

SUNSET ADVISORY COMMISSION

FINAL REPORT
WITH LEGISLATIVE ACTION

*Department of
Information Resources*

*Comptroller Procurement
and Support Services
Division*

JULY 2013

Sunset Advisory Commission

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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.

**DEPARTMENT OF INFORMATION
RESOURCES**

**COMPTROLLER PROCUREMENT AND
SUPPORT SERVICES DIVISION**

**SUNSET FINAL REPORT WITH LEGISLATIVE ACTION
JULY 2013**

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, November 2012* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff’s extensive evaluation of the agency.
 - *Sunset Staff Report with Hearing Material, December 2012* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.
 - *Sunset Staff Report with Decision Material, January 2013* – Adds additional responses, testimony, or new issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Sunset Staff Report with Commission Decisions, January 2013* – Adds the decisions of the Sunset Commission on staff recommendations and new issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
 - *Sunset Final Report with Legislative Action, July 2013* – Adds action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
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SUMMARY

SUMMARY

Texas' approach to providing administrative support services to state agencies reflects a fundamental paradox. On the one hand, the Legislature has long seen the need to centralize certain support functions to gain efficiencies and savings, such as procuring common goods; developing a shared telecommunications network; and managing state facilities and grounds. On the other hand, the overall decentralized structure of Texas government ultimately gives state agencies considerable autonomy to act on their own as evidenced by numerous statutory exemptions and delegated authority many agencies receive, freeing them from using these centralized functions. This decentralization makes evaluation of the few centralized functions inherently difficult, particularly when looking at the State's approach to delivering administrative support services over time. The State has gone through a 20-year period of back-and-forth organizational shifts from centralizing these services within a single agency, the now-defunct General Services Commission, to the more decentralized structure that exists today.

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.

This report addresses the Sunset reviews of the Texas Procurement and Support Services Division (Division) at the Comptroller's Office and the Department of Information Resources (DIR), both of which provide centralized support services for the State. While every Sunset review asks basic questions about an agency's organizational structure, legislative interest and direction regarding these agencies' programs required the reviews to answer two specific structural questions best addressed through a single report: Should the Division's functions return to the Texas Facilities Commission (formerly the Texas Building and Procurement 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?

Ultimately, the Sunset reviews concluded that further shuffling the administrative placement of these agencies' functions would likely create more risk than benefit at this time. Both agencies operate centralized purchasing programs for different types of commodities – standard commodities such as office supplies at the Division, and technology items such as computers at DIR. Considering both the Division and DIR have made significant efforts to address previous concerns regarding the effectiveness of these procurement programs, Sunset staff determined additional organizational change would delay needed improvements that have only recently begun to gain momentum. Also, the reviews revealed fundamental differences between the two programs and little actual overlap of functions, as well as a lack of consistent, comparable data. This lack of data prevented a reliable analysis

of the benefits and drawbacks of each program's approach that could help justify a merger from an analytical standpoint. However, benefits could result from formalizing the initial coordination efforts between the two programs to help ensure ongoing collaboration and collection of comparable data for future decision making, without the need to move the organizational boxes once again.

The reviews of these two programs also provide a window into 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. Over time, 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. Such an evaluation was beyond the scope of the current Sunset reviews, but the report recommends requiring such a review be performed in eight years. As recommended in Issue 1, this admittedly ambitious project would require a specific charge with a broad scope and dedicated resources to accomplish it. However, the evaluation would provide the Legislature an opportunity to look at these matters from a statewide perspective and consider making more meaningful, overarching changes to help address ongoing questions and concerns regarding procurement. While eight years may seem long, Sunset staff determined that improvements in data collection would be necessary to make the evaluation meaningful. Aligning the future Sunset reviews of the Division and DIR with this date would allow sufficient time for the two programs to develop and collect at least three years of better, comparable data, and to implement additional changes that could feed into this overall analysis. As with all Sunset reviews, the actual evaluation would begin two years in advance of the date, in this case 2019.

While the two statewide purchasing programs are the common link between the Division and DIR, this report also evaluates the continued appropriateness of all of the Sunset Commission's 2010 recommendations on DIR which were adopted by the 82nd Legislature, but ultimately vetoed by the Governor. The previous Sunset review identified concerns with DIR's oversight, management of administrative fees and costs, and contracting practices beyond its cooperative purchasing program for technology commodities. In assessing the status of the previous Sunset recommendations, staff concluded that DIR has made sincere efforts to address the concerns, but continued follow-up and statutory changes are needed to ensure ongoing implementation and accountability. Appendix A and Issues 2 through 4 of this report detail the Sunset Commission's previous recommendations on DIR and their current status. A brief description of the recommendations in this report follows.

Issues and Recommendations

Issue 1

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

Key Recommendations

- Retain the Texas Procurement and Support Services Division's functions at the Comptroller's Office and continue the program for eight years.
- Continue the Department of Information Resources and its customer advisory committee for eight years.

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

Issue 2

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

Key Recommendations

- Require DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.
- Require DIR to establish clear procedures for setting, adjusting, and approving administrative fees for each of its cost-recovery programs and report the fees and methodology to LBB annually as part of its annual budget process.
- Establish each of DIR’s accounts in statute and limit expenditures to program purposes.

Issue 3

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

Key Recommendations

- Require DIR to consistently measure and report cost savings and project status for IT consolidation projects.
- Require DIR to create a contract management guide to provide an overall approach to administering its major contracts, and detailed management plans specific to each of these contracts.
- Strengthen oversight of DIR’s contracts by requiring more direct involvement by the Board and customers, and by establishing stronger conflict of interest provisions in law.

Issue 4

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

Key Recommendation

- Require DIR to establish an Internal Audit Division, and require the Board to maintain an audit subcommittee to oversee the Internal Audit Division.

Issue 5

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

Key Recommendations

- Continue all of DIR's reporting requirements, but change the due date for the Texas.gov reporting requirements.
- Apply the standard Sunset across-the-board requirement for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Issue 6

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

Key Recommendations

- Abolish the Division's report on Texas Correctional Industries products sold and continue the Division's other reports.
- Modify the due date of the HUB Education and Outreach Report and update the recipients of the Semi-Annual and Annual HUB Reports.

SUMMARY OF FINAL RESULTS

H.B. 2472 Cook (Birdwell)

The Sunset review of the Department of Information Resources (DIR) and the Texas Procurement and Support Services Division at the Comptroller's Office (Division) resulted in changes that set the stage for a future comprehensive evaluation of and improvements to the State's overall approach to purchasing and contracting for goods and services.

House Bill 2472, the DIR and Division Sunset bill, maintains the State's two statewide procurement programs within the separate agencies, but requires more formal coordination between them to identify areas of overlap, and opportunities for collaboration and possible consolidation of state procurement functions. The bill also requires the collection and analysis of comparable procurement data to better inform future decision making. Using the data collected through this effort, the bill requires the Sunset Commission to conduct a comprehensive evaluation of the State's approach to contracting and procurement in 2021, which will coincide with the next Sunset reviews of DIR and the Division. This evaluation will provide the Legislature the opportunity to consider and make more meaningful, overarching changes to the State's highly decentralized procurement and contracting systems.

House Bill 2472 also enacts nearly all of the changes made to DIR through its 2010 Sunset review, which were adopted by the 82nd Legislature but ultimately vetoed by the Governor. These changes address concerns with DIR's oversight, management of administrative fees and costs, and contracting practices. DIR has mostly addressed and corrected these previous concerns, but H.B. 2472 contains the statutory changes needed to ensure their ongoing implementation.

The following material summarizes results of the Sunset review of DIR and the Division.

Continuation, Coordination, and Future Evaluation

- Continues DIR for eight years and requires DIR to establish a customer advisory committee.
- Retains the Division's functions at the Comptroller's Office for eight years.
- Requires formalized coordination and improved data collection between DIR and the Division to allow for a more complete evaluation of their procurement programs in 2021.
- Requires 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.

DIR Cost-Recovery Programs

- Requires 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.
- Requires 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.

- Establishes each of DIR's accounts in statute and limits expenditures to program purposes.

