a missing TxDOT laptop by a member of the public who purchased the hardware at a resale company. Chair Ryan asked if the laptop was wiped when it was identified missing, and Director Alexander confirmed it was. Overall third-party violations continue to be the largest category of allegations followed by employee leave violations in the third quarter. Planned actions include continued focus and emphasis on third-party outreach, education, and the development of a third-party risk management program.

d. External Audit Report – Laredo and Webb County Area Metropolitan Planning Organization

This item was presented by Cheryl Durkop, External Audit Section Director within the Compliance Division. Section Director Durkop introduced the audit of the Laredo and Webb County Area Metropolitan Planning Organization (MPO) and described it as an overall successful audit. During the two-year period audited, the MPO implemented the necessary financial controls in compliance with applicable funding agreements. As the MPO completes the final stages of its restructuring, there are processes, procedures, and internal controls which should be strengthened. During the timeframe under review, the city of Laredo did not perform suspension and debarment checks as required and the city's

procurements did not meet all federal requirements. The MPO did not submit requests for reimbursement to TxDOT timely. Additionally, the MPO did not have written procedures for timesheets and has not implemented an entity-wide risk assessment process. TxDOT provided recommendations to the city and the MPO. Chair Ryan asked if this was a follow-up audit from a couple year ago to which Section Director Durkop answered no. Director Alexander clarified that the MPO requested the audit due to the restructure. Executive Director Marc Williams explained TxDOT will continue to see different types of risks because of the structure of the new federal infrastructure bill or from the consideration by the United State Department of Transportation (USDOT) to provide discretionary grant money directly to subrecipients instead of through a state Department of Transportation (DOT). Executive Director Williams communicated that according to federal law, TxDOT has the burden to ensure the money is spent in compliance with federal guidelines. Chair Ryan asked if self-audit procedures are provided to grant subrecipients to report their procedures and controls through self-evaluations? Chief Ybarra stated there are no existing self-audit processes provided to subrecipients, but it could be explored. Commissioner Vaughn asked for clarification if the agreements outline specific responsibilities of both TxDOT and the subrecipient? Executive Director Marc Williams shared the agreements do outline responsibilities the subrecipient must follow. He acknowledged progress has been made due to the continued efforts of the Compliance program and help of TxDOT's Transportation Planning and Programming (TPP) division. Executive Director Marc Williams shared his confidence in the foundation TxDOT has built to take on the challenge to manage the new funding from the federal infrastructure bill and additional prospective recipients of federal funding which may include city, county, non-profit, and MPO recipients with variances in control environments. Chief Ybarra shared ongoing annual meetings with Federal Highway Administration (FHWA) about risks and upcoming changes.

e. Action Plan Follow-up

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander outlined the findings issued by the external audit section to subrecipients. Out of the 40 total recommendations issued since 2018, 25 have been fully implemented with 15 outstanding. The Compliance division is focusing on the outstanding items from 2018 with the districts and divisions who oversee those entities. Once strong action plans are established to resolve outstanding items, the intent is to implement remedies for noncompliance. Chair Ryan asked if any of the remaining actions from 2018 were high-risk. Director Alexander mentioned there was a fraud risk identified in the audit of the Houston Galveston Area Council MPO due to previous theft of federal funds and the reason quick closure is key. Director Alexander presented a list of the remaining findings resulting from external audits of TxDOT. Development and implementation of user access review procedures and policies within the Information Technology division and Construction division continues to make progress. The development of a database for facilities-related contracts at TxDOT was stalled due to a setback but is making progress. Two issues outstanding from the financial report related to toll findings are being tested. Outstanding Bills & Riders requiring TAC updates from the 86th (2019) Legislative Session were communicated. Significant progress has been made in quarter three of fiscal year 2022 (FY22) with 77 (68%) implemented, leaving 37 outstanding. For outstanding Bills & Riders requiring TAC updates from the 87th (2021) Legislative Session, 25 (33%) have been implemented, leaving 51 outstanding. Chair Ryan expressed continued need to push towards completing the TAC updates to prevent TxDOT

Item 4. 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 began the discussion covering an update on Management Action Plans (MAPs). Director Otto explained the MAPs are held open until all issues are completed to maintain a working relationship and accountability. Concentration on the 22 MAP follow-up engagements from prior fiscal years continues. Director Otto reported partial mitigation efforts continue for the nine enterprise-level (Priority 4) MAPs. The commissioners had no questions.

b.1. Internal Audit Report – Construction Project Payments Review and Approval

This item was presented by Jennifer Stanush, Internal Audit Division Section Manager. Section Manager Stanush presented the findings from the Construction Project Payments Review audit performed over two quarters to allow for a larger number of transactions from the eight participating districts to be reviewed. This internal audit report was given an enterprise-level priority of 2. The first finding in the Construction Project Payments Review and Approval audit identified the required certifications and documentation to confirm Buy America compliance was not available for steel materials on federally funded projects. The impact of noncompliance could result in withdrawal of federal funds. The second finding identified inaccurate entry of suppliers for steel construction project materials within the construction and maintenance contracts management system, Site Manager. Finally, the third finding showed the Daily Work Reports (DWRs) for construction projects had insufficient information to support work performed by the third-party contractor or contained inaccurate payment quantities. Section Manager Stanush reported interviews with FHWA were completed to understand compliance requirements for Buy America along with investigations into TxDOT processes of how materials are inspected on the project and how the documents are confirmed prior to payment. Chair Ryan asked if the field inspectors are expected to know where the product comes from or if it is confirmed by the paperwork prior to payment. Section Manager Stanush stated the inspector completes the material verification prior to installation on the project in addition to the paper verification prior to payment. In response to this audit, on the job training on Buy America compliance is currently being explored for inspectors. Chair Ryan stated if an issue was found in 100% of the samples, it raises the question of appropriate staff awareness of the requirement. Chief Ybarra highlighted there is opportunity for improvement to have a single focus through a single Buy America process across the enterprise with follow-up to ensure progress.

