

OIG Review of the HHS Procurement Process: 2013 - 2018



Office of Inspector General
Texas Health and Human Services

July 2018

Table of Contents

Executive Summary.....	1
Introduction	4
Recent HHSC Contracting History.....	5
CHIP Rural Services Areas Contract.....	8
Previous Audits, Reviews, and Investigations.....	9
Observation 1: PCS Lacks Necessary Procurement Policies and Procedures.....	9
Observation 2: PCS Needs a Stronger Evaluation and Scoring Process to Ensure Adequate Oversight, Consistency, and Transparency.....	11
Observation 3: Thorough and Accurate Documentation Must be Completed and Retained.	13
Observation 4: PCS Has Not Consistently Required Disclosures of Conflicts of Interest.	15
Observation 5: PCS Should Seek Opportunities to Increase Fair and Open Competition in Purchasing Activities Whenever Possible.	16
Conclusion.....	17
Appendix A: Referenced Audits, Reports, and Reviews	18
Appendix B: Children’s Health Insurance Program, Rural Services Areas (CHIP-RSA) Procurement Process.	20

Executive Summary

The Texas Health and Human Services System (HHS) mission is to improve the health, safety, and well-being of Texans through good stewardship of public resources. HHS manages the daily operations that ensure the delivery of all health and human services in Texas, in large part, through contracts or contracted goods and services. HHS currently oversees approximately 108,500 contracts estimated at \$60.2 billion in associated spending.

Given the magnitude of the HHS mission, and the complexity and volume of the procurements and contracts, it is imperative that HHS ensure the integrity of the procurement process. Effective policies and procedures are key to assuring overall program integrity and preventing fraud, waste and abuse. Strong processes are a form of prevention that mitigate the risks of misuse of taxpayer dollars.

However, over the last five years HHS has seen repeated, significant lapses in the evaluation, scoring, and awarding processes for several major procurements and contracts, the most recent of which was with the contract for the Children's Health Insurance Program (CHIP) services in the Hidalgo and rural service areas (RSA).

Several protests by contract bidders led to the discovery of errors in the scoring and HHS did not finalize the CHIP RSA contracts.

On April 6, 2018, Texas Governor Greg Abbott requested that the Office of Inspector General (OIG) investigate the HHS procurement process to "...uncover any and all errors with this system."

OIG investigators interviewed 25 current and former HHS employees. Investigators gathered and reviewed the request for proposal and requisition documents, employee emails, spreadsheets, timelines, evaluation tools and operational manuals.

CHIP RSA Procurement Process Issues

- **Manual process instead of automated data entry.** The purchaser was responsible for manually transferring 17 individual evaluations that included several thousand data points onto one scoring tool. Errors occurred when the purchaser utilized "cut, copy and paste" for transferring data. Additional errors included entering scores of "0.00" into cells that should have been left blank and vice versa.
- **Miscommunication about "approved" tool.** Each purchaser appeared to have the latitude to use the evaluation and scoring tool that they were most comfortable with, as they had access to multiple versions. There was no labeling to ensure that the appropriate tool was being used.
- **Inadequate controls and protections.** The cells in the scoring tool were not protected to prevent the values or formulas from being changed (either purposely or unintentionally). Furthermore, the scoring tool was not secured in the SharePoint repository and could be modified intentionally or accidentally at any time by anyone with access to the repository.
- **Inadequate training.** Purchasers were not thoroughly trained in the use of the tool or the use of advanced Excel.
- **No quality assurance.** No quality assurance measures were in place to require that PCS management or Medicaid & CHIP Services verify that the procurement tool was utilized appropriately or the scoring was free from errors.
- **Inadequate staffing.** The same purchaser for the CHIP RSA procurement had made similar errors in a previous procurement but was not replaced due to limited staffing. At the time of the CHIP RSA procurement, PCS had 69 RFPs supported by 3 purchasers.
- **No appeal process for protest.** PCS does not have a formal appeal process for procurement protests. There was no appeal review panel, nor established process in handling and/or resolving protests from bidding vendors.

The OIG's investigation confirmed that errors occurred when the purchaser manually aggregated the individual evaluators' scores into the procurement evaluation tool, but found no evidence to suggest intentional manipulation of the procurement evaluation tool. These errors stemmed from the issues identified in the CHIP RSA Procurement Process Issues callout box on page one of this report.

However, the type of issues identified are not unique to this procurement and echoed systemic issues previously identified in prior audits and reviews. Therefore, the OIG also conducted a review of previously published reports, audits, and investigations of HHS procurements. The review included reports published between 2013-2018 and were authored by the OIG, state agencies (including the State Auditor's Office, Legislative Budget Board, and Comptroller of Public Accounts), and the federal government to determine if there was a pattern of inconsistencies or weaknesses in the procurement process. Based on this review, the OIG identified the following observations:

Observation 1: Procurement and Contracting Services (PCS) Lacks Necessary Procurement Policies and Procedures.

Opportunity 1.1: Perform a Gap Analysis to Establish Clear Processes, Procedures, Roles and Responsibilities.

PCS must have procurement policies and procedures with clearly defined roles and responsibilities that are regularly maintained and communicated, and that staff are trained to follow. All staff involved in the procurement process need clear and reliable expectations, defined requirements, continual communication and collaboration throughout the procurement lifecycle.