DIR Contracting Practices

- Strengthens and improves the Board's oversight of DIR's contracting functions.
- Establishes stricter conflict-of-interest provisions in DIR's statute.
- Requires DIR to consistently measure and report cost savings and project status for IT consolidation projects.
- Requires DIR to establish formal contract governance structures and management plans for each of its major outsourced contracts.
- Directs DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.
- Requires DIR to better maximize the State's buying power through the agency's cooperative contracts program.
- Requires DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.
- Requires DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.
- Requires DIR to respond to Contract Advisory Team feedback on solicitations.

DIR Internal Audit

- Requires DIR to establish an Internal Audit Division.
- Requires the DIR Board to maintain an audit subcommittee.

Standard Sunset Review Elements

- Applies the standard Sunset Across-the-Board requirement for DIR to develop a policy regarding negotiated rulemaking and alternative dispute resolution.
- Continues all of DIR's reporting requirements, but changes the due date for the Texas.gov reporting requirements.
- Abolishes the Division's report on Texas Correctional Industries products sold and continues the Division's other reports.
- Modifies the due date of the Division's Historically Underutilized Business (HUB) Education and Outreach Report and modifies the due dates and updates the recipients of the Annual and Semi-Annual HUB Reports.

Fiscal Implication

House Bill 2472 will not have a significant fiscal impact to the State.

AGENCY AT A GLANCE
NOVEMBER 2012

DIR AT A GLANCE

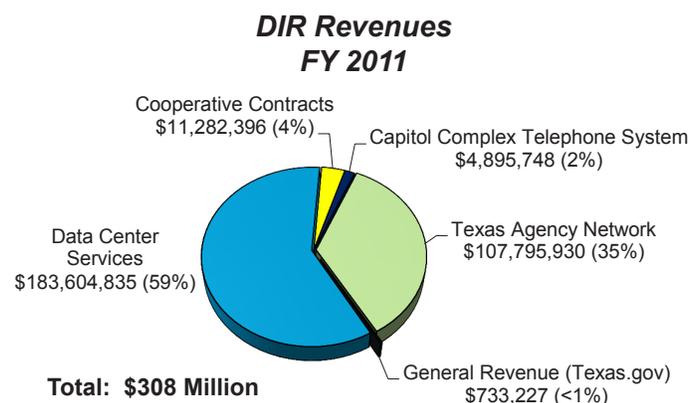
The Department of Information Resources (DIR) is the State's information technology and telecommunications agency. The Legislature created DIR in 1989 to set the overall strategic direction for state agencies' use and management of IT. Since then, DIR's responsibilities have expanded significantly. DIR 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.

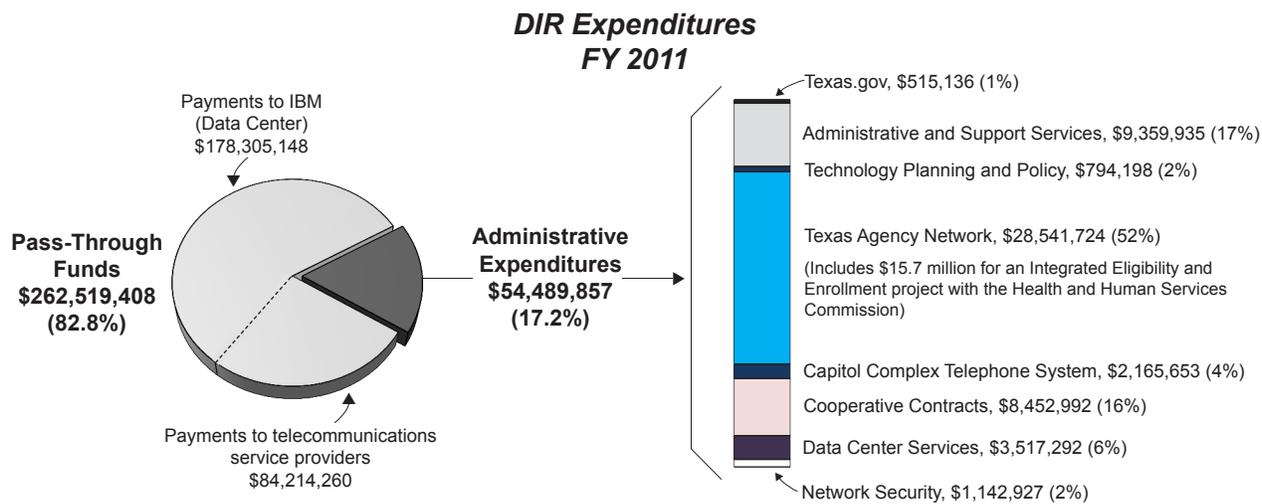
- Provides statewide IT strategic planning, reporting, and standards setting.
- Provides guidance and oversight of state information security.
- Oversees three major statewide programs, including procuring and managing contracts for the State's telecommunications system, the Texas Agency Network (TEX-AN); 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 (CCTS).

Key Facts

- **Board.** DIR's Board consists of seven Governor-appointed members and three ex officio members. One of the seven Governor-appointed members must be employed by an institution of higher education. The three ex officio members rotate among the Commissioners of Insurance, Health and Human Services, and Education; and the Executive Directors of the Departments of Transportation, Criminal Justice, and Parks and Wildlife.
- **Revenues.** DIR is primarily funded with fees collected from its cost-recovery programs, including data center services, TEX-AN, CCTS, and cooperative contracts. In fiscal year 2011, DIR received \$308 million in revenues, as shown in the pie chart, *DIR Revenues*. DIR received 99 percent of this amount, or about \$307 million, through interagency contracts and appropriated receipts associated with its cost-recovery programs, with less than 1 percent, or \$733,227, coming from General Revenue to support administration of Texas.gov. At the beginning of 2011, DIR also had access to an additional \$33 million in unexpended fund balances from revenues collected in prior years, and plans to spend most of this balance down by fiscal year 2013, as discussed in Issue 2.



- Expenditures.** The Department’s expenditures for fiscal year 2011 totaled approximately \$317 million. Of this amount, 83 percent, or \$263 million, represented pass-through payments to International Business Machines, Inc. (IBM) for the data center services contract, and service providers for TEX-AN and CCTS, primarily AT&T. The Department’s administrative expenditures for fiscal year 2011 totaled approximately \$54 million. The Department spent about half of this amount to administer its telecommunications program, as shown in the pie chart, *DIR Expenditures*.



Total Expenditures: \$317 Million*

* DIR’s expenditures exceeded revenues due to a planned spend-down of available fund balances, discussed in Issue 2.

- Staffing.** Although authorized to employ up to 235 staff, DIR employed approximately 206 staff at the end of fiscal year 2011. All staff are located in Austin. DIR’s telecommunications division, which administers TEX-AN and CCTS, has the largest number of employees.
- Telecommunications.** DIR operates CCTS, the phone system for the Capitol Complex, and oversees the management of the State’s consolidated voice and data network, TEX-AN. DIR is the provider for CCTS, while AT&T is the main service provider among several with contracts through TEX-AN. Although 80 percent of TEX-AN’s 732 customers are voluntary, 80 percent of the program’s revenues are from state agencies, which are statutorily required to use the program. In fiscal year 2011, TEX-AN and CCTS generated approximately \$113 million in sales.
- Cooperative Contracts.** DIR negotiates and administers approximately 700 cooperative contracts for products such as computer hardware and software, telecommunications services, and IT staffing services. In 2005, the Legislature authorized DIR to require state agencies to purchase all IT commodity items through these contracts.¹ Local governments, K-12 and higher education entities, and nonprofit organizations can voluntarily purchase from these contracts. In fiscal year 2011, approximately 2,700 entities purchased through the program, with \$1.65 billion in total sales. That year, higher education and K-12 combined represented 41 percent of total sales; state agencies represented 31 percent; and local governments represented 28 percent. According to DIR, customers saved \$265 million in fiscal year 2011 by purchasing through DIR’s contracts instead of other comparable group purchasing alternatives.

