State Auditor's Office

John Keel, CPA
State Auditor

An Audit Report on

Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

March 25, 2015

Members of the Legislative Audit Committee:

The Health and Human Services Commission (Commission) did not ensure that its decision to tentatively award a contract to GEO Care, LLC to manage selected operations at Terrell State Hospital provided the best value to the State. The Commission and the Department of State Health Services (Department) did not fully comply with the Commission's contract planning and procurement processes, which are designed to assist with ensuring that contracts are awarded to qualified vendors that offer best value in accordance with applicable state procurement laws and rules.

The Commission and the Department complied with certain contract planning and procurement requirements, such as providing the solicitation to the State's Contract Advisory Team for its review, publicly posting the solicitation, screening vendor proposals for completeness, and evaluating the only vendor proposal that it determined was complete. However, auditors identified significant deficiencies in the Commission's planning and proposal evaluation processes.

The Commission and the Department did not perform planning to identify the business services to outsource and the associated costs.

The Commission's executive commissioner directed the Commission's deputy executive commissioner for procurement and contracting services to initiate a solicitation for outsourcing Terrell State Hospital operations. However, when the solicitation was initiated, the Commission and the Department did not comply with the Commission's policy to conduct a needs assessment and cost-benefit analysis to support outsourcing those operations. Needs assessments and cost-benefit analyses are critical in (1) defining the scope of work for a solicitation and (2) evaluating vendor proposals.

Background Information on Terrell State Hospital

Terrell State Hospital is a 288-bed psychiatric inpatient hospital operated under the direction of the Department of State Health Services.

As of January 2015, Terrell State Hospital had approximately 980 employment positions (88 of which were vacant) to serve approximately 240 patients in the following programs:

- Adult acute program.
- Children and adolescent services.
- Forensics program.
- Geriatric services.
- Intensive behavioral program.
- Basic medical services (for example, health assessments, screenings, and physicals).

Terrell State Hospital's operating budget was approximately $59.8 million for fiscal year 2015.

Terrell State Hospital is accredited by The Joint Commission, a not-for-profit organization that sets standards for and evaluates a health care organization's level of performance in areas such as patient rights, patient treatment, infection control, and the organization's ability to provide safe, high-quality care. To earn and maintain accreditation, an organization must undergo an onsite survey by the Joint Commission at least every three years. Terrell State Hospital was last accredited in 2013.

In 2012, Terrell State Hospital was one of six state hospitals considered for privatization through a privatization effort directed by Rider 63, page II-73, the General Appropriations Act (82nd Legislature). However, no vendors submitted proposals to operate Terrell State Hospital.

Source: Department of State Health Services.

SAO Report No. 15-030

Robert E. Johnson Building
1501 North Congress Avenue
Austin, Texas 78701

P.O. Box 12067
Austin, Texas 78711-2067

Phone: (512) 936-9500
Fax: (512) 936-9400
Internet: www.sao.state.tx.us

The Commission's $30.0 million estimated contract value was not reasonable.

The draft solicitation that the Commission submitted to the State's Contract Advisory Team for its review specified an estimated total contract value of $30.0 million. However, neither the Commission nor the Department had documentation to support that amount. In addition, auditors determined that the $30.0 million cost estimate was unreasonable when compared to the following:

- The Department reported that the annual operating budget for Terrell State Hospital was approximately $55.7 million for fiscal year 2014 and $59.8 million for fiscal year 2015.

- The solicitation was for a five-year contract term with up to five additional two-year renewal periods. That suggests that the contract term could have been as long as 15 years.

The Commission may not have complied with Texas Government Code, Section 531.018, which requires the Office of the Attorney General to review certain health and human services agency procurements.

Texas Government Code, Section 531.018, specifies that, before a health and human services agency enters into a contract of $250 million or more for "goods or services in connection with the provision of medical or health care services, coverage, or benefits," it must notify the Office of the Attorney General during the initial planning process. The Office of the Attorney General must be given an opportunity to review the procurement process and the contract and to make recommendations. However, because its cost estimate was $30.0 million, the Commission did not provide information about the solicitation to the Office of the Attorney General. As discussed above, however, the $30.0 million cost estimate was not reasonable.

In addition, when considering Terrell State Hospital's annual operating budgets for fiscal years 2014 and 2015 and a five-year initial contract term, the estimated value for the contract could exceed $250 million.

The Commission did not consider price to be a factor in determining whether a vendor's proposal provided the State with the best value.

Title 1, Texas Administrative Code, Section 391.131(b), specifies that every procurement for goods or services must include consideration of price as a best value factor unless the purchasing entity (1) documents the reasons for disregarding price and (2) for a procurement that is estimated to exceed $100,000 in value, obtains the approval of the Commission. However, the Commission's Procurement and Contracting Services unit reported that it erroneously removed price as a best value factor. It asserted that occurred because it created the solicitation from a prior solicitation (used for a 2012 effort to privatize state hospitals) that required a vendor to achieve a 10 percent cost savings, which the Commission's executive commissioner did not want to require in the new solicitation. As a result, when the Procurement and Contracting Services unit removed the 10 percent cost-savings requirement, it also removed price as a best value factor.

The Procurement and Contracting Services unit started drafting the solicitation in March 2014; however, the Department did not submit an approved purchase requisition for the solicitation until June 2014.