Observation 2: PCS Needs A Stronger Evaluation and Scoring Process To Ensure Adequate Oversight, Consistency, And Transparency.

Opportunity 2.1.: Strengthen the Evaluation and Scoring Process.

Opportunity 2.2: Standardize and Protect Evaluation and Scoring Tools.

Lack of oversight and control in the PCS evaluation and scoring process has resulted in a variety of errors, ranging from a lack of documentation to inconsistently following processes to scoring errors. Particular attention should be given to the evaluation. HHS could explore ways to make the tool less susceptible to error.

Observation 3: Thorough and Accurate Documentation Must Be Completed and Retained.

Opportunity 3.1: Clarify and Ensure Appropriate Documentation.

PCS had inadequate or missing documentation related to HHS procurement decisions. Failure to document appropriately can lead to perceptions of unfair or biased procurement actions. HHS should give attention to policies and procedures specific to procurement documentation and retention.

Observation 4: PCS Has Not Consistently Required Disclosures Of Conflicts Of Interest.

Opportunity 4.1: Obtain Appropriate Attestations.

PCS has not consistently nor adequately worked with HHS program areas to identify and document potential conflict of interest during a procurement, even after adopting processes and developing disclosure forms pursuant to legislation enacted to safeguard the state from such improprieties. It is

critical that policies and procedures clearly define when and how conflicts of interest attestations must be disclosed.

Observation 5: PCS Should Seek Opportunities To Increase Fair and Open Competition In Purchasing Activities Whenever Possible.

Opportunity 5.1.: Promote Competitive Procurements.

It was noted that PCS could have strengthened processes or chosen another procurement method to increase the level of open and fair market competition. HHS should seek opportunities to increase fair and open competition in purchasing activities whenever possible and consider how to improve advanced procurement planning and balance resources to build expertise in writing solicitation requirements and conducting evaluations appropriately.

Adoption of sound policies and procedures provide organizations with a solid foundation for proper oversight, consistency, fairness, and transparency in their procurement processes. While HHS needs to ensure it rectifies the immediate issues identified with the CHIP RSA procurement, recognizing and addressing the common systemic issues that have impacted the HHS procurement process over the past five years sets a foundation upon which change can be built. Risk to the HHS system can be reduced and these types of procurement issues may be prevented.

Introduction

The Texas Health and Human Services System (HHS) mission is to improve the health, safety, and well-being of Texans through good stewardship of public resources. HHS manages the daily operations that ensure the delivery of all health and human services in Texas, in large part, through contracted goods and services. HHS currently oversees approximately 108,500 contracts which are estimated at \$60.2 billion in associated spending.

Given the magnitude of the HHS mission, and the complexity and volume of the procurements and contracts it oversees, it is imperative that HHS ensure the integrity of the procurement process. However, over the last five years, HHS has seen lapses in the procurement and contracting processes for several major procurements and contracts, including but not limited to the Enterprise Data Warehouse procurement, the 21CT, Inc. (21CT) procurement, the Texoma Area Paratransit System (TAPS) managed transportation contract, Foster Care Redesign procurement, Terrell State Hospital contract, Information Technology Seat Management contract, TxEVER procurement, and the Brain Synergy Institute procurement. (For list of events and reports, see the events timeline in the next section.)

Most recently, several protests by contract bidders led to the discovery of errors and the cancellation of the procurement for the Children's Health Insurance Program services in the Hidalgo and rural service areas (CHIP RSA). Texas Governor Greg Abbott asked the Office of Inspector General (OIG) to "immediately investigate the underlying procurement process to uncover any and all errors with this system" and to "conduct a thorough inquiry to get to the bottom of this issue."

The OIG's investigation identified a number of issues with the CHIP RSA procurement. These findings were not unique to this procurement. Establishing effective policies and procedures are key to assuring overall program integrity and preventing fraud, waste and abuse. Having strong processes in place can prevent and mitigate the risks of misuse of taxpayer dollars. To this end, the OIG conducted a review of various internal and external reports to identify trends and fundamental changes that can promote the integrity of the procurement process.

The OIG reviewed previously published reports regarding HHS procurements over the past five years (2013-2018), including investigations, audits, and reports by the OIG, other state agencies, the federal government and the Legislature. (For a complete list of documents referenced in this report, see Appendix A.) This report presents issues from the OIG Internal Affairs investigation of the CHIP RSA procurement, outlines associated procurement issues from prior investigations, audits, and reports, and identifies opportunities for improvement for HHS.

At the time of publication of this report, the HHS administration is pursuing efforts to strengthen procurement processes.

Recent HHSC Contracting History

In recent years HHS has had multiple procurement issues that have resulted in media or legislative attention, many of which have been identified by, or lead to, audits and investigations. Below are events and reports relating to HHS System procurements from January 2013-July 2018.