- **Data Center Services.** DIR manages the delivery of consolidated data center services to 27 state agencies and one university by managing major outsourced contracts. DIR originally awarded the data center services contract to IBM in 2006, which was valued at \$863 million over seven years. The outsourced services include consolidation of server and mainframe computer processing, print/mail functions, disaster recovery, security, and data center facility management. In 2010, after a number of vendor service failures, DIR re-procured the contract and in 2011, awarded new multi-year contracts to Capgemini America, Xerox Print Services, and Xerox State and Local (formerly ACS). The new contracts are valued at approximately \$1.2 billion over eight years and service commenced in July 2012. Issue 3 of this report provides more information about the current status of the data center services program.
- **Texas.gov.** Formerly known as TexasOnline, Texas.gov is the official website for the State of Texas. Texas.gov provides website and payment services for Texas state agencies and other governmental customers to conduct business with citizens. More than 100 state agency, local government, and university participants offer nearly 1,000 online services through the website, such as driver license renewals, vehicle registration, property and sales tax payments, and utility bill payments. Texas.gov operates as a public-private partnership. DIR provides contract management, oversight, and statewide coordination, while the vendor, Texas NICUSA provides all other aspects of daily program management and service delivery. DIR receives General Revenue to support Texas.gov, which totaled \$733,227 in fiscal year 2011. The State and Texas NICUSA share the transaction fees collected from citizens and businesses using the online services. Since the creation of TexasOnline in 2000 through fiscal year 2011, these fees have contributed more than \$98.5 million to the General Revenue Fund.
- **Information security.** DIR manages a statewide cyber security program to help state agency and higher education institutions protect state information assets, including personal information entrusted to the State. As the central authority for statewide information assurance programs, DIR operates the Network Security Operations Center which monitors, reports, and coordinates responses to cyber attacks against the state network. DIR also provides services including controlled penetration tests, web application and host vulnerability scans, technical security training, security program education, access to risk management and incident reporting applications, security policy and risk planning advisement, and outreach to statewide cyber response partners. In 2011, DIR formed a State Information Security Advisory Committee to guide DIR's statewide security operations and services.
- **IT policy and leadership.** Since its creation in 1989, DIR has been designated as the State's lead agency for coordinating the planning and use of IT. In addition to statewide strategic planning and reporting, DIR collects data and information from state agencies, conducts analysis, and reports to the Legislature on statewide strategic IT initiatives. The Department is responsible for Information Resources Manager education and outreach, and developing policies, best practices, and standards related to web accessibility, IT project management, and information security. DIR staff also serve on two statewide committees, the Contract Advisory Team and Quality Assurance Team, which provide input and monitoring of major contracts and IT projects.

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¹ Section 2157.068(f), Texas Government Code; and 1 T.A.C. Section 212.10.

COMPTROLLER DIVISION AT A GLANCE

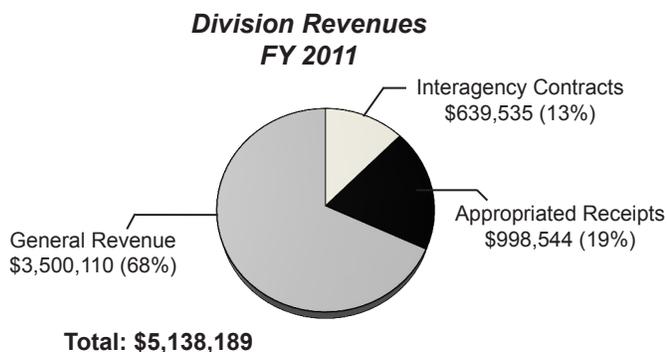
In 2007, the Legislature transferred statewide procurement functions and other support services from the then-named Texas Building and Procurement Commission to the Comptroller of Public Accounts, creating the Texas Procurement and Support Services Division (Division). The Division carries out the following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

Key Facts

- **Staffing.** The Division employs about 75 staff, the majority of whom are dedicated to statewide procurement and contract management. The Comptroller of Public Accounts oversees the Division and promulgates rules. The Statewide Procurement Advisory Council, comprised of representatives from the Governor, Texas Facilities Commission, Department of Information Resources, and the Legislative Budget Board, and the Vendor Advisory Committee advise the Comptroller in carrying out the Division's duties.

- **Funding.** In fiscal year 2011, the Division received revenues of about \$5.1 million, as detailed in the pie chart, *Division Revenues*. The Division is primarily funded by General Revenue, with smaller amounts of appropriated receipts derived from fees collected from vendors and voluntary customers, and payments from other state agencies receiving mail, fleet, and training services. The Division spent \$4.9 million in fiscal year 2011, of which salaries and wages accounted for 78 percent. Approximately \$200,000 in revenue received but not expended lapsed back to General Revenue.



- **Procurement and contract management.** To leverage the State's buying power, the Division establishes statewide contracts for commodities and services. The Division's customers include state agencies and institutions of higher education, as well as local governments and assistance agencies through its voluntary cooperative purchasing program. The Division shares statewide purchasing responsibilities with two other state agencies — the Department of Information Resources (DIR), which establishes contracts for information technology commodities and services, and the Council on Competitive Government (CCG), which enters into a smaller number of statewide contracts for large-volume commodities and services.

In fiscal year 2011, the State spent more than \$1 billion through Division-administered contracts, about half of which flowed through TxSmartBuy.com, the Division's online shopping website. These sales represent about 5 percent of the total amount of state spend on contracted commodities and services, with sales through DIR, CCG, and individual agencies comprising the remainder. The chart, *Major Types of Contracts*, details the types of contracts for which the Division is responsible. In addition, the Division negotiates statewide contracts for discount travel services, including hotels, rental cars, and airfare. About \$6.2 million in rebates from TxMAS and charge card contracts procured by the Division was deposited into the General Revenue Fund in fiscal year 2011.

Major Types of Contracts

Type	Examples	Amount of Contract Spend – FY 2011 (Millions)
Term Contracts. Statewide contracts intended for use by multiple agencies. State agencies and institutions of higher education must buy through term contracts if a contract exists for the product desired.	<ul style="list-style-type: none"> ● Office supplies ● Uniforms ● Chairs 	\$592.8
Managed Contracts. Statewide contracts established for unique commodities for specific agencies with ongoing needs, but from which all state agencies are unlikely to purchase.	<ul style="list-style-type: none"> ● Agricultural equipment ● Fish food ● Helicopters 	
Texas Multiple Award Schedule (TxMAS) Contracts. Contracts established by the federal General Services Administration, but available to Division customers and managed by the Division.	<ul style="list-style-type: none"> ● Medical equipment and supplies ● Shipping and packing supplies ● Furniture 	\$413.6
Open-Market Requisitions. One-time purchases made by the Division on behalf of a specific agency.	<ul style="list-style-type: none"> ● Heavy-grade road equipment ● Surveillance equipment ● Guns 	\$8.5

Statute requires the Division to award its contracts based on best value.¹ Because many of the Division's contracts are for straightforward commodity purchases, this best-value determination is typically based on the bid with the lowest price that meets product specifications. The Division may consider other factors in contract awards, such as quality of goods and services, delivery terms, vendor performance, and anticipated economic impact to the State. The Division also awards contracts using strategic sourcing methods, which target large-volume contracts for commodities such road aggregate, include more time-intensive research and analysis, and weigh additional criteria in making awards. The Division currently has strategically sourced contracts in 16 categories. The Division posts all Requests for Proposal on the Electronic State Business Daily and emails notifications directly to the almost 11,000 businesses registered on the Centralized Master Bidders List.

The Division provides contract management for its term, managed, TxMAS, and travel contracts, while individual agencies manage open-market contracts. Division contract management activities include contract renewal, amendment, and performance oversight. The Division relies on customer feedback provided through the Vendor Performance Tracking System to monitor contractors' performance.

- **Contract review and delegation.** By rule, commodity purchases of less than \$25,000 and service purchases of less than \$100,000 are delegated to individual agencies.² Purchases that exceed these amounts and are not specifically exempted by law must be submitted to the Division for review and approval if an agency seeks authority to make these purchases itself. The Division may choose to delegate the purchasing authority back to the requesting agency, or enter into a contract on the agency's behalf. Typically, the Division retains contracting authority over commodity contracts and delegates authority for service contracts. The Division commonly retains jurisdiction over a purchase if the product can be added to an existing statewide contract or is appropriate for a new statewide contract. In fiscal year 2011, the Division reviewed 222 delegation requests and delegated 148 back to the requesting agency.

The Division also coordinates the interagency Contract Advisory Team (CAT), comprised of representatives of the Division, Office of the Attorney General, Governor's Office, and DIR, with the State Auditor's Office and Legislative Budget Board serving as technical advisors. State agencies must submit draft solicitations of \$1 million or more to CAT for review and comment, although recommended changes are not binding on the contracting agency. In fiscal year 2011, CAT reviewed 114 draft solicitations.

