

Stephen F. Austin State University

Contract Management and Procurement Audit

As of May 31, 2023

Audit Report 23-VII



Department of Audit Services

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EXECUTIVE SUMMARY

INTRODUCTION

The Department of Audit Services has completed an audit of Contract Management and Procurement. Texas Education Code (TEC) §51.9337 specifies standards for contracting and requires “the chief auditor of the institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor.”

The Executive Director of Finance and Administrative Services, who reports to the Vice President for Finance and Administration, has oversight of procurement and contracts; though all University department heads and those with procurement authority play a role in contract management. University contracts are maintained in the iContracts system. An estimated 1,200 contracts are negotiated and tracked by Procurement and Business Services. The University has reported 34 contracts over \$1 million to the SFASU Board of Regents (BOR) in the quarterly Contract Monitoring reports. This does not include 6 additional contracts the BOR took action on at the April and May 2023 meetings.

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

The audit objectives were to gain assurance for the following: the University adopted the rules and policies required by TEC §51.9337; the University administered contract management functions for selected contracts in accordance with applicable requirements; and the University implemented previous contract management related audit management action plans.

The audit scope included the University’s Contract Management and Procurement program as of May 31, 2023 and selected contracts executed from May 1, 2022 through May 31, 2023.

We performed our audit in accordance with the *International Standards for the Professional Practice of Internal Auditing* and *Generally Accepted Government Auditing Standards (GAGAS)*. The 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.

The audit methodology consisted of performing a risk assessment; reviewing applicable policies, procedures, laws, and best practices; assessing key controls; interviewing appropriate University personnel; evaluating opportunities for fraud to occur; performing risk-based contract testing; following up on previous management action plans; and performing other procedures as deemed necessary to achieve the audit objectives.

The audit criteria included:

- University policies and procedures;
- Texas Education Code §51.9337;
- Other sound higher education contract management guidelines and practices.

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Audit Services selected the following contracts for risk-based contract testing.

Vendor	Executed	Purpose	Amount
D2L Ltd. (Desire2Learn)	December 17, 2022	Learning Management System	\$ 1,030,368
Vivature, Inc.	August 3, 2022	Athletic excess insurance	\$ 533,500

SUMMARY OF FINDINGS AND OBSERVATIONS

We gained assurance that the University was generally in compliance with adopting the rules and policies required by TEC §51.9337; and the University administered contract management functions for selected contracts in accordance with applicable requirements.

While performing our audit, we noted an opportunity to strengthen controls, enhance compliance, or improve processes which is included in the attached Details of Audit Observations as Legislative Budget Board Reporting. The audit observation was rated using the audit ratings as shown in Appendix 1.

The status of each TEC §51.9337 requirement as of May 31, 2023 is shown in the following table.

Requirement	Status
<p>I. Required Standards TEC §51.9337(b)</p> <p>The Board of Regents by rule shall establish for each institution under the management and control of the board:</p> <ol style="list-style-type: none"> a code of ethics for the institution's officers and employees, including provisions governing officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, subject to Subsection (c); policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an institutional or systemwide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent applicable; a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure, subject to Subsection (d); contracting delegation guidelines, subject to Subsections (e) and (f); training for officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies; and internal audit protocols, subject to Subsection (g). 	Generally in Compliance
<p>II. Required Standard – Code of Ethics TEC §51.9337(c)</p> <p>The code of ethics governing an institution of higher education must include:</p> <ol style="list-style-type: none"> general standards of conduct and a statement that each officer or employee is expected to obey all federal, state, and local laws and is subject to disciplinary action for a violation of those laws; 	Generally in Compliance