The Commission's procurement policies and procedures require the submission of an approved purchase requisition, along with other documents related to a needs assessment and cost-benefit analysis, to the

Procurement and Contracting Services unit to initiate the process for drafting a solicitation. That approach assists in ensuring that the need for the goods or services is identified and that the required approvals have been obtained to begin development of a solicitation. However, the Procurement and Contracting Services unit started drafting the solicitation in March 2014, and the Department did not submit an approved purchase requisition for the solicitation until June 2014.

The Procurement and Contracting Services unit did not complete the development of appendices referenced in the solicitation prior to publicly posting the solicitation.

During the procurement process, vendors requested copies of six appendices that were referenced, but not included, in the solicitation. Those six appendices contained information related to hospital guidelines, a required form to describe a vendor's hospital budget, information on Terrell State Hospital facilities, performance indicators that would be used to monitor vendor performance, a list of active buildings at Terrell State Hospital, and accessibility requirements for certain information resources. The Commission's Procurement and Contracting Services unit asserted that, due to the hurried approach taken to complete the solicitation and publicly post it, those appendices were not completed and posted with the solicitation.

The Commission's proposal evaluation process did not provide complete and reliable information to demonstrate that the vendor the Commission selected provided the best value to the State.

The Commission collected, recorded, and calculated evaluation scores for the vendor proposal in an inconsistent manner. That resulted in an unreliable and inaccurate overall evaluation score for the vendor's proposal. In addition, the Commission did not verify the accuracy and completeness of the vendor's corporate background, qualifications, and experience. Instead, the Commission relied solely on information that the vendor described in its proposal.

The Commission did not document the executive commissioner's approval to tentatively award the contract, as required.

The Commission did not document the executive commissioner's approval to tentatively award the contract, as required. The Commission's deputy executive commissioner for procurement and contracting services stated that, after informing the executive commissioner that there were no impediments to making a tentative award to the one vendor proposal determined to be responsive, the executive commissioner gave a verbal approval to make the tentative contract award to that vendor, GEO Care, LLC. However, the Commission's procurement requirements specify that a recommendation for a tentative award must be documented and submitted to the executive commissioner for review and written approval. The recommendation documentation typically shows the best value criteria and other factors that support the tentative award decision. The Procurement and Contracting Services unit drafted a memorandum for the executive commissioner's review and approval, but the deputy executive commissioner for procurement and contracting services did not send that document to the executive commissioner.

Based on the deputy executive commissioner for procurement and contracting services' assertion of when the executive commissioner gave verbal approval of the tentative contract award, that verbal approval occurred prior to the completion of the proposal evaluation process. Specifically:

- The deputy executive commissioner for procurement and contracting services stated that (1) the executive commissioner gave a verbal approval on October 15, 2014, and (2) the verbal approval included instructions to make a tentative award announcement by October 17, 2014.

- The Commission's Procurement and Contracting Services unit asserted that the tabulation of the evaluation scores was completed on October 16, 2014.
- The Commission's Procurement and Contracting Services unit drafted a memorandum to tentatively award the contract on October 17, 2014.
- The Commission publicly announced the tentative contract award on October 20, 2014.

On September 11, 2014, GEO Care, LLC changed its legal business name with the Office of the Secretary of State to Correct Care, LLC. On February 20, 2015, the Office of the Secretary of State reported a tax forfeiture for Correct Care, LLC. As of February 26, 2015, the Office of the Secretary of State's records showed that Correct Care, LLC's status was "forfeited existence." According to the Office of the Comptroller of Public Accounts, a "forfeited" status indicates that the vendor forfeited the right to transact business in Texas.

During this audit, the Commission postponed contract negotiations. As of February 26, 2015, the Commission asserted that contract negotiations had been placed on an indefinite hold.

The attachment to this letter contains additional details on issues auditors identified in the Commission's and Department's planning and procurement for Terrell State Hospital operations, recommendations, and management's responses.

Sincerely,

John Keel, CPA
State Auditor

Attachment

cc: The Honorable Greg Abbott, Governor
Dr. Kyle Janek, Executive Commissioner, Health and Human Services Commission
Mr. Kirk Cole, Interim Commissioner, Department of State Health Services

Attachment

Section 1

Audit Results and Recommendations

While the Health and Human Services Commission (Commission) and the Department of State Health Services (Department) complied with certain contract planning and procurement requirements in the solicitation for managing selected operations at Terrell State Hospital, auditors identified significant deficiencies related to other planning and procurement processes that are designed to assist with ensuring that the State receives best value in accordance with applicable state procurement laws and rules.

Table 1 details the strengths and weaknesses that auditors identified in the Commission's contract planning processes, as well as recommendations to address the weaknesses.

Table 1

Contract Planning Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital	
Process Strengths	
1	The Commission had a contracting manual for its contract planning and procurement processes.
2	The Commission's procurement management and staff responsible for managing the contract planning and procurement processes for the solicitation had the required certifications and training.
3	The Commission obtained delegated purchasing authority from the State's Contract Advisory Team as required.
4	The Commission established historically underutilized business (HUB) rules that incorporated the HUB rules adopted by the Office of the Comptroller of Public Accounts, as required.
5	The Commission submitted the solicitation to the State's Contract Advisory Team prior to public posting of the solicitation, as required. The Commission requested and received an expedited review of the solicitation.
6	The Commission determined that subcontracting opportunities were probable from the solicitation and ensured that the solicitation required vendor proposals to include HUB subcontracting plans, as required.
7	The Commission's standard general contract provisions (included with the solicitation documents and reviewed by the State's Contract Advisory Team) allowed the Department to recoup costs for overpayment. Additionally, in the event the vendor sought to terminate the contract, the vendor was required to (1) provide the Department with at least 90 calendar days prior written notice and (2) submit a transition plan.
8	The solicitation required the vendor to provide (1) a 120-day transition plan for transferring state-operated services to private operation and (2) a transition plan, upon termination of the contract by either party, that would allow the continuation of services with minimal interruption or disruption.