- **Statewide Historically Underutilized Business Program.** A HUB is a business that is at least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, or non-minority woman residing in Texas, and meets certain size standards. State law requires state agencies and institutions of higher education to make good faith efforts to increase HUB spending, and requires them to report their performance in their Legislative Appropriations Requests.³ To facilitate this, the Division certifies HUBs and monitors compliance with statutory criteria. At the end of fiscal year 2011, Texas had about 16,700 certified HUBs. That same year, the Division certified 1,209 new HUBs, recertified 973, and performed 3,952 compliance audits, including 680 performed on-site. The Division also promotes HUB participation by providing education and outreach to minority and women-owned businesses and state agencies. In fiscal year 2011, the Division participated in more than 140 education events.

In its disparity study, the Division reviews the State's use of HUBs and options for HUB program development. The Division uses this data to set statewide aspirational goals for agency procurement from HUBs in six categories. The table, *Total Statewide HUB Expenditures*, reflects the percentage of HUB spending of total statewide expenditures, which include all purchases by state agencies and institutions of higher education within the six categories of spending.⁴

Total Statewide HUB Expenditures – FY 2011

Category	Total Expenditures	Total HUB Expenditures	Actual HUB Percent	HUB Statewide Goal ⁵
Heavy Construction	\$3,800,362,175	\$314,893,897	8.29%	11.90%
Building Construction	\$1,693,109,129	\$423,717,062	25.03%	26.10%
Special Trade	\$475,135,584	\$154,769,501	32.57%	57.20%
Professional Services	\$711,502,469	\$115,885,096	16.29%	20.00%
Other Services	\$3,605,663,041	\$533,198,129	14.79%	33.00%
Commodities	\$3,789,603,617	\$493,357,242	13.02%	12.60%
Total	\$14,075,376,019	\$2,035,820,928	14.46%	

- **State purchaser and contract manager training and certification.** State law requires agency purchasers who handle procurements of significant dollar amounts to be certified by the Division. The Division has two levels of purchaser certification: Certified Texas Purchasers who handle procurements of \$100,000 or less, and Certified Texas Purchaser Managers who handle purchases of over \$100,000. The Division provides required continuing education for certified purchasers. Employees that act as contract managers must receive training from the Division, and can elect to become certified. In fiscal year 2011, the Division certified 141 new purchasers and 64 new contract managers, and provided 58 training sessions. The Division also publishes the Procurement Manual as a resource for state agencies, and the Contract Management Guide, which agencies are statutorily required to follow.⁶
- **Statewide mail.** The Division delivers and routes mail to 118 state agencies and institutions of higher education in Travis County, including both interagency and United States Postal Service mail. The Division also provides certified mail and postage metering services to state agencies on request, metering about 4.4 million pieces of mail for 40 agencies in fiscal year 2011.
- **Fleet management.** The Division houses the Office of Vehicle Fleet Management, which collects information from state agencies on their fleet inventory, operating costs, and other related data.

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¹ Section 2155.074, Texas Government Code.

² 34 T.A.C. Section 20.41(a).

³ Sections 2161.127 and 2161.181, Texas Government Code.

⁴ Texas Comptroller of Public Accounts, *Fiscal 2011 Annual HUB Report*, accessed October 8, 2012, http://www.window.state.tx.us/procurement/hub/hub_report/fy1/executive-summary.pdf.

⁵ Based on the disparity study, the Division amended the statewide goals in each of the six categories for fiscal year 2012, as follows: heavy construction (11.2 percent); building construction (21.1 percent); special trade (32.7 percent); professional services (23.6 percent); other services (24.6 percent); and commodities (21 percent).

⁶ Section 2262.052, Texas Government Code.

ISSUES

ISSUE 1

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

Background

The Comptroller of Public Accounts and the Department of Information Resources (DIR) provide numerous centralized support services for state agencies and other voluntary customers in Texas. The Comptroller's Office created the Texas Procurement and Support Services Division (Division) in 2007, after the 80th Legislature abolished the Texas Building and Procurement Commission and transferred its statewide procurement and other support services duties to the Comptroller.¹ The Division develops and manages statewide contracts for standard commodities, such as food for the Texas prison system and office supplies for all state agencies. In fiscal year 2011, state agencies, universities, local governments, and others spent about \$1 billion through the Division's contracts. Other Division duties include certifying and reporting on the use of Historically Underutilized Businesses (HUBs), training and certifying state purchasers and contract managers, and providing support services such as mail and fleet management.

The Legislature originally created DIR in 1989 to oversee planning and management of IT resources, but has significantly expanded its scope since that time. Today, DIR procures and manages major contracts for statewide telecommunications and data center services, and the State's website, Texas.gov; and provides IT leadership and guidance through standard-setting and strategic planning. DIR also manages a statewide cooperative contracts program narrowly focused on IT commodities and services, such as computers, software, staffing support, and wireless service. Various entities, primarily voluntary customers such as school districts, spent \$1.5 billion through DIR's cooperative contracts in fiscal year 2011.

Statute requires the current Sunset reviews of the Division and DIR to evaluate and answer specific questions regarding their organizational structure. As part of the 2007 transfer of duties to the Comptroller's Office, the Legislature required the Sunset Commission to evaluate whether these functions should stay at the Comptroller's Office or transfer back to the now-named Texas Facilities Commission (TFC) on September 1, 2013.² DIR underwent Sunset review in 2010, and the Sunset Commission and the Legislature recommended transferring DIR's cooperative contracts program to the Comptroller's Office to consolidate the two statewide procurement programs. However, the Governor vetoed the resulting Sunset bill, instead directing DIR to work with the Comptroller's Office to improve procurement efficiency and effectiveness.³ In a special session, the Legislature continued DIR for two years and directed this follow-up Sunset review, which took as its starting point the continued appropriateness of the 2010 recommendations. Also in the special session, the Legislature required DIR to implement some of the Division's procurement processes, including negotiating with vendors to obtain the best value for IT commodity items, and to consider using strategic sourcing and other methodologies when selecting vendors.⁴

Findings

The State has a continuing need for the procurement, support, and information technology functions performed by the Division and DIR.

- Comptroller Procurement Division.** While TFC could resume providing the services currently performed by the Division, no benefit or administrative efficiencies would result. Because TFC does not currently perform similar functions, it would have to create a new division within its existing organizational structure to absorb these functions and would require most if not all of the Division's current staffing and resources. This change could also divert some of TFC's attention from its current mission. Losing access to the Comptroller's technology resources would also be problematic because a transfer may require TFC to invest in new systems to support the functions.

Transferring the Division's functions back to TFC would result in no benefit.

The review also did not identify any compelling evidence to suggest that moving the Division's functions back to TFC would improve performance, particularly since the Division has taken significant steps to improve these functions since receiving them in 2007. Some of these efforts are ongoing, as described in the textbox, *Comptroller Improvements*. As part of the review, Sunset staff also surveyed the Division's customers to gauge performance since the transfer. The majority of state agency personnel responses indicated the transfer has not affected the quality of services.

Comptroller Improvements

- Increased volume purchasing by offering more items on statewide contracts, and implementing strategic sourcing methods to provide better pricing on commonly purchased items such as fleet vehicles.
- In 2009, conducted the first HUB disparity study since 1994, and revised administrative rules in 2011 to strengthen the State's HUB program.
- Reduced number of mail routes and personnel while maintaining same service level.
- Implemented a new IT system to automate internal processes and interactions with vendors and customers.
- Developed an online ordering system, TxSmartBuy.com, automating processes for staff, customers, and vendors.
- Transitioned to a more flexible procurement method that allows for negotiations on both price and product specifications.

- DIR.** No significant changes have occurred to affect the 2010 Sunset Commission recommendation to continue DIR as an independent agency. The 2010 Sunset review of DIR concluded that the State has a significant interest in coordinating its IT and telecommunications resources to maximize their cost-effectiveness and use, and that DIR was the appropriate agency to fulfill this role. However, the previous

review identified concerns with the Department's oversight, management of administrative fees and costs, and contracting practices, and the Sunset Commission made numerous statutory and management recommendations for improvement. Overall, DIR has made significant progress to address these issues, but continued statutory change and follow up is needed to hold DIR accountable and ensure ongoing implementation. Appendix A and Issues 2 through 4 of this report detail the Sunset Commission's previous recommendations on DIR and their current status.