Events	2013	Reports
		December: SAO Audit - 14-013 An Audit Report on Information and Communications Technology Cooperative Contracts at the Health and Human Services Commission.
	2014	
May: Accenture hired under no-bid contract.		June: SAO Audit - 14-035 An Audit Report on Selected Contracts at the Health and Human Services Commission.
September: HHS Enterprise Data Warehouse contract halted.		October: Sunset Advisory Commission Staff Report Health and Human Services Commission and System Issues.
December: 21CT contract cancelled.		
	2015	
		January: SAO Report - 15-019 A Report on Recent Contracting Audits.
		March: SAO Audit - 15-030 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: Report of the Health and Human Services Strike Force Report on six broad issue areas the strike force believes are most critical to dealing with recent events and improving the future direction of the agency.
		April: SAO Report - 15-031 An Investigative Report on the Health and Human Services Commission's and the Office of Inspector General's Procurement of Services and Commodities from 21CT, Inc.
May: SB 20 passes.		
October: OIG opens investigation on \$68 million Seat Management contract.		
November: TAPS Managed Transportation Organization Contract cancelled.		

Events	2016	Reports
August: HHS Enterprise Data Warehouse delayed for a second time.	January: OIG Internal Affairs Final Report 16978-16 Investigation of HHSC Seat Management procurement allegations of information leaks and kickbacks during procurement.	February: SAO-KPMG Independent Auditor's Report 16-317 State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2015.
	November: OIG Audit Audit of Contractors Selected as Noncompetitive Procurements Over \$10 Million: PerkinElmer Health Sciences, Inc.	November: OIG Audit Brain Synergy Institute Contractor Performance and Billing, and HHS Contract Procurement and Monitoring.
	2017	February: SAO-KPMG Independent Auditor's Report 17-314 State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2016.
March: Foster Care Redesign Procurement conflict of interest investigation requested by HHS.		
March: Managed Transportation Program Investigation requested into 2014 Procurement.		June: OIG Internal Affairs Final Report 20144-17 Investigation concerning conflict of interest in both the evaluation and potential awarding of a Foster Care Redesign contract.
		September: OIG Internal Affairs Final Report 20201-17 Investigation of the 2014 procurement for managed transportation services.
	2018	February: SAO-KPMG Independent Auditor's Report 18-314 State of Texas Federal Portion of the Statewide Single Audit Report for Fiscal Year Ended August 31, 2016.
March: CHIP RSA procurement cancelled due to scoring errors.		
April: DSHS TxEVER procurement audit reveals scoring errors.		April: SAO Audit - 18-025 An Audit Report on a Selected Contract at the Department of State Health Services.
		July: OIG Internal Affairs Final Report 22205-18 Investigation into the procurement process for the CHIP RSA that was cancelled due to miscalculated evaluation scoring that would have changed the outcome of the award.

Table 1 provides additional background on some events, reports and legislative changes listed in the timeline above.

Table 1. HHS Procurement History, 2013-2018

Year	Event
2014	<p>Accenture hired under no-bid contract. Accenture is hired under a three-year, no-bid contract as the state’s Medicaid Claims Administrator. (May)</p> <p>HHS Sunset Report issued. The Sunset Advisory Commission Staff Report identified a lack of clear oversight authority, missing tools, lack of training and a need for a more sophisticated approach to contracting. (July)</p> <p>Enterprise Data Warehouse Procurement cancelled. HHS cancels negotiations on a large data warehouse project because of concerns that the bidder had received inside information from state negotiators. The project had been funded since 2007. (September)</p> <p>21CT contract cancelled. HHS OIG used a Texas Department of Information Resources (DIR) cooperative contract to award a contract to 21CT, Inc. without bidding. Purchase orders totaled \$20 million over the two-year contract. A \$90 million, three-year contract extension was cancelled. (December)</p>
2015	<p>Health and Human Services Strike Force Report issued. The report highlighted a lack of tools and processes in PCS and the inability to identify and track all contracts. (March)</p> <p>Senate Bill 20 (SB 20) enacted. In response to state agency contracting issues, the Legislature passes contracting reforms in SB 20, including improvements in reporting standards, record retention, training, disclosure of conflicts of interest and revolving door prohibitions for state employees. (May)</p>
2016	<p>Enterprise Data Warehouse Project delayed for a second time. HHS cancelled the award of a \$121 million contract to create an Enterprise Data Warehouse, after having spent \$35 million to design the project that was determined to no longer meet the needs of the agency. (August)</p>
2017	<p>Foster Care Redesign Procurement conflict of interest. A DFPS employee failed to timely disclose that a family member was pursuing, and found, employment with a company under consideration for a contract that was under the employee’s purview. (March)</p> <p>Managed Transportation Organization contract procurement investigation. The HHS Executive Commissioner requested an OIG investigation into the procurement process for managed transportation services awarded in 2014. (March)</p>
2018	<p>CHIP RSA contract cancelled after errors discovered. An appeal by losing contract bidders revealed that the CHIP RSA evaluation scores had been miscalculated, impacting the final outcome of the bidding. (March)</p> <p>DSHS TxEVER contract scored incorrectly. A SAO audit revealed that the scoring of the evaluations for the DSHS TxEVER contract had been miscalculated, but did not impact the final outcome of the bidding. HHS also did not follow appropriate procedures in verifying vendor qualifications, reporting contract value, and obtaining the required exemption from the Statewide Data Center, which increased the cost of the contract. (April)</p>

CHIP Rural Services Areas Contract

In April 2018, the OIG opened an investigation at the request of the Governor's Office into the CHIP RSA procurement. Protests by contract bidders led to the discovery of errors in the scoring and internal examinations by PCS and HHS Internal Audit confirmed that the procurement scoring tool did contain calculation errors.