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Requirement	Status
<ol style="list-style-type: none"> 2. policies governing conflicts of interest, conflicts of commitment, and outside activities, ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position; 3. a conflict of interest policy that prohibits employees from having a direct or indirect financial or other interest, engaging in a business transaction or professional activity, or incurring any obligation that is in substantial conflict with the proper discharge of the employee's duties related to the public interest; 4. a conflict of commitment policy that prohibits an employee's activities outside the institution from interfering with the employee's duties and responsibilities to the institution; 5. a policy governing an officer's or employee's outside activities, including compensated employment and board service, that clearly delineates the nature and amount of permissible outside activities and that includes processes for disclosing the outside activities and for obtaining and documenting institutional approval to perform the activities; 6. a policy that prohibits an officer or employee from acting as an agent for another person in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the institution; 7. a policy governing the use of institutional resources; and 8. a policy providing for the regular training of officers and employees on the policies described by this subsection. 	
<p>III. Required Standard – Contract Review Procedures and Checklist TEC §51.9337(d)</p> <p>An institution of higher education shall establish contract review procedures and a contract review checklist that must be reviewed and approved by the institution's legal counsel before implementation. The review procedures and checklist must include:</p> <ol style="list-style-type: none"> 1. A description of each step of the procedure that an institution must use to evaluate and process contracts; 2. A checklist that describes each process that must be completed before contract execution; and 3. A value threshold that initiates the required review by the institution's legal counsel unless the contract is a standard contract previously approved by the counsel. 	Generally in Compliance
<p>IV. Required Standard – Contracts Requiring Board Approval TEC §51.9337(e)</p> <p>An institution of higher education's policies governing contracting authority must clearly specify the types and values of contracts that must be approved by the board of regents and the types and values of contracts for which contracting authority is delegated by the board to the chief executive officer and by the chief executive officer to other officers and employees of the institution. An officer or employee may not execute a document for the board unless the officer or employee has authority to act for the board and the authority is exercised in compliance with applicable conditions and restrictions.</p>	Generally in Compliance
<p>V. Required Standard – Contracts Over \$1 Million TEC §51.9337(f)</p> <p>An institution of higher education may not enter into a contract with a value of more than \$1 million, including any amendment, extension, or renewal of the contract that increases the value of the original contract to more than \$1 million, unless the institution's board of regents approves the contract, expressly delegates authority to exceed that amount, or expressly adopts an exception for that contract. The board must approve any amendment, extension, or renewal of a contract with a value that exceeds 25 percent of the value of the original contract approved by the board unless the authority to exceed the approved</p>	Generally in Compliance

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Requirement	Status
amount is expressly delegated by the board or an exception is expressly adopted by the board for that contract.	
<p>VI. Required Standard – Internal Audit TEC §51.9337(g)</p> <p>The board of regents of an institution of higher education shall adopt standards for internal audits conducted by the institution to provide a systematic, disciplined approach to evaluate and improve the effectiveness of the institution's risk management, control, and governance processes related to contracts and to require risk-based testing of contract administration. The internal auditor must have full and unrestricted access to all institutional property, personnel, and records. An internal auditor must report directly to the board of regents in accordance with Chapter 2102, Government Code.</p>	Generally in Compliance
<p>VII. Required Standard – Chief Audit Executive Annual Assessment TEC §51.9337(h)</p> <p>The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor. In auditing the purchase of goods and services by the institution, the state auditor shall determine whether an institution has adopted the required rules and policies.</p>	Generally in Compliance

For the previous audit management action plans, Audit Services performed verification procedures and found the following (see Appendix 2 for audit terminology):

Audit Report/Date	Audit Observation	Management Action Plan	Status
22-VIII Contract Management and Procurement As of April 30, 2022	<p>Training</p> <p>Recommendation: The University should establish an effective mechanism to provide and monitor training to ensure it complies with training requirements. A similar recommendation was reported as Observation 4 – Performance Monitoring in the 20-XI University Training audit and is outstanding on the Audit Services Follow-Up List. Officers and employees should complete the required trainings.</p>	<p>The University will establish an effective mechanism to provide and monitor training to ensure it complies with training requirements. The trainings have been completed by the officers.</p> <p>Original Implementation date is December 31, 2022.</p>	Implemented
22-VIII Contract Management and Procurement As of April 30, 2022	<p>Contract Monitoring - Chartwells</p> <p>Recommendation: The University should strengthen contract monitoring processes for the Chartwells agreement to ensure compliance with contract requirements and acceptable performance levels. The University should also review contract</p>	<p>The University will strengthen contract monitoring processes for the Chartwells agreement to ensure compliance with contract requirements and acceptable performance levels.</p> <p>Original Implementation date is May 31, 2023.</p>	In process but with a revised implementation date

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Audit Report/Date	Audit Observation	Management Action Plan	Status
	assumptions to determine future financial impact.	<p>Update 05/31/23: The University continues to strengthen contract monitoring processes for the Chartwells agreement to ensure compliance with contract requirements and acceptable performance levels.</p> <p>New target implementation date is December 31, 2023.</p>	

CERTIFICATION

TEC §51.9337(h) states “The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor.” This audit report fulfills the requirement of this section.

ACKNOWLEDGEMENTS

We appreciate the assistance provided to us during our audit by Auxiliary Services; Center for Teaching and Learning; Intercollegiate Athletics; Office of General Counsel; Human Resources; Procurement and Business Services; and the Department of Environmental Health, Safety, and Risk Management.