In particular, the Sunset Commission's previous recommendation to require a statutory customer advisory committee continues to be appropriate to ensure DIR obtains and responds to customer feedback and concerns. The previous review revealed flagging customer satisfaction, particularly among state agencies, the primary customers DIR was created to serve. As part of the current review, Sunset staff again conducted a survey of DIR's stakeholders and asked respondents to evaluate whether DIR's customer service and responsiveness to state agency needs had improved. Ambivalent responses from state agencies indicate DIR has made some progress, but has much work yet to do.

DIR has made progress since the 2010 Sunset review, but statutory change is still needed to ensure ongoing implementation.

While the Division and DIR share similar procurement functions and could benefit from increased coordination, a full merger of these programs is not appropriate at this time.

Balancing the ongoing improvements and initial coordination efforts the agencies are making against the disruption and uncertainty a merger would bring, Sunset staff determined consolidation of the two procurement programs would hinder needed changes that have only recently begun to gain momentum. As a result, a merger would likely create more risk than benefit at this time, particularly given the lack of customer dissatisfaction and limited possibility of administrative savings.

Generally, both of the procurement programs develop specifications and enter into master contracts that state agencies and other voluntary customers can purchase from without having to conduct their own procurement processes. However, the similarity between the two programs largely ends there, as summarized in the table on the following page, *Procurement Program Differences*.

In addition to the improvements the Division has made to its procurement program described previously, DIR has also made changes to its program, described in the textbox, *Cooperative Contracts Program Improvements*. DIR implemented many of these improvements to specifically address the Legislature's concerns that DIR was not making sufficient efforts to obtain the best prices

**Cooperative Contracts Program
Improvements**

- Completed an external assessment of its approach to procurement and an internal restructuring.
- Developed new administrative fee and evaluation procedures.
- Reduced maximum cost recovery fee from 0.92 to 0.5 percent.
- Developed strategic pricing models to offer deeper discounts on computers while retaining flexibility.
- Initiated developing a strategy to address a procurement backlog.

Procurement Program Differences

	Division	DIR
Types of commodities and services purchased	Basic items ranging from office supplies to vehicles to asphalt	IT products and services ranging from hardware to temporary staff
Predominant procurement methodology	Best value, typically low bid, with single vendor awards and fixed pricing	Best value, with multiple vendor awards and pricing based on a percentage discount off of Manufacturer's Suggested Retail Price
Customer base	Mostly state agencies required to use the contracts	Mostly voluntary customers such as school districts, though state agencies are required to use the contracts
Ordering systems	Customers place orders primarily through a centralized website	Customers find products through an online catalog and place orders directly with vendors
HUB credit	Purchases count toward overall state HUB goals, but not toward individual state agency goals	Purchases count toward individual state agency HUB goals
Funding to support administration	General Revenue	Cost-recovery fees charged to customers, currently averaging 0.39 percent
Cost savings calculation	Benchmark against past Division contract pricing, but only for its highest volume contracts	Benchmark against other national cooperative purchasing entities for all contracts

for its customers and minimize its administrative costs. While Sunset staff observed DIR's sincere efforts to improve its cooperative contracts program, implementation is still in the early stages and specific results are not yet available for evaluation. Both the Division and DIR are also evaluating and redesigning their procurement programs' websites; analyzing data to target opportunities for strategic sourcing initiatives; and working to streamline contract management processes, including more effective use of customer and vendor feedback.

Beyond these independent improvements, the Division and DIR have also been conducting a series of joint meetings since June 2012 to more clearly define the scope of each procurement program's responsibilities. These meetings have helped resolve the minimal areas of overlap between the two programs, mostly relating to accurately defining the technology commodity items under DIR's purview. However, the meetings are limited in scope, informal, and not tied to any specific requirements that ensure continued coordination in the future.

Due to the fundamentally different structure, approach, and available data of each program, Sunset staff could not quantitatively and comparatively evaluate or make definitive conclusions regarding the benefits and drawbacks of each program's approach to procurement. Most critically, each program measures the cost savings achieved through its contracts differently. A more structured way to collect and share data, document best practices, and identify opportunities for coordination would benefit both programs, especially in the area of evaluation, and would provide consistent and comparable data needed for future analysis of these two programs. For example, survey responses indicate customer frustration with both programs' websites. The two programs could explore whether sharing certain administrative functions such as creating a combined online ordering or catalog system could streamline and improve customer experience while reducing costs.

The Division and DIR have fundamental differences in structure, approach, and available data.

The breadth of state procurement and longstanding concerns about decentralized contracting practices with limited oversight warrant a more comprehensive evaluation beyond the reviews of these two agencies.

- **Decentralized approach.** The State's procurement and contracting functions are widely decentralized and operate with limited oversight. Though both the Division and DIR seek to take advantage of the State's considerable buying power, only about 10 percent of state spending on goods and services flows through the Division's and DIR's contracts. Statute provides 215 specific delegations and exemptions for state agencies to make purchases outside of the Division or DIR.⁵ As a result, most state spending on goods and services occurs through individual state agencies. Other entities involved in contracting include the Council on Competitive Government, which also establishes a small number of statewide contracts, and the Contract Advisory Team and Quality Assurance Team, both of which provide some oversight of major contracts and IT projects.
- **High-risk contracting concerns.** Contract expenditures represent a huge investment by the State and have resulted in recurring legislative concern and scrutiny to ensure these expenditures are efficient and accountable. According to the Legislative Budget Board, in fiscal year 2010, 124 state agencies and institutions of higher education held 21,664 contracts worth \$59.8 billion.⁶ While many of these contracts are straightforward and relatively simple to administer, in recent years, agencies have entered into increasingly high-risk, high-value contracts. Some of these contracts have ended in costly failures, such as DIR's data center consolidation contract with IBM, cancelled in 2012, and the Health and Human Services Commission's contract with Accenture for its integrated eligibility system, cancelled in 2007.

The Division's and DIR's contracts account for only about 10 percent of overall state spending on goods and services.

Legislative concern has resulted in significant efforts to scrutinize and improve state contracting practices.

Efforts by other agencies to develop new approaches to financing major projects have also caused significant concern due to the new types of risks presented, such as Texas Department of Transportation's use of Comprehensive Development Agreements and TFC's plans to use public-private partnerships for facility development. In a recent hearing on contracting issues, the State Auditor presented testimony regarding commonly identified problems such as failure to perform needs assessments, lack of sufficient contract monitoring, and insufficient analysis of the amount of funding required to complete projects.⁷ While large, high-risk contracts have historically received the most legislative and media attention, continuing interest also exists regarding the State's significant expenditures through the two statewide procurement programs at the Division and DIR, and whether they provide the best value to the State.

Legislative concern to ensure the State's dollars are spent wisely has resulted in significant efforts to scrutinize and improve state contracting practices, including contract management and oversight. However, these efforts have often been reactionary and haphazard due to the decentralized nature of state government contracting. The textbox, *Legislative Interest in Improving State Contracting*, provides some examples of these efforts. Despite this clear interest, these concerns have never resulted in a comprehensive evaluation of overall effectiveness and efficiency of the State's procurement and contracting approach.

Legislative Interest in Improving State Contracting

- Multiple interim committee charges and hearings on contracting-related issues spanning many years.
- Continual changes to and discussion about organizational placement of support functions, including statewide procurement programs.
- Legislative efforts aimed at improving procurement and increasing contract oversight, such as creation of the Contract Advisory Team in 2001, as well as various unsuccessful attempts to establish a State Office of Contract Management to oversee high-risk contracts.
- Limited-scope audits, reports, and evaluations of individual agency contracting practices by the State Auditor's Office, Sunset Advisory Commission, and Legislative Budget Board.

