

These are the minutes of the Texas Transportation Commission Audit Subcommittee quarterly meeting held on October 26, 2022 at 125 E. 11th Street, Austin, Texas 78701. The meeting convened at 2:00 p.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:

Benito Ybarra Chief Audit and Compliance Officer
Jeff Graham General Counsel
Rich McMonagle Chief Administrative Officer
Carl Johnson, P.E. Director of District Operations
Mo Bur, P.E. Director of Project Development
Alejandro Garcia Director of Communications and Public Affairs

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 9:56 a.m. on October 18, 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 July 11, 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 July 11, 2022 Audit Subcommittee meeting by a vote of 2 – 0.

Item 3. Federal and State Coordination

US Department of Justice, Texas Office of Attorney General, and TxDOT

The Chief Audit and Compliance Officer, Benito Ybarra highlighted recent collaboration with the U.S. Department of Justice (DOJ) and the Texas Office of the Attorney General (OAG) regarding antitrust and collusion. Chief Ybarra introduced two external guests: Jillian Rogowski, Trial Attorney at the DOJ, Antitrust Division and Maggie Sharp, Assistant Attorney General at the Texas OAG, Antitrust Division. Attorney Rogowski shared information on different anti-competitive practices in construction bidding and expressed that with the billions of dollars allocated to transportation projects across Texas comes increased opportunities for collusion (e.g., price fixing, bid rigging, and market allocation). The DOJ and OAG prosecute these crimes but also partner agencies to deter and prevent these crimes. Additionally, Attorney Rogowski expressed President Joe Biden's Bipartisan Infrastructure Bill introduces billions more dollars in funding for bridges, roads, and airports for Texas that is at risk for anti-competitive practices. Collusion is regularly seen within the construction industry, specifically the construction of roads and buildings paid for with federal and state taxpayer funds. The cost of collusion is simple, competitors want to eliminate competition to make more money for themselves. The Honorable Ed Carnes (U.S. Circuit Judge United State Court of Appeals Eleventh Circuit) "Like bears to honey, white collar criminals are drawn to billion-dollar government programs." The governing federal and state statutes are similar; at the federal level the Sherman Act written in 1980 is broad with a similarly broad statute in Texas. Attorney Rogowski explained there is no legal justification for these crimes; simply if an agreement is established to collude, there was a crime. Other legal requirements to convict include if the co-conspirators knowingly joined or intended to agree to these activities and proof that interstate or foreign commerce was affected. Some of the products, labor, or other goods/services cross state lines,

which can satisfy these requirements in antitrust cases. The requirement can also be satisfied if federal funding is involved in the project. The three major types of criminal antitrust violations are price fixing, bid rigging, and market allocation with several types of each. For a market allocation example, companies may agree to split up a market by geographical regions or agree to stay established in their geographical area but split up new customer markets. Attorney Sharp expressed the importance of looking for collusion in all areas of procurement and all industries. The Procurement Collusion Strike Force (PCSF) is the DOJ's partnership with other federal agencies, state/local agencies, and US Attorney Offices. So much of this crime is going undetected, that any collaboration is a mutually beneficial relationship both through providing potential training and education or prosecuting the crimes if they occur. Attorney Rogowski and Sharp offered their availability to assist the Texas Department of Transportation (TxDOT) in any concerns or efforts to prevent and deter these crimes. Further explained, this coordination and partnership is key to ensuring the most competitive and fair price for procurements using Texas taxpayer funds. Chief Ybarra thanked the guests for the training they provided and expressed the mutual goal of promoting competition. Chief Ybarra expressed the positive impacts that could come from continued collaboration and coordination. Chair Ryan further affirmed the training the DOJ and OAG offered to TxDOT staff was a proactive attempt and by bringing it in this public forum it shows a proactive approach to preventing the crime instead of reacting to a conviction. Chair Ryan asked that if any TxDOT industry partners have any questions or concerns, to reach out and ask questions so this activity can be prevented or identified. Chair Ryan and Chief Ybarra thanked the guests for their continued collaboration and presence.