Contract Planning Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital		
	Process Weaknesses	**Recommendations**
1	The Commission's executive commissioner directed the Commission's deputy executive commissioner for procurement and contracting services to initiate a solicitation for outsourcing Terrell State Hospital operations. However, when the solicitation was initiated, the Commission and the Department did not comply with the Commission's policy to conduct a needs assessment and cost-benefit analysis to support outsourcing those operations. The Commission's procurement requirements specify that health and human service agencies should identify their needs and determine budgetary, legal, or other constraints that may limit the ability to procure the service. The Commission's Procurement and Contract Services unit reported that it decided to use a revised version of the solicitation developed for a prior solicitation. However, planning for that prior solicitation did not include any detailed services or cost analyses related to Terrell State Hospital operations. In addition, during contract negotiations, the Department formally requested guidance and approval from the Commission's executive commissioner regarding the terms of contract negotiations with the vendor to which it made the tentative contract award. The request included several discussion topics involving the type of contract, whether the contract should involve construction projects, the term of the contract, the payment methodology, and the contract amount. Those discussion topics should have been identified and resolved during the contract planning process.	The Commission should identify and evaluate the services at Terrell State Hospital that it wants to outsource and determine the operating costs associated with those services.
2	The Commission did not establish a reasonable cost estimate for the value of the contract. The Commission did not have documentation to support how it determined the $30.0 million contract cost estimate it reported to the State's Contract Advisory Team. Auditors determined that cost estimate was not reasonable because Terrell State Hospital (1) had annual operating budgets of approximately $55.7 million in fiscal year 2014 and $59.8 million in fiscal year 2015 and (2) the Commission was seeking a contract with a term of five years and five two-year renewal periods.	The Commission should maintain documentation that shows how it calculates the estimated contract cost that it reports to the State's Contract Advisory Team.
3	As a result of not reasonably estimating a contract value, the Commission may not have complied with Texas Government Code, Section 531.018, which requires the Office of the Attorney General to review procurement processes involving health- and medical-related contracts that have a value of $250 million or more. In addition, when considering Terrell State Hospital's annual operating budgets for fiscal years 2014 and 2015 and a five-year initial contract term, the estimated value for the contract could exceed $250 million.	The Commission should determine whether procurements meet the statutory requirements for initiating a review by the Office of the Attorney General and document the results of those determinations.
4	The Commission did not require price to be a factor in determining whether a vendor's proposal offers the State best value, as required. The Commission and the Department staff erroneously removed price from the statement of work and as a best value requirement during the development of the solicitation. As a result, the solicitation specified the best value criteria as follows (in order of precedence): ▪ "Business Solution Meets or Exceeds [solicitation] requirements." ▪ "Experience Performing Services Described in [solicitation]." ▪ "Quality and Reliability of Respondent's Services." Title 1, Texas Administrative Code, Section 391.131(b), requires health and human services agencies to ensure that every procurement includes price as a factor unless the purchasing entity (1) documents the reasons for disregarding price and (2) for a procurement that is estimated to exceed $100,000 in value, obtains the approval of the Commission. However, the Commission and the Department did not document those reasons or obtain the required approval.	The Commission should establish a process to assist with ensuring that solicitations include the best value criteria that statute and its rules require.

Contract Planning Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital		
5	The Commission's Procurement and Contracting Services unit did not provide an explanation for not implementing certain recommendations that the State's Contract Advisory Team made after it reviewed the solicitation and standard general contract provisions. The Procurement and Contracting Services unit did not implement 11 (44 percent) of the 25 recommendations that the Contract Advisory Team made. Those 11 recommendations were related to specification of the contract term, limitations on the State's funding and liability with regard to contract termination, clarification regarding allowing a vendor to build a facility for the Terrell State Hospital, specification of required qualifications and certifications for certain vendor personnel, record retention requirements, and requirements for maintaining the confidentiality and security of electronic patient records. Texas Government Code, Section 2262.101(d), specifies that a state entity shall comply with a recommendation made by the Contract Advisory Team or submit a written explanation regarding why the recommendation is not applicable.	The Commission should not post a solicitation until it verifies that it has fully complied with the requirements for obtaining a Contract Advisory Team review.
6	The Commission's Procurement and Contracting Services unit drafted the solicitation before the Department submitted an approved purchase requisition for the solicitation. The Procurement and Contracting Services unit started drafting the solicitation in March 2014 upon the request of the Commission's executive commissioner. However, the Department did not submit an approved purchase requisition for the solicitation until June 3, 2014. The Commission's procurement policies and procedures require the submission of an approved purchase requisition, along with other documents related to needs assessment and cost-benefit analysis, to the Procurement and Contracting Services unit to initiate the process for drafting a solicitation. That approach assists in ensuring that the need for the goods or services is identified and that the required approvals have been obtained to begin development of a solicitation.	The Commission should ensure that all required documents are approved and submitted prior to the development of a solicitation.
7	The Commission's Procurement and Contracting Services unit did not complete the development of appendices referenced in the solicitation prior to publicly posting the solicitation. During the procurement process, vendors requested copies of six appendices that were referenced, but not included, in the solicitation. Those six appendices contained information related to hospital guidelines, a required form to describe a vendor's hospital budget, information on Terrell State Hospital facilities, performance indicators that would be used to monitor vendor performance, a list of active buildings at Terrell State Hospital, and accessibility requirements for certain information resources. The Commission's Procurement and Contracting Services unit asserted that, due to the hurried approach taken to complete the solicitation and publicly post it, those appendices were not completed and posted with the solicitation.	The Commission should verify that it has completed and included in solicitations all referenced appendices prior to publicly posting solicitations.