The OIG completed its investigation in July 2018. The investigation confirmed that there were scoring errors, as well as systemic issues with the procurement process. (See Appendix B for a full summary of the investigation and findings.) The issues identified by the OIG investigation were:

Pre-Procurement

- The evaluation tool was an Excel spreadsheet containing several hundred elements of criteria.
- Inadequate management of procurement tool.
- No system to protect the integrity of the procurement tool.
- Lack of communication about which tool was to be used.
- Lack of training for procurement staff in the advanced use of Microsoft Excel.

Mid-Procurement

- Repeated errors by the purchaser.
- The procurement tool failed to eliminate the manual transfer of data during the final aggregate scoring.

Post-Procurement

- No Quality Assurance process in place.
- The Medicaid and CHIP Services does not have a quality assurance process to review the final scores from PCS.
- Lack of a formal review process for procurement protests.

During the investigation, systemic issues with the procurement process were identified. This led the OIG to review past investigations, audits, and other reports to identify repeated patterns in HHS procurements, so that the underlying issues can be addressed, rather than addressing isolated issues identified by a single report.

The issues identified by the investigation were consistent with issues previously identified in multiple reports by various entities. The lack of necessary procurement policies and procedures, including quality assurance and training, as well as the lack of oversight, consistency, and transparency in evaluation and scoring process have been repeated issues for HHS.

Previous Audits, Reviews, and Investigations

The Medicaid CHIP RSA procurement issues are not unique. Over the course of the past several years, other issues regarding the HHS procurement process have been identified in various investigations, audits, and reports by both the OIG, external state agencies, and the Legislature. Therefore, in addition to investigating the most recent procurement issue, the OIG also undertook an initiative to look more holistically at the issues identified across previous reports spanning over the course of the past five years (2013-2018) in order to determine trends and identify opportunities to increase the integrity of the HHS procurement process.

Observation 1: PCS Lacks Necessary Procurement Policies and Procedures.

PCS is the authority for procurement activities within the HHS system and provides direction to HHS program areas to remain compliant with the laws, rules, and policies governing procurement activities. PCS needs to have standardized procurement policies and procedures with clearly defined roles and responsibilities that are regularly maintained and communicated, and that staff are trained to follow.

Several of the reviewed reports have indicated a need to strengthen PCS procurement policies and procedures, as well as the communication and collaboration surrounding them. For example:

- In 2015, the Sunset Advisory Commission Staff Report noted that HHS provided “insufficient technical support to client agencies and programs” and that a lack of designated points of contact between HHS and system agencies resulted in impaired two-way communication flow.
- In 2015, the Report of the Health and Human Services Strike Force stated that there were unclear roles and responsibilities around procurement and contracting in the HHS system; that there was inconsistent program guidance, technical assistance, and oversight from PCS; and that there were issues regarding delays in the procurement process, particularly for major procurements, that resulted in emergency purchases.
- A 2016 Texas Comptroller of Public Accounts report noted that HHS had not utilized or obtained in a timely manner a required Texas Correctional Industries (TCI) waiver. The report recommended that HHS ensure that set-aside contracts for products/services offered by TCI receive priority over open market purchases, and if a product/service offered by TCI needs to be purchased from another source, HHS should timely obtain and maintain a waiver from TCI.
- A 2018 State Auditor’s Office (SAO) report noted that HHS failed to obtain a required exemption from the Governor and the Department of Information Resources for a DSHS contract.
- A 2018 OIG Internal Affairs investigation into the procurement process for the CHIP RSA, identified no quality assurance processes were in place to ensure the appropriate utilization of evaluation and scoring tools.

To achieve consistently successful procurements, all staff involved in the procurement process need clear and reliable expectations, defined requirements, and continual communication and collaboration throughout the procurement lifecycle.

Opportunity 1.1: Perform a Gap Analysis to Establish Clear Processes, Procedures, Roles and Responsibilities.

As HHS undertakes its effort to revise its procurement processes and procedures, HHS may consider analyzing its existing processes and policies to identify where potential process and procedural gaps exist. Based on the OIG's investigation of the CHIP RSA procurement process and review of previous reports, potential areas to explore and strengthen could include:

- Delineating roles and responsibilities between program staff and PCS.
- Developing policy requirements that adhere to procurement law, rule, and Comptroller guidelines.
- Defining detailed procedures for program areas, PCS, Chief Counsel, and IT throughout the procurement lifecycle.
- Including in the procurement manual timelines, checklists, and forms or templates with clear instructions for when and how they should be used at defined points in the procurement process.
- Addressing how regular updates will be incorporated and communicated across HHS.
- Collaborating with program areas, Chief Counsel, IT and the Ethics Office in the development of new policies, procedures, and training.
- Offering ongoing training on the procurement process and necessary job skills. Training could focus on policy requirements, as well as how to achieve compliance using HHS business processes.

Observation 2: PCS Needs a Stronger Evaluation and Scoring Process to Ensure Adequate Oversight, Consistency, and Transparency.