Item 4. Financial Management Division Update

Annual update on the spirit of Sarbanes-Oxley Act compliance

This item was presented by Melinda Gildart, Deputy Director of the Financial Management Division (FIN). Deputy Director Gildart began by highlighting since 2014, the Sarbanes-Oxley (SOX) testing has been conducted by TxDOT's Compliance Division to provide better financial statement assurance at a reduced cost. The objectives of the SOX testing are to strengthen controls over financial reporting, improve reporting reliability, and to meet the Spirit of SOX requirements as directed by the Texas Transportation Commission. Twelve out of the thirteen of the key controls tested for effectiveness were found to be appropriately designed and operating effectively. All financial controls passed, and one general information technology control did not pass but had no significant impact on TxDOT financial reporting. As of October 26, 2022, the one general information technology control has been cleared effectively. For fiscal year 2023 (FY23), FIN will perform a risk assessment to identify high risk processes that impact financial reporting and determine controls that should be tested during the next SOX testing beginning in May 2023. The commissioners had no questions.

Item 5. Compliance Division Update

a.1. Summary of Investigations – Fiscal Year 2022, 4th Quarter

This item was presented by Anthony Thomas, Investigations Section Director in the Compliance Division. Section Director Thomas began by highlighting 40 new investigations during the third quarter of fiscal year 2022 (FY22): an 82% increase from the second quarter. A total of 25 cases were closed in the fourth quarter with 56% substantiated. Third-party allegations continue to drive investigation numbers. Significant investigations during the fourth quarter of FY22 involved falsification of Quality Assurance/Quality Control (QAQC) data, cybersecurity investigations, illegal dumping on right-of-way, and investigative assistance provided to the Department of Labor. The commissioners had no questions.

a.2. Summary of Investigations – Fiscal Year 2022 Overall

This item was presented by Anthony Thomas, Investigations Section Director in the Compliance Division. Section Director Thomas highlighted the 40% increase in investigations initiated from the previous fiscal year with a 30% increase in third party related allegations. Themes of third-party related allegations included material quality control, falsification of documents, collusion, conflict of interest, and breach of confidential information. The increase in allegations has lengthened the cycle-time for TxDOT

investigation staff to process and investigate the allegations, even with the increase in districts' identification of vehicle misuse and timesheet falsification. An average of 52% of allegations were substantiated in FY22. Planned actions include continued focus and emphasis on third-party outreach, education, the third-party risk management program, and a staffing strategy. Additionally, FY22 allegation totals for the employee conduct section of the Human Resources Division (HRD) also experienced an increase in new Equal Employment Opportunities (EEO) allegations. EEO complaints are typically connected to a protected class and involve allegations related to harassment, discrimination, unprofessional conduct, and retaliation. In FY22, harassment accounted for 57% and sexual harassment accounted for 20% of new allegations. Outreach and education with an emphasis on zero tolerance is needed to address this trend. Section Director Thomas shared a slide showing the spread of investigations by geographical location which showed similar spread over previous years. Commissioner Vaughn asked what factors contribute the most to the increase in third-party allegations. Section Director Thomas shared that third parties are reporting other third parties possibly as a direct result of the Compliance Division's outreach and education at industry events and conferences or with the intent to possibly gain competitive advantage. Chair Ryan asked if anything is at risk with longer cycle times, specifically if the time to dive deeper into the allegations is compromised. Section Director Thomas stated historically, priority has been given to investigations of third parties which naturally required additional staff resources, which causes longer cycle times for employee conduct investigations. Chair Ryan asked if there has been any discussion on the resolution to address the longer cycle times to which Chief Ybarra stated a staffing request has been submitted for consideration. Chair Ryan expressed her appreciation for all the outreach and education to third parties and asked if there are additional things TxDOT can do to further the compliance within the third-party organizations. Section Director Thomas explained that a lot of third parties are certified through Texas Asphalt Pavement Association and there are considerations of providing additional training focused on compliance for inspectors going through their certification processes. Chair Ryan expressed concern for the harassment allegation numbers and shared that another reiteration of TxDOT's zero tolerance for harassment may be needed. Commissioner Vaughn mentioned that Carl Johnson, Director of District Operations, could address the harassment with individual districts as needed.