- **Limited evaluation.** While a decentralized contracting approach may indeed be appropriate for the State, this structure makes evaluation inherently difficult. Efforts to evaluate contracting at state agencies by the Sunset Commission, State Auditor's Office, the Legislative Budget Board, and legislative committees have largely resulted in narrow-scope reviews of individual programs or issues, and have not produced a comprehensive evaluation of the State's contracting practices, or clear direction for making any needed broad-based statutory changes. While both of the State's centralized procurement programs at the Division and

DIR are currently under Sunset review, any significant changes to these programs would best be considered as part of a broader analysis of the State's overall approach to procurement and contract management, which is beyond the scope of these reviews.

The Sunset process, while typically used for evaluating individual agencies and their programs, is sometimes used for special purpose reviews and would be well suited to perform this comprehensive analysis. Specific direction, a broad scope, and ample lead time for such a review would be necessary to ensure the full range of possible issues and improvements could be considered. To allow for an effective and complete evaluation, five years following the 2013 legislative session would provide time for the Division and DIR to develop common methodologies and collect at least three years of trend data needed for solid analysis. Directing this project through a Sunset date in eight years would practically mean Sunset staff would begin the review process in six years.

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 Comptroller's Office would continue to procure and manage statewide commodities and services contracts, certify and report on the use of HUBs, train and certify state purchasers and contract managers, and provide support services such as mail and fleet management. However, this recommendation would require the Division to undergo a Sunset review in eight years, aligning it with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4. This recommendation would permit the Division to continue implementing improvements and coordinating with DIR as proposed in Recommendation 1.3, allowing for the collection of more consistent and comparable data on the two programs for use in the next Sunset review.

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

This recommendation would continue DIR as an independent agency for eight years to align its review with the overall Sunset review of state procurement and contracting proposed in Recommendation 1.4. The shorter Sunset date would also provide increased oversight of DIR by allowing the Legislature to evaluate DIR's progress sooner than the standard 12-year period. The Department would continue to operate the cooperative contracts program for IT commodities and services; the major statewide programs for data center services, telecommunications, and the Texas.gov website; and would continue to perform its other roles to set IT standards and plan for the State's future technology needs. The recommendation would direct 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 would also statutorily require DIR's Board to maintain its recently created customer advisory committee to ensure ongoing implementation of the previous Sunset recommendation. The customer advisory committee would be comprised of customer representatives, including small agencies, receiving services from each of DIR's key programs. In making appointments to the advisory committee, the Board should consider including a wide range of stakeholders to inform its decision making, including representatives from institutions of higher education and members of the public.

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 would require 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. The recommendation would help promote best practices and efficiency within each program without disruptive organizational change, and would help future efforts to evaluate the two programs by providing reliable and comparable data. Under this recommendation, the two agencies would take the following actions.

- Dedicate high-level staff to form a coordinating committee to regularly conduct and document joint meetings to improve coordination and share best practices. The committee could appoint advisory members as appropriate to assist with this effort, such as customers and other stakeholders of each program.
- Develop and share best practices between the two programs, such as successful contracting and procurement methodologies; tools for data collection and contract management; approaches for vendor and customer relations; and any other relevant practices.
- Identify and develop strategies to address the following issues:
 - potential areas of overlap and ways to avoid duplication between the two programs;
 - opportunities for collaboration on certain procurements, whether in pilot projects or across-the-board, that could produce greater efficiencies or other benefits for the State; and
 - opportunities for collaboration or consolidation of certain administrative functions, such as online ordering systems, to improve customer service and reduce costs for both programs.
- Develop a standard and comparable approach between the two programs for:
 - collecting analytical data on spending through each program's contracts for use in future evaluations and comparisons; and
 - benchmarking and quantitatively measuring cost savings, administrative efficiencies produced for state agencies as a result of cooperative purchasing, and other factors useful in evaluating the success of each program.

DIR and the Division would develop a memorandum of understanding to carry out this recommendation by March 1, 2014. As part of this recommendation, the agencies must provide two biennial status updates regarding the progress of these efforts to the Sunset Commission and make this information available on their websites. These status updates would be due by September 1, 2015 and September 1,

2017. The agencies should also provide similar updates and any suggestions for needed changes to their programs or other state procurement policies or laws in their 2019 Self-Evaluation Reports submitted as part of the next Sunset reviews required in Recommendations 1.1 and 1.2.

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 would direct 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 the following areas:

- overall statutory procurement and contracting framework, including exemptions and delegations;
- Council on Competitive Government;
- Contract Advisory Team;
- Quality Assurance Team; and
- general contract management and oversight.

Though the Sunset Commission would be charged with conducting a broad evaluation of the State's procurement structure and approach, only the Division and DIR would be subject to specific related Sunset dates. In conducting this review, the Sunset Commission should coordinate and consult with the State Auditor's Office and the Legislative Budget Board, as well as appropriate legislative committees for assistance and expertise. Such an evaluation would provide an opportunity for the Legislature to consider making more meaningful, overarching changes and potentially address ongoing concerns regarding state agencies' procurement and contract management practices and activities. An eight-year timeframe would allow DIR and the Division sufficient time to identify and begin collecting common data as proposed in Recommendation 1.3.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State.

If the Legislature continues both DIR and the Division's functions for eight years, their annual appropriations would continue to be needed. DIR's fiscal year 2013 appropriation is approximately \$260 million, which is almost entirely funded with cost-recovery fees and used for pass-through payments for services provided to other agencies and vendors. Of this amount, DIR receives \$677,739 in General Revenue to support administration of Texas.gov. The Comptroller's Office's fiscal year 2013 appropriation for all of the Division's functions is about \$4.7 million in General Revenue.

Under Recommendation 1.3, DIR and the Comptroller's Office would need to assign staff time and resources to participate in sharing information and developing best practices, but these efforts would not require significantly expanded action beyond what each agency is currently performing. Improved coordination should also result in administrative savings and efficiencies to each program, and eventually, the State overall.

Under Recommendation 1.4, the Sunset Commission could conduct this evaluation within its regular appropriation, assuming the Legislature balances the review schedule and workload to ensure staff can effectively conduct this large-scale review without additional resources.

¹ Section 2151.0041, Texas Government Code.

² Ibid.

³ Veto Proclamation, Governor Rick Perry, June 17, 2011. H.B. 2499, 82nd Texas Legislature, Regular Session, 2011.

⁴ Section 2157.068(b), Texas Government Code.

⁵ Comptroller of Public Accounts, *Spend Pattern Assessment Final Report* (Austin, TX, 2010), p. 3.

⁶ Legislative Budget Board, *Contracts Reported by Texas State Agencies and Institutions of Higher Education*, accessed October 19, 2012, http://www.lbb.state.tx.us/Contracts/Contracts_Reported_FY2010_0211.pdf.

⁷ John Keel, Texas State Auditor, testimony before the House State Affairs Committee (Austin, TX, September 27, 2012).

RESPONSES TO ISSUE 1

Recommendation 1.1

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

DIR Response to 1.1

This recommendation is not directly applicable to DIR. However, DIR looks forward to coordinating with the Division as provided in recommendation 1.3. (Karen Robinson, Executive Director – Department of Information Resources)

Comptroller Procurement Division Response to 1.1

The Comptroller's office agrees with this recommendation. As highlighted in the report, the Comptroller's office has made many improvements to the state procurement and support service functions. There is a continuing need for the Division and the Comptroller's office will continue to improve the Division for the benefit of Texas.

As stated in the report, the fiscal implications for continuing the Division are non-existent. The Division, in FY 2011, received \$5.1 million to fund its operations but returned \$6.2 million to General Revenue from contract rebates. (The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

For 1.1

None received.

Against 1.1

None received.

Recommendation 1.2

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

DIR Response to 1.2

DIR agrees with this recommendation. (Karen Robinson, Executive Director – Department of Information Resources)

Comptroller Procurement Division Response to 1.2

The Comptroller's office agrees with this recommendation. (The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

For 1.2

Cindy Hallett, Purchasing Manager – City of Cedar Park

Tina Murphy, Director of Purchasing – Lovejoy ISD, Allen

Against 1.2

None received.

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.

DIR Response to 1.3

DIR agrees with this recommendation. The Division and DIR are working towards more formalized coordination of their respective procurement programs. DIR is committed to working with the Division to develop a memorandum of understanding between the agencies to address the actions under this recommendation. (Karen Robinson, Executive Director – Department of Information Resources)

Comptroller Procurement Division Response to 1.3

The Comptroller's office agrees with this recommendation. The Division would benefit from shared best practices and a common data collection methodology. The Comptroller's office worked for a year to develop a method for calculating savings that was reasonable and supportable by the evidence. Working with DIR to further develop savings calculations would benefit both organizations and our customers. The Comptroller's office will dedicate high-level staff to serve on the proposed coordinating committee and will work diligently with DIR on these common goals. (The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

For 1.3

None received.