Inconsistent, unclear, or inaccurate evaluations undermine the fair evaluation of prospective vendors for a given procurement and can result in the appearance of impropriety, even when all other measures are taken to ensure a fair and competitive purchasing environment. Inadequate oversight and controls in the PCS evaluation and scoring process have resulted in a variety of errors, ranging from a lack of documentation to inconsistently following processes to scoring errors. For example:

- A 2013 SAO report noted that none of the 32 IT purchases reviewed included documentation to support that the selected vendor represented best value to the state.
- A 2014 SAO report noted that HHS staff did not record clarifications reportedly provided in vendor oral presentations as justification for selection or non-selection, and as such the SAO could not verify whether or not best value was achieved through the evaluation process. The report also found that not all identified evaluation tools could be produced, with no explanation documented to support the reason behind the missing tools. Also, one vendor's proposal was missing a required document (HUB Subcontracting Plan), but there was no documentation to support why the vendor was not rejected.
- A 2014 SAO audit maintained that HHS neglected to include the weights associated with evaluation criteria in the solicitation documents for the two procurements that it audited, which contradicts guidance from the Comptroller's State of Texas Contract Management Guide that requires agencies to include in solicitations, at a minimum, the weight assigned to each criterion.
- A 2018 OIG Internal Affairs investigation into the procurement process the CHIP RSA cited inadequate management of procurement tools, as well as inconsistency in the evaluation tools used by individual purchasers for the CHIP RSA and similar procurements. Additionally, errors in scoring evaluations were noted, including incorrect tabulation related to scoring for the procurement.
- A 2018 SAO audit determined that HHS did not compile and calculate the scores correctly in a DSHS procurement and did not verify the vendors' qualifications and experiences.

Failure to thoroughly document how and why HHS made evaluation decisions can lead to the appearance of impropriety in the procurement process and raise questions about whether the selected vendor represented the best value and quality to meet a given need. PCS evaluation and scoring processes should be strengthened to promote consistency, increase transparency, and reduce the potential for errors.

Opportunity 2.1.: Strengthen the Evaluation and Scoring Process.

As procurement policies and procedures are developed and refined, particular attention may be given to the processes surrounding evaluation to ensure that HHS is:

- Fairly and accurately evaluating respondents for best value.
- Using additional criteria that are clear and well-defined in the solicitation documents.
- Sharing information equitably with all prospective vendors.
- Documenting evaluation steps, outcomes, and decisions throughout the entirety of the evaluation process.
- Employing an evaluation process that represent fairness, consistency, and accepted best practices.

Opportunity 2.2: Standardize and Protect Evaluation and Scoring Tools.

While it may not be appropriate to create standardized evaluation tools, given the diversity of HHS procurements, HHS could explore ways to make the tool less susceptible to error, such as:

- Building templates from which to develop the tool for a particular procurement.
- Implementing quality assurance controls.
- Instituting an automated system with fewer opportunities for mathematical miscalculations and manual data entry or transfer error.

Observation 3: Thorough and Accurate Documentation Must be Completed and Retained.

Inadequate or missing documentation in procurement records is another theme that has been observed in reports over the past five years. While this issue overlaps with several of the other observations, its recurrence warrants its own category. The following concerns were highlighted in the reports reviewed:

- In two SAO reports from 2014 and 2015, appropriate documentation was not always retained or available to substantiate evaluation scoring. In some cases, the criteria used to determine best value were not apparent from documentation. In others, the records retention schedule for procurement planning did not align with rules set forth in the Texas Administrative Code on maintaining all evaluation documentation.
- A 2013 SAO report, auditors recommended that HHS should consistently document its justification for pursuing noncompetitive procurements for IT purchases.
- Several reports indicated a lack of documentation to support that HHS staff involved in the procurement process had consistently completed nondisclosure and conflict of interest forms (see Observation 4).
- In the statewide single audit reports from 2015-2017, KPMG identified multiple instances of missing or incorrect support documentation in procurement files. This included:
 - A lack of evidence of competitive bidding in Department of Information Resources services contracts;
 - No evidence that Council on Competitive Government (CCG), TIBH Industries, Inc., and Texas Correctional Industries (TCI) were checked to ensure a similar product was not offered prior to award;
 - Lack of documentation on HUB searches;
 - No evidence of verification check that the vendor was not barred from receiving federal funds;
 - Insufficient approvals for continuing the use of temporary information technology IT staff;
 - Missing evidence that multiple contractors were solicited prior to offering a contract;
 - No clear evidence to document the purchase was a best value;
 - No clear evidence of solicitation to qualified vendors other than the one than was selected for purchase; and,
 - No justification for selecting an alternate vendor instead of a CCG recommended vendor.

Thorough and accurate documentation related to the procurement must be completed and retained according to applicable record retention requirements to memorialize and justify decisions and actions. Failure to document appropriately can lead to perceptions of unfair or biased procurement actions.

Opportunity 3.1: Clarify and Ensure Appropriate Documentation.

As part of its review process, HHS may give attention to policies and procedures specific to procurement documentation and retention, including determining:

- What constitutes a complete procurement file.
- Where the file is kept.
- How it is associated or interfaces with the resulting contract record(s).
- Whose responsibility it is to maintain the documentation.

- What associated forms, justification statements, and attestations must be contained in the file.

Additionally, the HHS records retention schedule could be reviewed to ensure that all components of the procurement lifecycle are aligned with the overarching procurement and contract retention requirements.

Observation 4: PCS Has Not Consistently Required Disclosures of Conflicts of Interest.

State agencies have a responsibility to ensure employees participating in procurement and contracting processes have disclosed any potential conflict of interest. The disclosure process is intended to help the agency be transparent and accountable for their actions and decisions.