b.2. Internal Audit Report – Facilities Management System

This item was presented by Craig Otto, Director of the Internal Audit Division. Director Otto began the presentation explaining the facilities management system is considered a sub-ledger program containing both financial information and operational preventative maintenance data. This internal audit report was given a program-level priority of 3. The first finding in the Facilities Management System identified the system was not being used to its fullest potential to support the agency based on its usage, reporting, documentation capabilities and performance metrics tracking. Delays in preventative maintenance can invalidate warranties and reduce the preventative repair budgets allocated to the districts for the subsequent years. Analysis on repair expenditure can improve cost-benefit analysis and enable decision-making. The second finding determined the Support Services (SSD) division did not establish a process to monitor the user access for the system to certify the external active accounts which could include both TxDOT employees and contractors. Director Otto expressed continued need for efficient solutions to ensure no additional strain is placed on the districts while still focusing on the documentation needed to effectively control risk. Chair Ryan mentioned there are systems that easily allows documentation to be uploaded while also requiring it to move forward in the process. Anh Selissen, Chief Information Officer, responded that TxDOT's repository for official state records exists and mentioned a current effort to digitize paper contracts in the San Antonio district. Chair Ryan mentioned the focus on making a process easy along with the communication on why something is important is the best way to support the districts as they navigate challenges in resources.

Item 5. Chief Audit and Compliance Officer Update

This item was presented by Benito Ybarra, Chief Audit and Compliance Officer. Chief Ybarra began the presentation highlighting the focus for FY22 is on prioritization, performance measures, and supportable reporting. In addition to the goal to provide assurance to the TxDOT leadership, specific attention is focused to ensure TxDOT is prepared for federal audits and legislative changes. Chief Ybarra highlighted audits expected to be completed soon, including Title VI goal setting and professional engineering budget

management. Continued emphasis is being placed on past due MAPs and continued risk exposure. To highlight one update, the Hidalgo Regional Mobility Authority (RMA) has been deferred to next year to allow them to execute on some projects before being audited. The RMA has repaid the SIB loan. Chief Ybarra highlighted his key initiatives for FY22 which include the Enterprise Risk Management (ERM) program, industry engagement on third-party compliance, human trafficking initiatives, and talent management. Tiffany Creuzbaur, Senior Executive Advisor to Chief Ybarra was hired to oversee the ERM program. Strategies to address concerns in talent management within the Internal Audit division are being deployed to ensure retention; with a focus on team building, monitoring, and collaborating with the Human Resource division on additional strategies. Chair Ryan asked how many positions are open in the Internal Audit division to which Director Otto replied four. Senior Advisor Creuzbaur presented on ERM and began by explaining that Enterprise Risk Management (ERM) is a holistic and disciplined approach to managing risk across the enterprise. ERM enables the prioritization of top risks that inform strategic decision-making, reduce volatility in business results, and increase performance. ERM exists within the context of strategy and is a continuous process with a broader scope than traditional more siloed approaches to risk management. Senior Advisor Creuzbaur highlighted things accomplished since the last Audit Subcommittee meeting which includes acquiring membership on the American Association of State Highway and Transportation Officials (AASHTO) Subcommittee on Risk Management and planned interviews with other state DOTs with ERM programs. The 2016 AASHTO Guide for Enterprise Risk Management and other National Cooperative Highway Research Program (NCHRP) reports focused on ERM programs at state DOTs are the focus of additional discovery efforts. A draft list of strategic risks, an ERM framework, and a draft ERM maturity model have been completed in addition to a draft proposal for executive consideration and alignment. ERM provides assurance towards the achievement of strategic objectives in a continuous, proactive, and comprehensive framework. The graphic presented on the slide shows the six steps of the ERM framework to Identify, Assess, Prioritize, Respond, Monitor, and Report risks after objectives are established. The ERM framework begins at an enterprise level and intended to mature to the program, project, and activity levels of the business. In addition to the enterprise management of risks, ERM's focus is to build a risk intelligent culture at all levels of the organization through building a shared understanding of risk, shared risk language, shared procedures on risk mitigation, and cohesive risk reporting. The progress made with the ERM program is due to the existing research available for state DOTs, valuable connections, and collaboration at TxDOT. Chief Ybarra reported being pleased with the progress since ERM reinitiated and the collaboration between the three lines (internal audit, compliance, and strategic planning division's risk management program). The collaboration allows Chief Ybarra to better understand what STR can do for the organization and how they can provide support when more analysis is needed instead of another audit. Overall, a better recognition to the opportunities we have is the goal for the collaboration. The commissioners had no questions.

Item 6. Executive Session

Pursuant to Government Code Section 551.071, consultation with and advice from legal counsel regarding any item on the agenda.

The audit subcommittee recessed to executive session at 11:02 a.m., and open session reconvened at 11:25 a.m.

Chair Ryan adjourned the meeting of the May 25, 2022 Audit Subcommittee at 11:25 a.m.

APPROVED:



Laura Ryan, Chair, Audit Subcommittee