Table 2 details the strengths and weaknesses that auditors identified in the Commission's contract procurement processes, as well as recommendations to address the weaknesses.

Table 2

Contract Procurement Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital	
Process Strengths	
1	The Commission publically advertised the solicitation for outsourcing select Terrell State Hospital operations, as required.
2	The Commission verified that the vendor proposals it received met the submission requirements of the solicitation. It received two proposals, only one of which it deemed responsive. It determined that the other proposal was nonresponsive because that proposal did not include several required documents, such as the required HUB subcontracting plan, a compliance plan, staff job descriptions, and a cost proposal.

Contract Procurement Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital		
3	Ten Department staff with expertise in clinical services, patient protection, facility management, financial operations, hospital administration, and human resources reviewed the responsive proposal.	
4	Prior to evaluating the responsive proposal, the 10 Department staff who reviewed the responsive proposal completed and signed nondisclosure agreements that included requirements for disclosing conflicts of interest. None of the members of the evaluation team reported conflicts of interests.	
5	The solicitation required vendors to describe how they planned to maintain the same level of care.	
	Process Weaknesses	**Recommendations**
1	The Commission provided a response to a vendor question that was not consistent with the scope of work defined by the solicitation. A vendor submitted a question to the Commission asking who would be responsible for the repairs, upgrades, and replacements of known buildings, equipment, and other infrastructure items. The Commission responded by stating the requirements of the solicitation, but it also included in the response a statement specifying that the vendor would be responsible for only the first $25,000 of any modification to state-owned property or equipment. However, the solicitation specified that the vendor would be responsible for all maintenance and deferred maintenance of facilities and expenses. A November 2014 consultant's report, which was part of a mandate by Rider 83, page II-76, the General Appropriations Act (83nd Legislature), specified that the 10-year cost of deferred maintenance and ongoing facility maintenance for Terrell State Hospital would be approximately $63.9 million. In addition, another vendor question was posted that asked a similar question concerning facility maintenance costs. For that question, the vendor asked the Commission to modify the requirement concerning the vendor's responsibility of facility maintenance costs to only the first $25,000 of any modification to state-owned property or equipment; however, for that question, the Commission responded that "Consideration was contemplated but no modification will be possible. This is the standard requirement for all [state hospital] facilities."	The Commission should ensure that responses to vendor questions are consistent with the requirements specified by its solicitations.
2	The evaluation document that the evaluation team used to evaluate the vendor proposal erroneously included a requirement to review the vendor's proposal response for achieving a 10 percent cost savings. However, the 10 percent cost-savings requirement was not part of the solicitation requirements. That requirement was part of the 2012 solicitation for privatizing state hospitals as directed by Rider 63, page II-73, the General Appropriations Act (82nd Legislature). The Commission's Procurement and Contracting Services unit reported that it revised the evaluation document from the 2012 solicitation to evaluate the solicitation for outsourcing Terrell State Hospital, but it mistakenly forgot to remove the cost-savings requirement. The evaluation team scored the cost-savings criterion, assigning scores ranging from a low of four to a high of eight. Those scores were used in determining the overall score for the vendor proposal.	Before it uses an evaluation document to assess vendor proposals, the Commission should verify that the evaluation document includes only the requirements in the associated solicitation.
3	The Commission did not correctly compile and accurately calculate the overall evaluation score for the proposal submitted by the vendor to which it tentatively awarded a contract. Seven of the ten members of the evaluation team evaluated certain solicitation requirements more than once; in some instances, they gave significantly different scores each time. In addition, the Commission omitted certain evaluators' scores when it calculated the overall evaluation score for best value. The Commission asserted that the errors in scoring occurred because it processed the evaluation scores in a hasty manner to meet the procurement deadline to execute a contract by January 1, 2015.	The Commission should: ▪ Ensure that each member of an evaluation team provides a single evaluation score for each solicitation requirement that a member reviews. ▪ Accurately calculate overall evaluation scores according to the evaluation scores provided by all members of an evaluation team.

