

# DEPARTMENT OF INFORMATION RESOURCES

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## COMPTROLLER PROCUREMENT AND SUPPORT SERVICES DIVISION

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### DIR at a Glance

The Department of Information Resources (DIR) is the State's information technology and telecommunications agency. The Legislature created DIR in 1989 to set the overall strategic direction for state agencies' use and management of IT. Since then, DIR's responsibilities have expanded significantly. DIR now provides a range of IT and telecommunications products and services to state agencies and eligible voluntary customers, including local governments and universities, primarily by procuring and administering contracts on behalf of the State.

DIR's purpose is to coordinate and support the IT and telecommunications needs of the State by carrying out the following key activities.

- Provides statewide IT strategic planning, reporting, and standards setting.
- Provides guidance and oversight of state information security.
- Oversees three major statewide programs, including procuring and managing contracts for the State's telecommunications system, the Texas Agency Network (TEX-AN); the official website of Texas, Texas.gov; and consolidated data center services for state agencies.
- Procures and manages statewide cooperative contracts for IT services and products.
- Operates the Capitol Complex Telephone System.

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*The reviews of DIR and the Division point to the need for a broader look at the State's decentralized approach to contracting and procurement.*

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### Comptroller Division at a Glance

In 2007, the Legislature transferred statewide procurement functions and other support services from the then-named Texas Building and Procurement Commission to the Comptroller of Public Accounts, creating the Texas Procurement and Support Services Division. The Division carries out the following key activities.

- Establishes and manages statewide contracts for commodities and services, and reviews and delegates specific purchases to individual state agencies.
- Certifies Historically Underutilized Businesses (HUBs), develops statewide HUB goals, and reports on the State's use of HUBs.
- Trains and certifies purchasers and contract managers.
- Provides mail services to state agencies within Travis County.

## Summary

Legislative interest and direction regarding DIR and the Division required the Sunset Commission to answer two specific structural questions regarding these two agencies: Should the Division's functions return to the Texas Facilities Commission, and should DIR's cooperative contracts program for information technology items transfer to the Comptroller's Office to consolidate the State's two centralized purchasing programs?

Considering that the State has gone through a 20-year period of back-and-forth organizational shifts from centralizing state administrative support services within a single agency to the more decentralized structure that exists today, the Sunset Commission ultimately concluded that further shuffling the placement of these functions would likely create more risk than benefit at this time. However, more formal coordination between DIR and the Division regarding the State's two procurement programs is needed to ensure ongoing collaboration and collection of comparable data for future decision making.

The reviews of these agencies' purchasing programs also highlighted the persistent, and much broader, legislative interest in ensuring the State's overall approach to contracting and procurement results in the most efficient and accountable use of taxpayer dollars. The Legislature has made repeated attempts to study and address concerns arising from various high-profile contracting problems, but these efforts have largely been piecemeal, with no complete, in-depth evaluation of the State's overall approach to contracting and procurement. Without such an evaluation, the Legislature has not had the opportunity to look at these matters from a statewide perspective and consider making more meaningful, overarching changes to help address ongoing questions and concerns.

The Sunset Commission also evaluated the continued appropriateness of its 2010 recommendations on DIR which were adopted by the 82nd Legislature, but ultimately vetoed by the Governor. These recommendations addressed concerns with DIR's oversight, management of administrative fees and costs, and contracting practices beyond its cooperative purchasing program for technology commodities. The Sunset Commission concluded that DIR has made sincere efforts to address previous concerns, but continued follow-up and statutory changes are needed to ensure ongoing implementation and accountability. The following material summarizes the Sunset Commission's recommendations on DIR and the Division.

## *Issue 1*

### **While the Division and DIR Should Continue, the State's Fragmented Approach to Procurement Needs Further Evaluation.**

The Sunset Commission found the State has a continuing need for the procurement, support, and information technology functions performed by DIR and the Division, and that no organizational

change is needed at this time. While the programs share similar procurement functions and could benefit from increased coordination, the Sunset Commission concluded that a full merger could pose more risks than benefits, particularly given both agencies have made significant efforts to address previous concerns. More broadly, the breadth of state procurement and longstanding legislative concerns about the State's approach to contracting warrant a more comprehensive evaluation than the reviews of these two agencies could provide.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Retain the Texas Procurement and Support Services Division's functions at the Comptroller's Office and continue the program for eight years.**

This recommendation would maintain the Division's functions at the Comptroller's Office instead of transferring them back to the Texas Facilities Commission on September 1, 2013. The Division would undergo a Sunset review in eight years, aligning it with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4.