Against 1.3

None received.

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.

DIR Response to 1.4

DIR supports this recommendation and will provide the necessary resources to assist with the evaluation of the State's overall approach to procurement and contracting. (Karen Robinson, Executive Director – Department of Information Resources)

Comptroller Procurement Division Response to 1.4

The Comptroller's office agrees with this recommendation. Further, we recommend a review that goes beyond the scope of DIR, the Division, CCG, CAT and QAT. As stated in the report, DIR and the Division account for approximately 10 percent of the annual state spend. Therefore, a true, comprehensive review of the State's overall approach to procurement needs to consider the other 90 percent, which means considering the large agencies that have large procurement operations, as well. (The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

Staff Comment: As proposed in Recommendation 1.4, the evaluation of the State's overall approach to procurement and contracting has an intentionally broad scope, which would allow for the Sunset Commission to consider procurement operations at other state agencies as part of the review.

For 1.4

None received.

Against 1.4

None received.

COMMISSION DECISION ON ISSUE 1

(JANUARY 2013)

Adopted Recommendations 1.1 through 1.4.

FINAL RESULTS ON ISSUE 1

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 1.1 — House Bill 2472 retains the Texas Procurement and Support Services Division's functions at the Comptroller's Office instead of transferring them back to the Texas Facilities Commission, and continues the program for eight years.

Recommendation 1.2 — House Bill 2472 continues the Department of Information Resources for eight years. The bill also requires the DIR Board to create a customer advisory committee composed of representatives of customers that receive services from each of DIR's key programs. The bill specifies the committee must include members of the public and representation of state agencies with fewer than 100 employees, and requires the DIR Board to ensure the committee represents a cross-section of the agency's customers.

Recommendation 1.3 — House Bill 2472 requires DIR and the Comptroller to establish a procurement coordination committee composed of essential staff to identify:

- areas of overlap in their procurement functions;
- mutually beneficial contracting and procurement methodologies, data collection, management techniques, and customer relations management;
- opportunities for collaboration on procurement functions; and
- opportunities for consolidation of administrative or other functions to improve customer service and reduce costs.

The bill also requires the committee to develop:

- a standardized method to collect and analyze procurement spending data;
- benchmark and quantitatively measure cost savings and administrative efficiencies resulting from collaboration and cooperative purchasing; and
- strategies that encourage coordination between DIR and the Division relating to procurement functions.

House Bill 2472 requires DIR and the Division to develop a memorandum of understanding to carry out this requirement, and to provide two biennial status updates regarding the progress of these efforts to the Sunset Commission and make this information available on their websites. The bill also requires the agencies to submit similar updates and any suggestions for needed changes as part of their 2021 Sunset reviews.

Recommendation 1.4 — House Bill 2472 requires the Sunset Commission to evaluate the State’s overall procurement system and submit a report to the Legislature by January 1, 2021 to coincide with the next Sunset reviews of DIR and the Division. The bill authorizes the Sunset Commission to include any provision in state law that relates to procurement and contracting for goods and services in its evaluation, and authorizes the Commission to request the assistance of LBB, SAO, and legislative standing committees with primary jurisdiction over state procurement in conducting the evaluation.

ISSUE 2

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

Background

DIR recovers 99 percent of its operational costs through administrative fees for most of its programs, including data center services; telecommunications services such as the Texas Agency Network (TEX-AN) and the Capitol Complex Telephone System (CCTS); and cooperative contracts. The chart, *DIR Cost-Recovery Programs and Fees*, briefly describes each of these programs and their associated fees and accounts.

DIR Cost-Recovery Programs and Fees

Program	Service Provided	Cost-Recovery Fees	Account
Telecommunications (CCTS & TEX-AN)	CCTS provides telephone services to agencies within the Capitol Complex. TEX-AN includes voice, data, shared internet, and security services provided to agencies and other public entities.	Uncapped. For services that DIR provides directly, such as CCTS and shared internet services, fees are included in the prices. Fee levels for other telecommunications services are: <ul style="list-style-type: none"> • 0% on surcharges from telecom companies; • 12% for services billed by DIR; • 2% for wireless services that are direct billed by vendor; and • 4% for local services that are direct billed by vendor. 	Telecommunications Revolving Fund
Cooperative Contracts	Procures contracts for information technology commodities and services that state agencies must use, and other public entities may purchase from.	Capped at 2% by appropriations rider. The maximum fee is currently 0.5%. The actual fees vary by contract and the average fee amount is currently 0.39%. Fees are included in the purchase price of commodities and services.	Clearing Fund
Data Center Services	Consolidates the servers and mainframe computers of 27 state agencies and one university. Other services include bulk printing and mailing, disaster recovery, and facility management.	Uncapped. Set at 2.95% at inception of the contract based on initial assumptions. DIR must get approval from the Legislative Budget Board and the Governor's Office before changing the fee.	Statewide Technology Account

Findings

Despite significant progress, statutory changes are still needed to ensure DIR continues to appropriately manage its cost recovery programs and operate as efficiently as possible.

The 2010 Sunset review found that DIR's customers were paying more than necessary to recover DIR's 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. Overall, the Sunset review concluded that DIR operated under reverse incentives that encouraged the Department to maximize revenue to cover costs, instead of controlling costs and improving efficiency.

Due to both legislative action and DIR's own initiative, Sunset staff 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, as described below. These changes are encouraging, but continued legislative direction is necessary to ensure lasting progress.

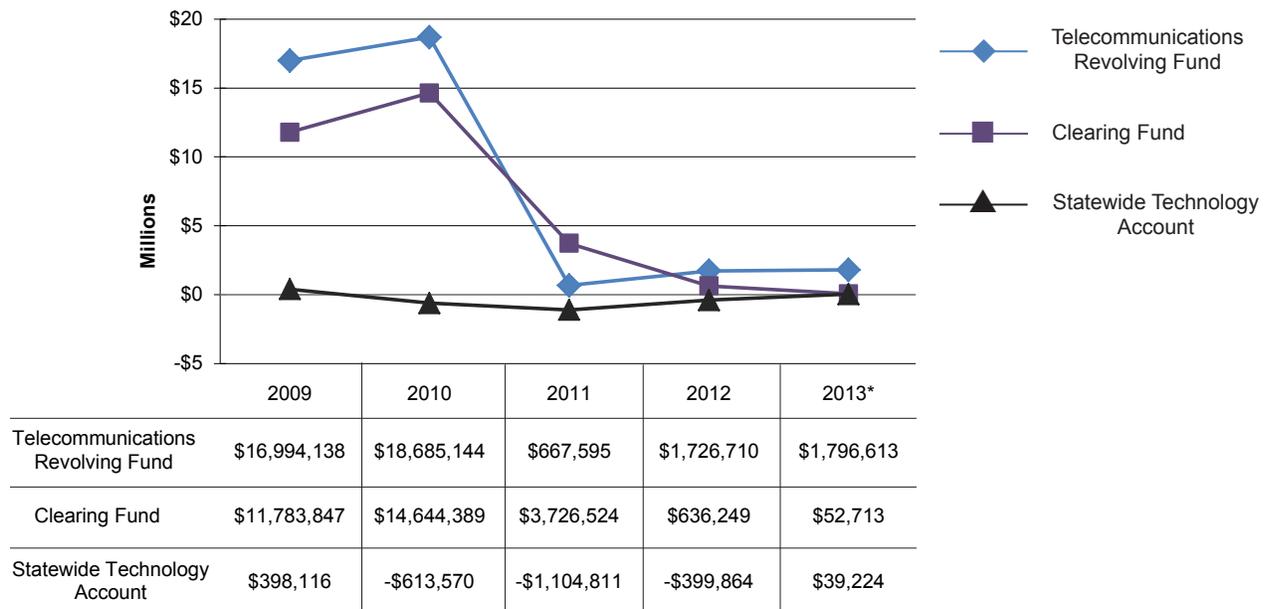
- **Fund balances.** Though the Governor vetoed the bill containing the Sunset Commission's statutory recommendations on DIR, the 82nd Legislature passed two of the Sunset provisions relating to DIR's fund balances and cost-recovery fees in other legislation. House Bill 1, the General Appropriations Act for the 2012–2013 biennium, increased oversight and accountability of DIR's appropriations and fund accounts by limiting DIR's appropriations to specific, not-to-exceed amounts and requiring DIR to return money collected in excess of its operating expenses to customers. House Bill 4, the supplemental appropriations bill, transferred a portion of DIR's surplus fund balances from DIR's accounts to the General Revenue Fund.