b. Traffic Safety Grant Pre-Award Review

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander began by highlighting the purpose of the annual Traffic Safety Grant Pre-Award review is to evaluate an entity's ability to successfully administer a federal grant in accordance with federal and state requirements and identify additional monitoring needed by TxDOT to ensure compliance. The recent annual review evaluated ten prospective Traffic Safety Grant subrecipients that have not previously received TxDOT funding. The prospective subrecipients included non-profits, educational institutions, and local government organizations. Four out of the ten prospective subrecipients were impacted through the review process. One entity withdrew its grant proposal during the review and another entity was not awarded funding from TxDOT's Traffic Safety Division (TRF) due to insufficient controls in place to successfully administer the grant. Two entities were required to comply with Internal Compliance Program requirements prior to payment. Other issues identified during the review include two entities with outstanding federal single audit findings, six entities' policies and procedures not complying with federal requirements, and two entities' policies and procedures not addressing all the Traffic Safety Enforcement Program (STEP) requirements. The annual pre-award review provides assurance up front that the subrecipients are prepared to administer the grant funds appropriately. Commissioner Vaughn asked for examples of traffic safety grant projects to which Director Alexander explained that STEP grant funding typically is awarded to local law enforcement to provide additional resources for increased patrol hours to deter traffic safety violations. Additionally, other traffic safety grants target a variety of objectives like pedestrian or bicycle safety through different efforts like education and enforcement. Commissioner Vaughn asked if there are any physical safety-focused changes to infrastructure and Chair Ryan clarified if these grant funds are the same as those approved through the Highway Safety Plans

presented the TRF division. Director Alexander confirmed.

c. Action Plan follow-up

This item was presented by Kristin Alexander, Director of the Compliance Division. Director Alexander began by highlighting the 34 outstanding action item follow-ups issued by the External Audit section within the Compliance Division. All eight entities with action items are included in the second quarter FY23 follow-up plan, especially the Houston-Galveston Area Council Metropolitan Planning Organization that has outstanding action items from 2018. Director Alexander noted significant progress with follow-up items from audit findings issued by other entities to TxDOT. All recommendations relating to contract change management, facilities-related contracts, and federal portion of statewide single audit for FY21 have been fully implemented. Additionally, the Annual Comprehensive Financial report and the Comptroller of Public Accounts audit on post payments have a target implementation of December 31, 2022. Chair Ryan asked what the target implementation was for the two findings relating to the financial report. Director Alexander explained it was in the hands of the external auditor and related to toll operations that are currently being worked on. Regarding outstanding bills and riders from the 86th Legislature, five were implemented during the fourth quarter of FY22 with 27 remaining, of which 16 are highway designations. From the 87th Legislature, eight were implemented during the fourth quarter of FY22 with 43 outstanding, of which 14 are highway designations.

Item 6. 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 shared the success of the newly implemented MAP self-certification process for lower risks (priority 3 and 4) that allow the Internal Audit Division to focus resources on higher risks (priority 1 and 2). Since the implementation of this change, 29 MAPs have been self-certified by the respective MAP Owner District Engineer and/or Division Director. Director Otto reported continued mitigation efforts for the two enterprise-level (priority 1) MAPs currently being tested for closure. Director Otto expressed the need for the business to prioritize the completion of high priority MAPs first among many competing priorities. Chair Ryan suggested working with the Directors to help them prioritize the higher risks to ensure there is no additional high-risk exposure to the agency.