#### **1.2 Continue the Department of Information Resources and its customer advisory committee for eight years.**

This recommendation continues DIR as an independent agency and aligns its next review with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4. The recommendation directs Sunset staff to report on DIR's implementation of the Sunset Commission's 2010 management recommendations currently in progress in its compliance report to the 84th Legislature. The recommendation also requires DIR's Board to maintain its recently created customer advisory committee to ensure ongoing implementation of the previous Sunset recommendation.

#### **1.3 Require formalized coordination and improved data collection between DIR and the Division to allow for a more complete evaluation of their procurement programs in the 2020–2021 biennium.**

This recommendation requires DIR and the Division to formally coordinate, share best practices, and develop common methodologies for collecting data and measuring the success of their two statewide procurement programs. Under this recommendation, the two agencies would dedicate high-level staff to form a coordinating committee; develop and share best practices; and identify and develop strategies to avoid duplication and capitalize on opportunities for collaboration and consolidation. DIR and the Division would develop a memorandum of understanding to carry out this recommendation.

#### **1.4 Require the Sunset Commission to evaluate the State's overall approach to procurement and contracting in 2021 to coincide with the next DIR and Division Sunset reviews.**

This recommendation directs the Sunset Commission to evaluate the State's overall approach to procurement in eight years, concurrent with the next Sunset reviews of DIR and the Division as suggested in Recommendations 1.1 and 1.2. The evaluation would have an intentionally broad scope, including but not limited to examining the State's overall statutory procurement and contracting framework, the Council on Competitive Government, the Contract Advisory Team, the Quality Assurance Team, and general contract management and oversight.

### **1.5 Require DIR to better maximize the State's buying power through the agency's cooperative contracts program.**

This recommendation requires DIR to analyze the historical spending for information technology commodities and services, and to develop contracts that leverage this spend. DIR would negotiate specific pricing, when reasonable, for commonly purchased IT commodities and services. If DIR negotiates a contract that uses a discount from list pricing scheme, DIR must document why this pricing scheme is necessary.

## ***Issue 2***

### **DIR Continues to Need Statutory Direction to Ensure Its Recently Improved Cost-Recovery Strategies and Administrative Efficiencies Are Lasting.**

The 2010 Sunset review found that DIR's customers were paying more than necessary to recover the operating costs for its telecommunications and cooperative contracts programs, and that DIR had not established the procedures necessary to ensure it charged appropriate fees and delivered expected cost savings. While these programs are intended to break even, DIR had accumulated \$29 million in fund balances by the end of fiscal year 2009.

Due to both legislative action and DIR's own initiative, the Sunset Commission observed significant positive change over the last two years resulting in the elimination of surplus fund balances, reduced fees charged to DIR's customers, and greater administrative efficiency. These changes are encouraging, but continued legislative direction is necessary to ensure lasting progress.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Require DIR to establish clear procedures for setting, adjusting, and approving administrative fees for each of its cost recovery programs as part of its annual budget process.**

This recommendation requires DIR to maintain its recently adopted process for calculating the administrative fees for each of its cost recovery programs. Fees must directly relate to the amount the Department needs to collect to recover the cost of its operations, as determined by the agency's annual budget process. DIR would maintain clear procedures directing how staff in each of DIR's programs and the finance division would work together to determine fees, including review and approval of fees by the agency's Chief Financial Officer, Executive Director, and Board.

#### **2.2 Require DIR to report its administrative fees and the methodology used to set them to the Legislative Budget Board annually, and post all fee information on its website.**

After reviewing and adjusting its fees as part of the annual budget process, the Department would report its fees for the new fiscal year to LBB, along with the underlying analysis and methodology which determined the fee amounts. DIR would also post information about the fees for its cost recovery programs, including a description of how they are derived, on its website. DIR would provide updates anytime a contract amendment or other action results in major pricing changes. The Department must also report the cost allocation charged to its telecommunications customers, similar to existing reporting requirements for its cooperative contracts and data center customers.

### **2.3 Establish each of DIR's accounts in statute and limit expenditures to program purposes.**

This recommendation adds DIR's Clearing Fund Account and the Statewide Technology Account to statute, along with a description of their intended use to benefit each program, similar to what already exists for the Telecommunications Revolving Fund. DIR would not use funds in these accounts for purposes other than those specifically authorized by the Legislature.

### **2.4 Direct DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.**

This recommendation requires DIR to maintain its recently developed criteria for the appropriate use of staff augmentation contractors and outside consultants by the agency. DIR staff must prepare, and the Board approve, an annual analysis of staffing needs and proposed use of contractors and consultants in conjunction with the budget process. The analysis would include the need for and cost-effectiveness of using staff augmentation contractors or outside consultants, and consider the possibilities for DIR to use its own workforce to accomplish tasks proposed for contractors or consultants, and any training or additional resources that may be needed.