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DETAILS OF AUDIT OBSERVATIONS

Observation 1: Legislative Budget Board Reporting

Background: Texas Government Code §2054.008 *Contract Notification*, requires the University to “provide written notice to the Legislative Budget Board (LBB) of a contract for a major information system. The notice must be on a form prescribed by the LBB and filed not later than the 10th day after the date the institution enters in to the contract.” This section defines major information system as “(1) one or more computers that in the aggregate cost more than \$100,000; (2) a service related to computers, including computer software, that costs more than \$100,000; and (3) a telecommunications apparatus or device that serves as a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network and costs more than \$100,000.”

General Appropriations Act, Article IX Section 7.04(d) *Contract Notification: Amounts Greater than \$50,000*, states the University “shall report to the Legislative Budget Board in the manner prescribed by Legislative Budget Board all contracts, amendments, modifications, renewals, and extensions to which the agency or institution was a party...before the 30th calendar day after awarding a contract or granting an amendment, modification, renewal, or extension”

The Procurement and Property Services Department’s *Director’s Manual and Contract Review Procedures* provide guidance for LBB reporting.

Observation: During our audit procedures, we noted:

- 2 of 2 (100%) instances requiring LBB notification were not reported timely.

Observation Rating: **Medium**

Recommendation: Procurement and Business Services should strengthen procedures to ensure contracts are reported to the LBB within the required timeframe.

Management Response: Procurement and Business Services will strengthen procedures to ensure contracts are reported to the LBB within the required timeframe.

Responsible Party: Vice President for Finance and Administration

Implementation Date: May 31, 2024

APPENDIX 1 SFASU AUDIT SERVICES OBSERVATION RATINGS

Audit Services uses professional judgment to rate the audit observations identified in audit reports. The audit observation ratings are determined based on the risk or effect of the issues in relation to the audit objective(s), along with other factors. These factors include, but are not limited to, financial impact; potential failure to meet area/program/function objectives; level of compliance with laws, regulations, and other requirements or criteria; adequacy of the design of control activities and information system activities; level of potential fraud, waste, or abuse; control environment; history of audit issues; and other pertinent factors.

The table below provides a description of the audit observation ratings used by SFASU Audit Services.

SFASU Audit Services Observation Ratings	
Rating	Description
Low	The audit observation does not present significant risks or issues that could negatively impact the University in the area/program/function audited. Action is needed to address the audit observation.
Medium	The audit observation presents risks or issues that if not addressed could moderately impact the University in the area/program/function audited. Action is needed to address the audit observation and reduce risks to a more desirable level.
High	The audit observation presents risks or issues that if not addressed could substantially impact the University in the area/program/function audited. Prompt action is needed to address the audit observation and reduce risks to a more desirable level.
Priority	The audit observation presents risks or issues that if not addressed could critically impact the University in the area/program/function audited. Immediate action is needed to address the audit observation and reduce risks to a more desirable level.

APPENDIX 2 SFASU FOLLOW-UP AUDIT TERMINOLOGY

In an audit that incorporates follow-up on management actions plans, the audit report terminology may include the following:

SFASU Audit Services Terminology	
Category	Explanation
<i>Implemented</i>	The Administrator responsible for implementation represented that the management action plan was completed and fully implemented as of the audit scope date. Audit Services performed verification procedures.
<i>In process but with a revised target implementation date</i>	The Administrator responsible for implementation represented that the University was in the process of addressing the management action plan in an appropriate manner but additional time was needed for implementation and the target implementation date was revised as of the audit scope date.
<i>Verified</i>	Audit Services verified the management action plan was implemented at the time of audit report issuance; thus, no representation from the responsible Administrator was needed.
<i>Excluded</i>	The management action plan was excluded from further audit work; thus, no representation from the responsible Administrator was requested.
<i>Closed</i>	Audit Services closed the management action plan as the process, system, or control was no longer applicable.
<i>Delayed</i>	The Administrator responsible for implementation represented that the management action plan was completed and fully implemented as of the audit scope date; however, due to the COVID-19 environment, Audit Services was unable to perform verification procedures.
<i>Open</i>	Audit Services requested representation from the responsible Administrator for management action plans in this category as of the audit scope date.
<i>Original Implementation Date</i>	The implementation date provided by the responsible Administrator in the original audit report.
<i>Target Implementation Date</i>	The implementation date provided by the responsible Administrator in a previous follow-up audit report.
<i>New Target Implementation Date</i>	The implementation date provided by the responsible Administrator for the current follow-up audit report.