Contract Procurement Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital		
4	The Commission did not hold a meeting to allow members of the evaluation team to discuss significant differences in their evaluation scores, as its procedures permitted. The Commission asserted that the intent of its evaluation process was to determine a field of competition for a solicitation. The Commission also asserted that it waived that meeting because it had only one responsive proposal and holding a meeting would not have added value to the evaluation process.	The Commission should allow members of the evaluation team to meet and discuss variances in evaluation scores to assist with ensuring that they all have the same understanding of the solicitation requirements and access to information available for evaluating proposals.
5	The Commission did not verify the corporate background, qualifications, and experience of the vendor that submitted the responsive proposal. The Commission relied only on the information that the vendor reported in its proposal. The solicitation permitted the Commission to confirm the capabilities a vendor described through oral presentations, site visits, demonstrations, and references.	The Commission should ensure that its evaluation of vendor proposals requires it to verify the corporate background, qualifications, and experience that vendors report.
6	The Commission did not establish a minimum qualifying evaluation score for proposals. The Commission asserted that its rules allow it to begin immediate contract negotiations with solicitations that receive only one proposal. However, that approach exposes the Commission to the increased risk of awarding and executing a contract with a vendor that may not meet the minimum qualifications.	The Commission should establish a standard minimum qualifying evaluation score for health and human services solicitations to ensure that a vendor proposal meets the minimum qualifications and expectations for a solicitation.
7	The Commission's Procurement and Contracting Services unit did not document the executive commissioner's approval to tentatively award the contract, as required. The Commission's deputy executive commissioner for procurement and contracting services asserted that, on October 15, 2014, after the executive commissioner was informed that there were no impediments to making a tentative award to the only vendor proposal determined to be responsive, the executive commissioner gave verbal approval to tentatively award the contract. On that same date, the Procurement and Contracting Services unit collected the evaluation scores from the evaluation team. The Procurement and Contracting Services unit tabulated the final evaluation scores on October 16, 2014. The Procurement and Contracting Services unit drafted a memorandum to obtain written approval from the executive commissioner on October 17, 2014. However, that memorandum was not finalized and it was not sent to the executive commissioner. That memorandum would typically list the best value factors and other information that were considered to support the tentative award decision.	The Commission should document approvals to tentatively award contracts and include in that documentation the best value factors that support the tentative contract award decision.

Contract Procurement Process Strengths and Weaknesses in the Solicitation for Managing Selected Operations at Terrell State Hospital		
8	The Commission did not ensure that all members of the contract negotiation team signed nondisclosure agreements before participating in negotiations with the vendor to which it tentatively awarded a contract. Four (36 percent) of the 11 team members did not sign nondisclosure agreements prior to the start of negotiations. Specifically: ▪ Two team members, who were Department employees, signed nondisclosure agreements during this audit. ▪ One team member signed a nondisclosure agreement approximately one week after attending the vendor presentation. ▪ One member, who was a Commission employee, never signed a nondisclosure agreement and resigned prior to the start of this audit. None of the members of the contract negotiating team who signed a non-disclosure agreement reported a conflict of interest.	The Commission should consistently obtain signed nondisclosure agreements from management and staff prior to their participation in contract negotiations.
9	The Commission's Procurement and Contracting Services unit did not document its notification to the vendor whose proposal was rejected. While the Procurement and Contracting Services unit screened the two vendor proposals that it received and determined that one vendor proposal did not meet the solicitation requirements, the Procurement and Contracting Services unit did not notify the vendor in writing of the reasons its proposal was rejected. The Commission's procurement policies require that it notify, in writing and in a timely fashion, each vendor that does not meet the screening requirements. The written notification must specify why the offer has been eliminated from further consideration and include a statement of the Commission's willingness to provide a debriefing.	The Commission should ensure that vendors whose proposals are rejected during the screening process are notified in the manner prescribed by its procurement policies before it begins its evaluation process.

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

KYLE L. JANEK, M.D.
EXECUTIVE COMMISSIONER

March 23, 2015

John Keel, CPA
State Auditor
1501 North Congress Avenue, Suite 4.224
Austin, Texas 78711-2067

Dear Mr. Keel:

Attached please find the Health and Human Services Commission's management response to the State Auditor's Office (SAO) draft audit report titled "An Audit Report on Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services."

We have carefully reviewed the information contained in the draft report and appreciate the opportunity to provide our response to SAO's findings and recommendations.

Sincerely,

Kyle L. Janek, M.D.

P. O. Box 13247 • Austin, Texas 78711 • 4900 North Lamar, Austin, Texas 78751 • (512) 424-6500

Health and Human Services Commission
Management Response to the State Auditor's Office Report:

An Audit of the Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

The Health and Human Services Commission (HHSC) provides procurement and contracting support to five Health and Human Services (HHS) agencies, including the Department of State Health Services (DSHS). This support, provided by HHSC Procurement and Contracting Services, includes responsibility for contract procurements and establishing HHS agency guidance for the planning of contract procurements for all five HHS agencies. As a result, HHSC is providing the following management response to address the State Auditor's Office audit of the Procurement for Terrell State Hospital Operations at HHSC and DSHS.

Summary of Management Response

HHSC has determined that no further action on the request for proposal and tentative award related to Terrell State Hospital operations will be taken and the procurement that was the basis of this audit has been terminated. However, the issues identified in this report help inform a comprehensive initiative currently in progress in HHSC to address weaknesses in contract management, with emphasis on evaluating and strengthening contract management policies, processes, performance, compliance, and oversight. HHSC has a commitment, through this initiative, to not only correct the issues identified in this and other recent audits, but to become a leading model of how contracting in state government should be managed and performed. HHSC has hired and deployed a team of contract experts, all with extensive experience in Texas state government contract management, to examine high-risk contracts, correct deficiencies that are identified, and implement improvements needed to improve contract management in all HHS agencies.

As part of its initiative, HHSC is conducting a thorough review of all contract and procurement policies and processes. The outcome of this effort will be the identification of opportunities for standardization; development of contract planning and procurement tools, templates, and checklists; improvements in the existing management control structure designed to strengthen preventive and detective controls; and centralized oversight and quality assurance in all phases of the contracting cycle, including the planning and procurement phases examined during this audit. HHSC is identifying needed improvements in its Health and Human Services Contract Administration Tracking System (HCATS) contract management system, and requiring that all agencies use one system for contract management. New processes are already in place to obtain executive level review and approval of all contracts that reach specified dollar thresholds.