PCS has not consistently nor adequately identified and documented potential conflicts of interest, even after adopting processes and developing disclosure forms pursuant to legislation enacted to safeguard the state from such improprieties, either real or perceived. The following errors were noted:

- In 2013 and 2014, in two separate SAO reports, auditors were unable to obtain nondisclosure and conflict of interest forms for employees involved in the audited procurements, indicating that either the documents were not obtained or that the procurement file documentation was incomplete (see Observation 3). The findings applied to participants involved in a particular procurement process and to annual renewals of the forms by purchasers.
- A SAO report to the Texas Legislature in 2015 on the procurement and contracting processes of multiple state entities, including HHS, identified weaknesses in adequately identifying and/or documenting conflicts of interest.
- A 2017 OIG Internal Affairs investigation noted risks around the nondisclosure and conflict of interest process, including:
 - Nepotism disclosure forms were not provided by PCS at procurement kick-off to ensure that all involved staff were free of real or perceived conflicts; and,
 - Staff involved in the procurement or contract process failed to reveal conflicts of interest, such as financial or family relationships.

To protect the integrity of the HHS system from concerns about potential nondisclosure, nepotism, and conflicts of interest, policies and procedures should clearly define when and how conflicts of interest attestations must be disclosed.

Opportunity 4.1: Obtain Appropriate Attestations.

As HHS reviews its policies and procedures for conflicts on interests, areas of attention could include:

- Staff education on conflict of interest requirements.
- The process for review, escalation, and resolution of potential conflicts.
- Procurement file requirements for the documentation, storage, and retention of these forms
- A quality assurance process as a control to promote adherence to these processes.

Observation 5: PCS Should Seek Opportunities to Increase Fair and Open Competition in Purchasing Activities Whenever Possible.

The awarding of public funds to a contractor must be conducted in a fair and competitive market environment. All interested vendors must be given an equal opportunity to bid on advertised services, whenever possible. Barring preferences established in law, such as those for veteran- or minority-run businesses, all vendors who bid on a particular procurement must then be given unbiased consideration in the evaluation and award process. However, findings in the reports identified several instances where, although it was concluded that PCS followed the law, PCS could have strengthened processes or chosen another procurement method to increase the level of open and fair market competition. The findings include:

- A 2015 SAO report on the 21CT procurement concluded that the OIG predetermined that 21CT would be the vendor, and neither HHS nor the OIG conducted required planning activities to help ensure that the vendor's product would ultimately benefit the state.
- The 2016 OIG Audit recommended that conducting a fully competitive procurement, rather than advertising that the procurement had a sole source vendor, may have better served the state, both financially and in terms of client care.
- A 2016 Texas Comptroller of Public Accounts report identified purchase transactions where the procurement process was not utilized and a purchase order was improperly changed. The report recommended that HHS obtain bids from qualified vendors for all services exceeding \$5,000 and ensure that payments do not exceed amounts authorized on the contract or purchase order, unless properly amended due to the vendor providing additional consideration.

Policies and processes should default to conducting the procurement method with fair and open competition for a given purchase. This supports the growth of a robust vendor community which strengthens HHS ability to provide continued services.

Opportunity 5.1.: Promote Competitive Procurements.

HHS should seek opportunities to increase fair and open competition in purchasing activities whenever possible. To promote an increase in the use of competitive procurements, HHS could consider how to improve advanced procurement planning and balance resources to build expertise in writing solicitation requirements and conducting evaluations appropriately.

Conclusion

As this report indicates, the HHS system has continued to see repeated procurement issues in its recent history. Although the individual issues identified in each report may be unique to the situation being audited or investigated, HHS needs to focus on addressing these five foundational issues:

Observation 1: PCS Lacks Necessary Procurement Policies and Procedures.

PCS must have procurement policies and procedures with clearly defined roles and responsibilities that are regularly maintained and communicated, and that staff are trained to follow. Multiple reports indicated a need to strengthen PCS procurement policies and procedures, as well as the communication and collaboration surrounding them.

Observation 2: PCS Needs a Stronger Evaluation and Scoring Process to Ensure Adequate Oversight, Consistency, and Transparency.

Lack of oversight and control in the PCS evaluation and scoring process has resulted in a variety of issues, ranging from a lack of documentation to inconsistently following processes to scoring errors.

Observation 3: Thorough and Accurate Documentation Must be Completed and Retained.

Multiple reports indicated that there was inadequate or missing documentation related to PCS procurement decisions. Failure to document appropriately can lead to perceptions of unfair or biased procurement actions.

Observation 4: PCS Has Not Consistently Required Disclosures of Conflicts of Interest.

PCS has not consistently nor adequately identified and documented potential conflicts of interest, even after adopting processes and developing disclosure forms pursuant to legislation enacted to safeguard the state from such improprieties.

Observation 5: PCS Should Seek Opportunities to Increase Fair and Open Competition in Purchasing Activities Whenever Possible.

Reviewers observed several instances where, although it was concluded that PCS followed the law, PCS could have strengthened processes or chosen another procurement method to increase the level of open and fair market competition.

Having effective policies and procedures are key to achieving overall program integrity and preventing fraud, waste, and abuse. Strong processes are a form of prevention that can mitigate risks associated with fraud, waste, and abuse and ensure that taxpayer dollars are used efficiently and effectively.