b. Internal Audit Report: Accounts Receivable – Damage Claims

This item was presented by Craig Otto, Director of the Internal Audit Division. Director Otto presented Accounts Receivable for Damage Claims audit rated at program-level priority 3. When TxDOT property is damaged by the traveling public, the damage claim process allows the recoverability of funds to repair the damage. The damage claim system was implemented in early 2022 to provide more visibility and accountability for damage claim processing. Over the past four fiscal years, recoverability of funds increased from 52% to 80% along with more money being recovered from less claims. The first finding in the Damage Claims audit identified confidentiality agreements are not required for users to gain and maintain access to the system. The system contains Personally Identifiable Information (PII) from police reports and crash system information. PII information can be exposed in email, printed copies, or other types of correspondence related to the processing of these claims. This information needs to be treated as confidential and with conscious awareness of the risk to those whose PII data is included in these reports. The second finding of the Damage Claims audit found the FIN division did not perform routine system access reviews for users to limit unauthorized or unnecessary access to the system. Instances were found where users had no log in activity. The third finding of the Damage Claims audit found uncollected claims were not submitted to the OAG within the established referral timeframe of 90 days. The fourth finding of the Damage Claims audit found records that did not always reflect the object that required repair or when a service was provided by TxDOT to a third-party. Chair Ryan suggested a year end user access review that could be compared to human resource records showing position changes or

offboarding to improve the efficiency of user access reviews. Director Otto mentioned when users leave the department, the Information Technology Division (ITD) removes the user from the active directory but not all systems are connected or linked to the active directory and may need to be manually managed. Chief Ybarra asked Scott Rogillio, Enterprise Resource Planning Branch Manager in ITD to coordinate with HRD to which Rich McMonagle, Chief Administrative Officer agreed.

c. Fiscal Year 2023 Audit Plan

This item was presented by Craig Otto, Director of the Internal Audit Division. Director Otto began the presentation explaining the Texas Internal Auditing Act, Government Code, Chapter 2102, requires the internal auditor to create an annual Internal Audit plan that is prepared using risk assessment techniques to determine the individual audits to be conducted during the year. The proposed FY23 Internal Audit Plan consists of 35 risk-based audit engagements aimed toward providing assurance and/or recommendations regarding the top 24% of risks identified in the completed annual risk assessment. Chief Ybarra determined adequate resources exist to ensure that risks identified in the annual risk assessment are adequately addressed within a reasonable time frame. Director Otto stated attrition continues to challenge the Internal Audit Division as competition for talent has been high. Six staff left the Internal Audit Division in August and September 2022 due to increased pay opportunities in private sector, personal family reasons, and benefit impacts to take-home pay and eight staff have been hired since August 1, 2022. Director Otto highlighted the slide showing the planned audit engagements in the proposed FY23 Internal Audit Plan based on the following risk themes: governance and third-party monitoring, program optimization, financial management and asset recovery, information technology and cyber security, project delivery, recurring, management action plan follow-ups, and contingency. Prioritized audits will be kicked off as soon as the plan is approved. The list of prioritized audits for quarter 1 and 2 of FY23 include: Management and Oversight of Utility Accounts, Right of way Budget Management, IT Contracted Support Services Management, Construction Project Management – Record Keeping Development, Public Funds Investment Act, Travel Expense Reporting Effectiveness, Oversize/Overweight Permit Revenue, Toll Facilities – Federal Reporting, and Evaluation of priority 1 and 2 activities to determine mitigation. Director Otto explained the contingency audits listed in the plan were identified in advance to serve as backups in case of any delays or issues with the other audits. Chair Ryan asked for clarification on what a voyager card was to which Director Otto explained it is the name of the fuel cards used at TxDOT.

Item 7. Executive Session

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

Chair Ryan noted there will be no Executive Session at this time.

Chair Ryan adjourned the meeting of the October 26, 2022 Audit Subcommittee at 2:59 p.m.

APPROVED:



Laura Ryan, Chair, Audit Subcommittee