## ***Issue 3***

### **While DIR Has Made Progress, Management and Enforcement of Major Contracts Continue to Pose Risks to the State.**

Although chosen by the Legislature to help other state agencies mitigate risks inherent in IT projects and contracts, DIR has struggled to fulfill this role. The 2010 Sunset review highlighted significant concerns with two of DIR's major contracts for data center and telecommunications services, and recommended increased oversight and a more strategic, best-practices approach to contract management from DIR's Board and staff. While the agency has made significant progress in addressing these previous concerns and recommendations, statutory and legislative direction is still necessary to ensure continued attention given the wide scope and high risk of DIR's contracted programs.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Require DIR to consistently measure and report cost savings and project status for IT consolidation projects.**

DIR would work with entities involved in consolidation projects to develop an agreed upon methodology to first collect and validate data for a baseline assessment of costs, for use in both initial projections and subsequent cost comparisons. DIR must use this methodology to evaluate and annually report information on actual costs and cost savings to the DIR Board, LBB, and DIR customers. DIR would also report on the progress of the projects compared to the initially projected timelines for implementation.

DIR would report this information on both a statewide and individual agency level and coordinate with its Internal Audit Division for guidance on how to ensure the methodology provides an objective assessment of costs and project status. DIR would post these status reports on its website. In addition to the current data center services project, this recommendation would apply to any future consolidation initiatives DIR undertakes.

### **3.2 Require DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.**

Under this recommendation, DIR must create, maintain, and regularly update a contract management guide specifically targeted toward providing an overall, consistent approach on how to procure and manage DIR's major outsourced contracts. DIR would update this manual regularly, using lessons learned and changing conditions to guide these updates. The manual would include DIR's general approach to contract management, lines of accountability, ethics standards and policies, risk management, stakeholder input, and contract monitoring.

### **3.3 Require DIR to create management plans specific to each of its major outsourced contracts.**

This recommendation requires DIR to develop and maintain specific procedures for administering and overseeing each of its major contracts and for managing and mitigating risks inherent in each contract. The plans would be required for Texas.gov, TEX-AN, and data center services, and any other major outsourced contract DIR enters into in the future. Contract administration and program staff would develop these plans jointly, with input from executive management and the Board, and approval by the Executive Director.

For each of its major contracts, DIR would tailor the plan to define its approach to transitioning from one contract to another; establishing lines of accountability and coordination of contract activities; implementing the program; monitoring contractor performance; identifying and mitigating risks; and involving and communicating with customers. DIR would revise its management plans as necessary to keep current during the active contract phase, and as it re-procures its contracts to ensure the plans remain updated and incorporate any changes resulting from new contracts.

### **3.4 Strengthen and improve the Board's oversight of DIR's contracting functions.**

This recommendation requires DIR's Board to take the following actions to continue improving its oversight of DIR's contracting functions.

- Require the Board to approve all major outsourced contracts and any significant amendments with statewide impact.
- Require the Board to adopt a policy describing the Board's role in setting a strategic direction for DIR's programs and require the Board to evaluate and approve new initiatives or categories of services offered by DIR.
- Require the Board to establish subcommittees to monitor DIR's major outsourced contracts, including data center services, TEX-AN, and Texas.gov.
- Require the Board to regularly evaluate the extent to which DIR meets its information technology mission by providing cost effective services and addressing customer needs.
- Require the Board to regularly evaluate the operations of the agency, including information regarding the agency's revenues and expenses and customer satisfaction.

### **3.5 Require DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.**

This recommendation would require DIR to develop and maintain a contract management training policy for all staff involved in contract management, including contract managers, program staff, and

executive management, as well as members of DIR's Board. The policy would include specific training on DIR's overall approach to procuring and managing contracts, as well as contract-specific procedures, as developed under Recommendations 3.2 and 3.3. Contract management training for Board members, while less specific, would be a part of the Board member training already required in statute.

### **3.6 Require DIR to establish formal contract governance structures for each of its major contracts.**

This recommendation requires DIR to create a formalized contract governance structure for each of its major contracts, including data center services, TEX-AN, and Texas.gov, to ensure customer involvement in decision making. DIR would have a standard, coordinated approach to obtaining the feedback necessary to effectively manage its contracts and best meet customer needs.

### **3.7 Establish stricter conflict of interest provisions in DIR's statute.**

This recommendation adds specific provisions to DIR's statute similar to those in the Comptroller of Public Account's statute. DIR employees involved in contracting and procurement would be prohibited from soliciting or accepting anything of value from a vendor or potential vendor. DIR would maintain these provisions in its recently adopted internal policies, such as its employee and contract management manuals, and in staff training.