In addition to the policy, process, contract management system, and oversight improvements that are underway, HHSC's Risk and Compliance Management division is assisting Procurement and Contracting Services in the development of risk assessment methods designed to identify high-risk contracts, to more efficiently utilize contract monitoring resources, and to manage risk throughout all phases of contracting. A new Chief Ethics Officer is providing instruction on all contractual ethics issues and how to best mitigate those issues, and is reviewing the adequacy

and effectiveness of ethics disclosures. A team of lawyers has been organized and dedicated to providing support throughout each phase of the contracting cycle.

Contracting policy and process improvements will be formalized through revisions in the HHS Procurement Manual and included in the Contract Management and Risk Assessment Manual currently being drafted. These changes will be communicated to Procurement and Contracting Services staff and HHS agency contract managers through training sessions and targeted information sharing, such as by publishing articles in the Connection newsletter, and enforced through quality assurance and centralized oversight to ensure required processes and documents are completed, documentation has been reviewed and approved by an appropriate level of management, and contract records, including contract planning documentation, are maintained in a centralized location.

While the activities described above address many of the recommendations included in this audit report, additional responses are included in the Contract Planning and Contract Procurement sections that follow.

Contract Planning

SAO Recommendation

The Commission should:

- *Identify and evaluate the services at Terrell State Hospital that it wants to outsource and determine the operating costs associated with those services.*
- *Maintain documentation that shows how it calculates the estimated contract cost that it reports to the State's Contract Advisory Team.*
- *Determine whether procurements meet the statutory requirements for initiating a review by the Office of the Attorney General and document the results of those determinations.*
- *Establish a process to assist with ensuring that solicitations include the best value criteria that statute and its rules require.*
- *Not post a solicitation until it verifies that it has fully complied with the requirements for obtaining a Contract Advisory Team review.*
- *Ensure that all required documents are approved and submitted prior to the development of a solicitation.*
- *Verify that it has completed and included in solicitations all referenced appendices prior to publicly posting solicitations.*

Health and Human Services Commission
Management Response to the State Auditor's Office Report:

An Audit of the Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

Management Response:

The report identified contract planning issues HHSC plans to address through a combination of approaches that include developing policy and process enhancements, improving existing forms and creating new templates and checklists, providing ongoing training on key components of the planning process, establishing Procurement and Contracting Services quality assurance and oversight processes, and improving planning documentation maintenance. Specific actions planned to address these issues follow.

Policy and Process Enhancements

HHSC will make revisions in the HHS Procurement Manual to include a stronger and more comprehensive methodology agency personnel will use for performing a needs assessment, calculating and estimating the cost or overall value of a proposed contract, and performing a cost/benefit analysis. It will also strengthen guidance about how best value is to be determined and documented.

Estimated Completion Date:

May 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Checklists and Templates

HHSC will develop a checklist that lists actions, documentation, and approvals that are required during the contract planning phase. It will also examine opportunities for standardizing or improving planning documents, including adding a new section to the solicitation approval form to detail the results of the estimated contract value amount calculation.

Estimated Completion Date:

May 31, 2015 Develop contract planning checklist.

May 31, 2015 Review, standardize, and improve contract planning forms.

Health and Human Services Commission
Management Response to the State Auditor's Office Report:

An Audit of the Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Training

HHSC will develop specialized training, to be presented periodically to HHS agency program and operational personnel, on the preparation of required planning documentation, including cost value estimates. It will also periodically train Procurement and Contracting Services staff on how to ensure solicitations include appropriate best value criteria.

Estimated Completion Date:

August 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Quality Assurance and Oversight

HHSC Procurement and Contracting Services will expand its quality assurance function to include a review of planning documents prepared by HHS agency program and operational personnel. This process will include verifying whether cost estimates are reasonable and accurately calculated, and comparing the contract value against state requirements, based on the estimated total contract value, to determine when a proposed contract should be submitted to the Contract Advisory Team or Office of Attorney General, if applicable, based on the total estimated contract value. The quality assurance function will also put processes in place to validate that:

- All required planning documentation and approvals have been completed and submitted to Procurement and Contracting Services before development of a solicitation.
- HHSC has responded to all Contract Advisory Team recommendation before a solicitation is issued.
- Postings include all required or referenced documents.

Estimated Completion Date:

August 31, 2015

Health and Human Services Commission
Management Response to the State Auditor's Office Report:

An Audit of the Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Document Maintenance

HHSC will develop a central repository of HHS agency contract planning documents within Procurement and Contracting Services.