Adoption of sound policies and procedures provide organizations with a solid foundation for proper oversight, consistency, fairness, and transparency in their procurement processes. While HHS needs to ensure it rectifies the immediate issues identified with the CHIP RSA procurement, recognizing and addressing the common systemic issues that have impacted the HHS procurement process over the past five years sets a foundation upon which change can be built, risk to the agency can be reduced, and these types of procurement issues can be prevented.

Appendix A: Referenced Audits, Reports, and Reviews

The OIG conducted a review of reports from the OIG, state agencies (including the State Auditor's Office, Legislative Budget Board, and Comptroller of Public Accounts), and the federal government. The reports listed below are those specifically referenced in this report.

2013

SAO Audit - 14-013 (December 2013)

An Audit Report on Information and Communications Technology Cooperative Contracts at the Health and Human Services Commission.

2014

SAO Audit - 14-035 (June 2014)

An Audit Report on Selected Contracts at the Health and Human Services Commission.

2015

Sunset Advisory Commission Staff Report With Final Results (July 2015)

Health and Human Services Commission and System Issues.

SAO Report - 15-019 (January 2015)

A Report on Recent Contracting Audits.

SAO Audit - 15-030 (March 2015)

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

Report of the Health and Human Services Strike Force (March 2015)

A Report on six broad issue areas the strike force believes are most critical to dealing with recent events and improving the future direction of the agency.

SAO Report - 15-031 (April 2015)

An Investigative Report on the Health and Human Services Commission's and the Office of Inspector General's Procurement of Services and Commodities from 21CT, Inc.

2016

OIG Internal Affairs Final Report 16978-16 (January 2016)

Investigation of HHSC Seat Management procurement allegations of information leaks and kickbacks during procurement.

SAO-KPMG-Independent Auditor's Report 16-317 (February 2017)

State of Texas Federal Portion of the Statewide Single Audit Report For the Fiscal Year Ended August 31, 2015.

OIG Audit (November 2016)

Audit of Contractors Selected as Noncompetitive Procurements Over \$10M: PerkinElmer Health Sciences, Inc.

OIG Audit (November 2016)

Brain Synergy Institute Contractor Performance and Billing, and HHSC Contract Procurement and Monitoring.

Texas Comptroller of Public Accounts Audit Report #529-16-01 (November 2016)

Post-Payment Audit of the Texas Health and Human Services Commission.

2017

SAO-KPMG-Independent Auditor's Report 17-314 (February 2017)

State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2016.

OIG Internal Affairs Final Report 20144-17 (June 2017)

Investigation concerning conflict of interest in both the evaluation and potential awarding of a Foster Care Redesign contract.

OIG Internal Affairs Final Report 20201-17 (September 2017)

Investigation of the 2014 procurement for managed transportation services.

2018

SAO-KPMG-Independent Auditor's Report 18-314 (February 2018)

State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2017.

SAO Audit - 18-025 (April 2018)

An Audit Report on a Selected Contract at the Department of State Health Services (TxEVER).

OIG Internal Affairs Final Report 22205-18 (July 2018)

Investigation concerning the Children's Health Insurance Program, Rural Services Areas (CHIP-RSA) Procurement Process.

Appendix B: Children’s Health Insurance Program, Rural Services Areas (CHIP-RSA) Procurement Process Investigation

In April 2018, the Office of Inspector General (OIG) conducted an investigation at the request of the Governor’s Office into the Children’s Health Insurance Program, Rural Services Areas (CHIP RSA) procurement process. Protests by contract bidders led to the discovery of errors in the scoring and internal examinations by PCS and HHS Internal Audit confirmed that the procurement scoring tool did contain errors.

The OIG completed its investigation in July 2018. The investigation confirmed that the purchaser committed errors that contributed to the incorrect tabulation related to scoring for this procurement. No evidence was discovered to suggest intentional manipulation of the scoring tool.

CHIP RSA Procurement Background

CHIP helps Texas families with incomes too high to qualify for Medicaid health insurance. CHIP is jointly funded by the federal and state government, and provides primary and preventive health care to qualifying, uninsured children (from birth through the month of their 19th birthday).

In Texas as of fiscal year 2017, 92 percent of persons with Medicaid receive their health care services from a managed care organization (MCO). MCOs contract with HHS to provide health care services for persons with Medicaid. MCOs also provide children eligible for CHIP with health care services. Both Medicaid and CHIP MCOs bid for these contracts through a competitive procurement process:

MCO contracts for the CHIP RSA were originally competitively procured in 2008 and service delivery under these contracts began on September 1, 2010. The contract spanned over three years, with an optional extension through August 31, 2018.

The enactment of Senate Bill (SB) 7, 83rd Legislature, Regular Session, 2013, directed HHS to align CHIP RSAs to Medicaid managed care service areas.

In January 2016, HHS approved the re-procurement of the MCO contract, and began the process for implementing a re-procurement to “align the CHIP service areas with Medicaid's service areas, the single CHIP RSA will be broken into four separate service areas: 1) Central Texas, 2) Northeast Texas, 3) West Texas, and 4) Hidalgo” through a competitive procurement process.