### **3.8 Require DIR to respond to Contract Advisory Team feedback on solicitations.**

Under this recommendation, for any solicitation DIR submits to the Contract Advisory Team for review, DIR must either adopt CAT's recommendations or provide an explanation in writing as to why the recommendations cannot be implemented.

## ***Issue 4***

### **DIR's Statute Does Not Ensure Ongoing Strong Internal Audit Oversight of Its High-Risk Programs.**

DIR's contracts involve considerable amounts of public funds — \$2 billion in fiscal year 2011. Because the risks inherent to DIR's programs affect not only DIR, but many other governmental entities that rely on and pay for DIR's services, a high level of scrutiny is necessary to ensure DIR manages these complex programs effectively. The 2010 Sunset review found DIR did not dedicate sufficient resources to its internal audit function, exposing the Department and the State to an unacceptable level of risk. DIR has since taken encouraging steps to improve its internal audit program, but statutory direction is still necessary to ensure DIR and its Board continue to make internal auditing a priority.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require DIR to establish an Internal Audit Division.**

#### **4.2 Require the DIR Board to maintain an audit subcommittee.**

These recommendations would solidify the Department's and Board's decisions to establish an Internal Audit Division and a Finance and Audit Subcommittee by placing them in statute. This approach would ensure DIR maintains a full-time, in-house internal audit function, and that the Board continues

to closely monitor internal audit activities. The Audit Subcommittee would determine if allocated resources are adequate to cover the areas of risk identified in the internal audit plan. Under this recommendation, the Internal Audit Division would continue to prepare an annual audit plan using risk assessment techniques to determine DIR's areas of greatest risk, for approval by the Board.

## ***Issue 5***

### **The Department's Statute Contains Inefficient Reporting Requirements and Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Sunset Act charges the Sunset Commission to recommend the continuation or abolishment of each reporting requirement imposed on an agency under review. The Sunset Commission found that all of DIR's reporting requirements continue to serve a useful purpose and should be continued, but the due date for one of these reports should be changed. Also, among the standard elements considered in a Sunset review, the Sunset Commission adopts Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. DIR's statute lacks one of these recommendations.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue all of DIR's reporting requirements, but change the due date for the Texas.gov reporting requirements.**

This recommendation would continue all of DIR's reporting requirements, but would change the due date for Texas.gov reporting requirements from September 1 of even-numbered years to November 15 of even-numbered years to align the submission date with DIR's Biennial Performance Report on the Use of Information Resources Technologies by Texas State Agencies. To comply with a recent change in law, reports to the Legislature should be provided in electronic format only.

#### **5.2 Apply the standard Sunset Across-the-Board Recommendation for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution.**

This recommendation requires DIR to implement a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Department would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

## ***Issue 6***

### **Three of the Division's Statutorily Required Reports Are Inefficient and One Is No Longer Needed.**

The Sunset Commission found that one of the Division's reporting requirements no longer serves a useful purpose and should be eliminated, and that the other four required reports should be continued. In addition, the Sunset Commission identified opportunities to adjust due dates and recipients for the remaining Division reports to increase efficiency.

### **Recommendations**

#### ***Change in Statute***

#### **6.1 Abolish the Division's report on Texas Correctional Industries products sold and continue the Division's other reports.**

This recommendation eliminates the Division's required report on TCI products sold, since the information is readily available in alternative ways. The Division's remaining four statutory reports would be continued because they provide useful information to state leadership. To comply with a recent change in law, reports to the Legislature should be provided in electronic format only.

#### **6.2 Modify the due date of the HUB Education and Outreach Report and modify the due dates and update the recipients of the Annual and Semi-Annual HUB Reports.**

This recommendation changes the due date for the Historically Underutilized Business (HUB) Education and Outreach Report from before September 1 of each year to October 15 of each year. This recommendation also changes the due dates for the Semi-Annual and Annual HUB Reports from April 15 and October 15 to May 15 and November 15, respectively. Finally, this recommendation amends the recipients of both the Semi-Annual and Annual HUB reports to remove references to the joint committee charged with monitoring the implementation of HUB goals, which no longer exists. Instead, the Division would send both reports to the Lieutenant Governor and the Speaker of the House of Representatives, consistent with the current statutory recipients of the Annual HUB Report.

### **Fiscal Implication Summary**

These recommendations would not have a significant fiscal impact to the State. Improved coordination between DIR and the Division recommended in Issue 1 would result in administrative savings and efficiencies, but the exact amount depends on implementation and could not be estimated.