Estimated Completion Date:

August 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Contract Procurement

SAO Recommendation

The Commission should:

- *Ensure that responses to vendor questions are consistent with the requirements specified by its solicitations.*
- *Before it uses an evaluation document to assess vendor proposals, verify that the evaluation document includes only the requirements in the associated solicitation.*
- *Ensure that each member of an evaluation team provides a single evaluation score for each solicitation requirement that a member reviews.*
- *Accurately calculate overall evaluation scores according to the evaluation scores provided by all members of an evaluation team.*
- *Allow members of the evaluation team to meet and discuss variances in evaluation scores to assist with ensuring that they all have the same understanding of the solicitation requirements and access to information available for evaluating proposals.*
- *Ensure that its evaluation of vendor proposals requires it to verify the corporate background, qualifications, and experience that vendors report.*
- *Establish a standard minimum qualifying evaluation score for health and human services solicitations to ensure that a vendor proposal meets the minimum qualifications and expectations for a solicitation.*

- *Document approvals to tentatively award contracts and include in that documentation the best value factors that support the tentative contract award decision.*
- *Consistently obtain signed nondisclosure agreements from management and staff prior to their participation in contract negotiations.*
- *Ensure that vendors whose proposals are rejected during the screening process are notified in the manner prescribed by its procurement policies before it begins its evaluation process.*

Management Response:

HHSC received responses to the Terrell State Hospital Operations request for proposals from two vendors. One of the proposals was determined to be non-responsive, leaving only the remaining proposal for consideration. When there is only one response to a solicitation, some of the processes HHSC has in place to ensure the best of several proposers is selected become less important. However, in an effort to demonstrate due diligence preceding a decision to select even a single proposal for a tentative award, HHSC usually performs these processes. As the report indicates, for this procurement some of the processes were not performed well.

While HHSC's policies and processes are adequate, there are opportunities to improve them. More importantly, there is a need for HHSC to ensure its policies and processes are followed and, as a result of performing those processes, ensure and be able to demonstrate that the selected contractor, even when only one proposal exists, is highly qualified to perform the requirements of a solicitation.

As a result, HHSC plans to address the contract procurement issues identified in the report through a combination of approaches that include developing policy and process enhancements, creating new checklists, providing ongoing training on key components of the procurement process, developing Procurement and Contracting Services quality assurance and oversight processes, and improving procurement documentation maintenance. Specific actions planned to address these issues follow.

Policy and Process Enhancements

HHSC will consider revising the HHS Procurement Manual to address recommendations for establishing a minimum qualifying evaluation score for a solicitation and notifying unqualified vendors, whose proposals were rejected, prior to beginning the evaluation process.

HHSC will also make revisions in the HHS Procurement Manual to clarify requirements for when verification of corporate background qualifications and experience should be performed,

documenting support for tentative award decisions, and addressing evaluator misunderstandings, resolving outlier scores, and calculating final evaluation scores.

Estimated Completion Date:

May 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Checklists

HHSC will develop a checklist that lists actions, documentation, and approvals that are required during the procurement phase.

Estimated Completion Date:

May 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Training

HHSC will develop specialized training, to be presented periodically to Procurement and Contracting Services staff, on ensuring evaluation documents include all appropriate requirements. It will also develop and present training to Procurement and Contracting Services staff and contract evaluation teams about processes for addressing evaluator misunderstandings, resolving outlier scores, and calculating final evaluation scores.

Estimated Completion Date:

August 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Health and Human Services Commission
Management Response to the State Auditor's Office Report:

An Audit of the Procurement for Terrell State Hospital Operations at the Health and Human Services Commission and the Department of State Health Services

Quality Assurance and Oversight

HHSC will ensure that legal teams assigned to support contracting (a) review and concur on responses to vendor questions before the responses are posted and (b) review evaluation documents to ensure all required components are included before evaluations begin.

HHSC Procurement and Contracting Services will include processes in its quality assurance function to validate that best value factors support award decisions, the decision to support a tentative award is documented, and nondisclosure agreements are signed.

Estimated Completion Date:

August 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Document Maintenance

HHSC will include documents supporting contracting decisions in its central repository of HHS agency contract documents within Procurement and Contracting Services.

Estimated Completion Date:

August 31, 2015

Title of Responsible Person:

Deputy Executive Commissioner for Procurement and Contracting Services

Section 3

Procurement Time Line

Table 3 lists important dates related to the Health and Human Services Commission's (Commission) and the Department of State Health Services' (Department) procurement for Terrell Hospital operations.

Table 3

Time Line of Important Dates Related to the Procurement for Terrell State Hospital Operations	
Date	**Event**
March 5, 2014	The Commission's Procurement and Contracting Services unit started developing the solicitation.
March 24, 2014	The Commission's Procurement and Contracting Services unit completed an initial draft of the solicitation and sent it to the Department for review and approval.
May 27, 2014	The Department completed its review of the solicitation and submitted a revised solicitation to the Commission's Procurement and Contracting Services unit.
May 30, 2014	The Commission's chief of staff's office submitted suggested revisions to the solicitation. The Commission's Procurement and Contracting Services unit completed the final version of the solicitation.
June 3, 2014	The Department created a purchase requisition for the solicitation. The Commission's Procurement and Contracting Services unit submitted the final solicitation to the State's Contract Advisory Team for review.
June 9, 2014	The State's Contract Advisory Team completed its review of the solicitation and provided the Commission's Procurement and Contract Services unit with recommended revisions. The Commission's Procurement and Contracting Services unit posted the solicitation on the *Electronic Business Daily* Web site.
June 24, 2014	The Commission's Procurement and Contracting Services unit conducted a site visit of Terrell State Hospital with four vendors.
June 30, 2014	The Commission's Procurement and Contracting Services unit held a vendor conference in Austin, Texas. The Commission posted the first addendum to the solicitation and revised the dates of the original procurement schedule. The anticipated contract start date changed from September 15, 2014, to January 1, 2015. The Commission posted the second addendum to the solicitation and provided vendors with a copy of the vendor conference presentation and the vendor sign-in sheet.
July 7, 2014	Vendor questions were due to the Commission's Procurement and Contracting Services unit.
July 14, 2014	The Commission's Procurement and Contracting Services unit released the schedule for posting the Department's responses to vendor questions.
July 28, 2014	The Commission posted the third addendum to the solicitation and changed the procurement schedule.
August 4, 2014	The Commission posted the fourth addendum to the solicitation and published all vendor questions and answers.
August 12, 2014	The Commission posted the fifth addendum to the solicitation and published revised answers to selected questions that were originally posted in the fourth addendum.
August 19, 2014	The time period for vendors to submit and withdraw proposals to the solicitation closed. Two vendors submitted proposals.
August 20, 2014	The Commission determined that one vendor's proposal was nonresponsive because that vendor's proposal was incomplete.
September 11, 2014	GEO Care, LLC changed its legal business name with the Office of the Secretary of State to Correct Care, LLC.