The contract was awarded in December 2017 to six MCOs and was immediately protested by one of the bidders. The protest was denied by the Deputy Executive Commissioner of Procurement and Contracting Services (PCS) (hereafter referred to as the former Deputy Executive Commissioner of PCS). Subsequent protests were filed by three other MCOs after an open records request for the procurement scoring tool raised questions about the procurement process. The protest noted that the procurement scoring tool used in the evaluation process contained calculation errors.

PCS and HHS Internal Audit examined the evaluation tool and confirmed that the procurement scoring tool did contain calculation errors. HHS did not finalize the CHIP RSA contracts.

In April 2018, former Deputy Executive Commissioner of PCS Ron Pigott testified before the House Appropriations Committee regarding the issues identified in the CHIP RSA. The former Deputy Executive Commissioner of PCS stated that PCS utilizes Microsoft Excel as the tool for procurement evaluations and scoring and that the errors occurred due to human error.

CHIP RSA Procurement Investigation

At the direction of Texas Governor Greg Abbott in April 2018, the OIG conducted a targeted investigation of the CHIP RSA procurement process.

OIG investigators interviewed 25 current and former HHS employees. Additionally, investigators gathered and reviewed the request for proposal and requisition documents, employee emails, spreadsheets, timelines, evaluation tools and operational manuals.

The OIG's investigation confirmed that errors occurred when the purchaser overseeing the procurement manually transferred 17 individual evaluations onto one scoring tool, which contained formulas that aggregated the scores into a final scoring tool. Each evaluation tool contained several thousand data points. The OIG's investigation found no evidence to suggest intentional manipulation of the procurement scoring tool.

The OIG investigation found that there was a lack of communication about which evaluation and scoring tool was to be used. Senior level management developed an evaluation scoring tool for PCS staff to use, however, lower level management did not implement the evaluation and scoring tool that was designed by senior level management. Each purchaser had the latitude to use the evaluation and scoring tool that they were most comfortable with.

The evaluation and scoring tools were not labeled to ensure that the appropriate tool was being used. Furthermore, the cells in the spreadsheet were not protected to prevent the values or formulas from being changed. Based on interviews, documentation, and reviews of the tools used in various contract procurements, it appears there is no standard template. All interviewed purchasers stated that an advanced knowledge of Microsoft Excel was a necessity for their job. However, none had received advanced training and stated it was not provided by PCS.

No review process was in place to ensure that the procurement tool designed by senior level management was utilized appropriately or that the scoring tool was free from errors. The procurement scoring tool was a Microsoft Excel spreadsheet containing several thousand data points that were compiled manually into the scoring tool. The purchaser's errors appeared to be from utilizing "cut/copy and paste" for transferring data from the evaluations to the final score sheet. Additionally, there were other errors including placing scores of "0.00" into cells that should have been left blank and vice versa, as well as blank cells and high scores that were translated to zeros.

No quality assurance processes were in place to require that PCS lower or senior level management, or Medicaid and CHIP Services verify that the scoring tool was utilized appropriately or that it was

free from errors. PCS management reviewed the final scores, but did not identify the error. In order to confirm the accuracy of the procurement scores, the individual evaluator's scoring tool would need to be compared with the scoring tool used by the purchaser. A review of the calculations on the scoring tool would not show the errors because mathematically, the scores were correct. While Medicaid and CHIP Services received the final scores from PCS, they also did not have a quality assurance process in place to independently verify the aggregate scores before awarding contracts.

Additionally, PCS senior level management knew of findings from an audit by the Texas SAO released between January and February 2018 of the 2016 TxEVER Genesis procurement in which the same purchaser for the CHIP RSA procurement had made similar errors. PCS senior level management requested that the purchaser be reassigned, however, limited staffing (at the time, PCS had 69 RFPs supported by three (3) purchasers) prevented the reassignment.

In addition to not having an internal review process for validating evaluation scores, PCS did not have a formal review process for procurement protests. At the time of the CHIP RSA procurement, only the former Deputy Executive Commissioner for PCS reviewed procurement protests and had the authority to accept or deny them. There was no review panel, nor established process in handling and/or resolving protests from bidding vendors, other than a single person making the decision.

Given the complexity of managing over 100,000 contracts worth over \$60 billion, the PCS procurement and contracting process lacks the necessary infrastructure (including policies and procedures, quality assurance protocol and training) to ensure the integrity of the procurement process. Sound policies and procedures provide the foundation for oversight, consistency and transparency.

Produced by Texas Health and Human Services Commission Office of Inspector General

Sylvia Hernandez Kauffman, Inspector General

Report contributors: Collette Antoine, Amanda Arreola, Susan Biles, Amanda Civins, Sarah Diseker, Anita D'Souza, April Ferrino, David Griffith, Kevin Hoskins, Kate Hourin, Jen Kaufman, Jessica Magee, Christine Maldonado, Art Moore, Olga Rodriguez, Diane Salisbury, Richard Segovia, Sivan Silver, Elham Sliman

HHSC Office of Inspector General

11501 Burnet Road, Building 902
Austin, Texas 78758
512-491-2000

Email: OIGCommunications@hhsc.state.tx.us
Website: oig.hhsc.texas.gov

To report fraud, waste or abuse: [OIG Fraud Hotline \(800-436-6184\)](tel:800-436-6184); online at oig.hhsc.texas.gov/report-fraud