Time Line of Important Dates Related to the Procurement for Terrell State Hospital Operations	
Date	**Event**
September 19, 2014	The Department held a kick-off meeting for members of the evaluation team.
October 15, 2014	The Commission's deputy executive commissioner for procurement and contracting services stated that after the Commission's executive commissioner was informed that there were no impediments to the tentative award to the single vendor proposal received, the executive commissioner gave verbal approval to tentatively award the contract. The Commission's Procurement and Contracting Services unit obtained all completed evaluations for tabulation.
October 16, 2014	The Commission's Procurement and Contracting Services unit completed the tabulation of the evaluation scores.
October 17, 2014	The Commission's Procurement and Contracting Services unit drafted a recommendation to tentatively award the contract to GEO Care, LLC. However, the deputy executive commissioner for procurement and contracting services did not send that recommendation to the executive commissioner for review and approval.
October 20, 2014	The Commission announced a tentative contract award to GEO Care, LLC.
November 7, 2014	Selected Commission and Department management and staff met to discuss contract negotiations.
January 1, 2015	The targeted commencement date for the contract was January 1, 2015.
January 13, 2015	The Department submitted a memorandum to the Procurement and Contracting Services unit requesting approval to discuss certain negotiation terms and conditions. However, that memorandum was not provided to the Commission's executive commissioner.
February 11, 2015	The Commission's Procurement and Contracting Services unit submitted a request to meet with the executive commissioner to discuss the tentative contract award to GEO Care, LLC.
February 20, 2015	The Office of the Secretary of State reported a tax forfeiture for Correct Care, LLC. [a]
February 26, 2015	As of February 26, 2015, the Commission and the Department had not executed a contract.

[a] As of February 26, 2015, the Office of the Secretary of State's records showed that Correct Care, LLC's status was "forfeited existence."

Source: Auditor review of Commission and Department documentation.

Objective

The objective of this audit was to determine whether health and human services agencies have administered certain contract management functions for selected contracts in accordance with applicable requirements.

Scope

The scope of the audit covered the contract planning and procurement processes related to the tentative contract award for Terrell State Hospital operations.

Methodology

The audit methodology consisted of collecting and reviewing procurement documentation; conducting interviews with the Health and Humans Services Commission (Commission) and the Department of State Health Services (Department) staff; reviewing statutes, rules, the Office of the Comptroller of Public Accounts requirements, and Commission and Department policies and procedures; and performing selected tests and other procedures.

Information collected and reviewed included the following:

- Terrell State Hospital request for proposals, the 2012 state hospital privatization request for proposals, and associated appendices and addendums.
- Commission policies and procedures, manuals, and applicable rules and regulations.
- Commission solicitation and bid documentation, evaluation criteria and documentation, and related supporting documentation.
- Commission procurement files, including planning documentation, approvals, and other supporting documentation.
- Commission personnel training and certification records and nondisclosure and conflict of interest forms.
- Commission and Department internal audit reports.
- Prior State Auditor's Office reports.
- Emails and other documentation that supported information that Commission and Department employees provided during interviews.

Procedures and tests conducted included the following:

- Interviewed employees at the Commission and the Department.
- Tested whether the Commission complied with applicable requirements for planning the solicitation of Terrell State Hospital operations.
- Reviewed applicable conflict of interest and nondisclosure forms.
- Tested whether the Commission properly documented bid evaluation criteria and evaluation scores.
- Tested the Department's scoring of the vendor proposal to determine whether all evaluators completed the same scoring matrix and ensured mathematical accuracy.
- Tested criteria the Commission used to evaluate vendor proposals to determine whether it followed applicable requirements in the Texas Government Code.

Criteria used included the following:

- Texas Government Code, Chapters 322, 531, 572, 2151, 2155, 2156, 2157, 2161, 2252, 2254, 2261, 2262, and 2263
- Title 34, Texas Administrative Code, Chapter 20.
- Title 1, Texas Administrative Code, Chapter 391.
- *State of Texas Contract Management Guide* (Version 1.12, March 2014).
- *State of Texas Procurement Manual* (2012).
- *Health and Human Services Contracting Processes and Procedures Manual* (March 2013).
- *Health and Human Services Procurement Manual* (2010).

Project Information

Audit fieldwork was conducted from January 2015 through February 2015. 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.

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

- Willie J. Hicks, MBA, CGAP (Project Manager)
- Kelsey Arnold, MEd (Assistant Project Manager)
- Scott Armstrong, CGAP
- Pamela A. Bradly, CPA
- Paige Dahl
- Darcy Hampton, MAcy
- Eric Ladejo, MPA
- Kathy-Ann Moe, MBA
- Valentine Reddic, MBA
- Mike Apperley, CPA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)