As a result of these changes, DIR no longer has access to large, accumulated fund balances, as shown in the graph on the following page, *DIR Fund Balances*. Of the \$32.7 million in DIR's accounts at the beginning of fiscal year 2011, the Department returned \$16.4 million to customers through rebates, and the Legislature transferred \$4.3 million to the General Revenue Fund. Fiscal year 2013 shows a leveling off as the Department manages its cost-recovery fee structure more effectively.

- **Cost-recovery fee and program management.** The 2010 Sunset review found DIR did not have a consistent agencywide approach to setting, reviewing, and approving its administrative fees, and that fees were not transparent within the Department or to DIR's customers. Overall, DIR was not adequately monitoring its fees or pricing to ensure it delivered the cost savings that customers and the Legislature expected. DIR

DIR returned \$16.4 million to customers through rebates in fiscal year 2011.

**DIR Fund Balances
FYs 2009–2013**



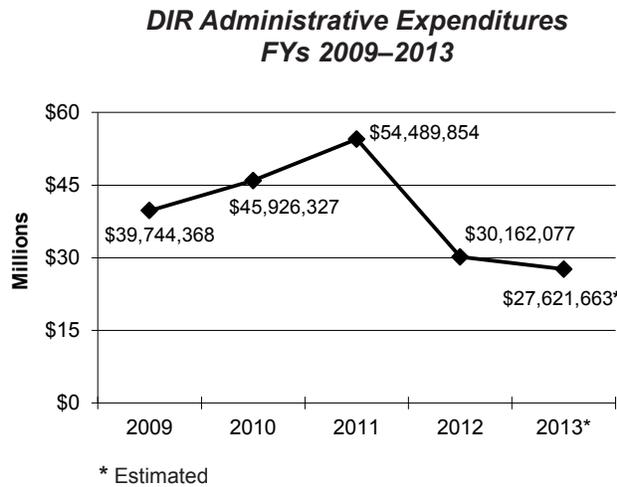
* Estimated

staff in each program area, particularly telecommunications, had broad authority to determine and manage pricing and fees without adequate oversight from DIR management or the Board. DIR was not regularly evaluating fee amounts and making necessary adjustments, allowing problems to go unnoticed and uncorrected for many years, particularly in the telecommunications program where DIR had overcharged customers. A lack of clear statutory direction regarding the use of DIR's various accounts also led to questionable use of telecommunications fees to fund data center consolidation expenses in fiscal year 2010, demonstrating the overall lax funding structure in which DIR operated.

DIR has since developed new fee-setting and evaluation procedures, including consolidating responsibility for setting and managing all fees under the Chief Financial Officer; better tracking costs and expenditures specific to each program and reducing some fees; presenting fees to the Board for approval; and posting fee information on its website. DIR also more closely monitors its fee revenues, provides customer rebates when necessary, and submits additional reports to the Legislative Budget Board as required by rider in H.B. 1, the General Appropriations Act for the 2012–2013 biennium. These changes reflect sincere efforts to address past concerns, but placing these procedures in statute is necessary to ensure ongoing implementation. In addition, the Sunset Commission adopted a management action in 2010 directing DIR to take steps to ensure it offers the most competitive pricing possible. DIR has made efforts to

benchmark its pricing, resulting in some significant price reductions, particularly within the telecommunications program, as discussed in Issue 3. However, these efforts are still in progress and require continued follow up to ensure ongoing implementation.

- Administrative efficiency.** The 2010 Sunset review revealed DIR lacked incentives to control its costs and ensure the efficiency of its operations. DIR’s operating expenses had grown considerably through fiscal year 2011, as shown in the graph, *DIR Administrative Expenditures*. A significant



portion of these expenditures, up to 43 percent of its budget, was used for professional services, including staff augmentation contractors and outside consultants. DIR often relied on outside help automatically instead of using its own staff or carefully considering the most cost-effective options.

DIR has since significantly reduced its administrative expenses, including nearly eliminating its use of staff augmentation contractors. The Department’s fiscal year 2013 operating budget represents a nearly 50 percent reduction from its fiscal year 2011 expenditures. DIR now employs approximately 188 staff, a 10 percent reduction over its fiscal

year 2011 staffing levels. DIR has also implemented written procedures, including Board review and approval, to guide the appropriate use of staff augmentation and outside consultants, though statute should still require this policy to ensure ongoing implementation.

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 would ensure DIR continues to use its recently adopted process for calculating the administrative fees for each of its cost recovery programs. Fees would continue to be directly related 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 continue to post information about the fees for its cost recovery programs, including a description of how they are derived, on its website. As part of this recommendation, DIR should provide updates anytime a contract amendment or other action results in major pricing changes.

The Department would also report the cost allocation charged to its telecommunications customers, similar to existing reporting requirements for its cooperative contracts and data center customers. These statutory changes would provide continued assurance of needed transparency and accountability in DIR's fee-setting practices.

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

This recommendation would add 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 should 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 would ensure DIR's continued use of recently developed criteria for the appropriate use of staff augmentation contractors and outside consultants by the agency. DIR staff would continue to prepare, and the Board would approve, an annual analysis of staffing needs and proposed use of contractors and consultants in conjunction with the budget process. The analysis should include the need for and cost-effectiveness of using staff augmentation contractors or outside consultants, and should 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.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. DIR is currently implementing these changes using existing resources.

RESPONSES TO ISSUE 2

Recommendation 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.

DIR Response to 2.1

DIR agrees with this recommendation. DIR has completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continued implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 2.1

None received.

Against 2.1

None received.

Recommendation 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.

DIR Response to 2.2

DIR agrees with this recommendation. DIR has completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continuation of this practice. (Karen Robinson, Executive Director – Department of Information Resources)

For 2.2

None received.

Against 2.2

None received.

Recommendation 2.3

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

DIR Response to 2.3

DIR agrees with this recommendation. (Karen Robinson, Executive Director – Department of Information Resources)

For 2.3

None received.

Against 2.3

None received.

Recommendation 2.4

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

DIR Response to 2.4

DIR agrees with this recommendation. DIR has completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continued use of recently developed policy. (Karen Robinson, Executive Director – Department of Information Resources)

For 2.4

None received.

Against 2.4

None received.

COMMISSION DECISION ON ISSUE 2

(JANUARY 2013)

Adopted Recommendations 2.1 through 2.4.

FINAL RESULTS ON ISSUE 2

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 2.1 — House Bill 2472 requires DIR to adopt a process to determine, adjust, and approve the administrative fee charged for each of its cost recovery programs as part of its annual budget process. The bill requires the fee to directly relate to the amount necessary to recover the cost of the Department's operations. The bill requires DIR to develop clear procedures directing DIR program and financial staff to work together to determine the amount of administrative fees. The procedures must require review and approval of all administrative fees by the Board, Executive Director, and the agency's Chief Financial Officer.

Recommendation 2.2 — House Bill 2472 requires DIR to report all administrative fees to LBB each fiscal year. The report must include the underlying analysis and methodology used to determine the fee amounts and the cost allocation charged to customers. The bill also requires DIR to post information about each administrative fee the Department charges, including a description of how each fee is determined, on its website. DIR must update this information when a contract amendment or other action results in a major change to the costs incurred or pricing.

Recommendation 2.3 — House Bill 2472 establishes DIR's Clearing Fund Account (related to the statewide cooperative contracts program) and the Statewide Technology Account (related to data center services consolidation) in statute as accounts within the State Treasury. The bill specifies that money in the accounts may only be used for the operation and management of each program's purposes, or for any other purposes specified by the Legislature.

Recommendation 2.4 — House Bill 2472 requires DIR to develop clear criteria for the appropriate use of staff augmentation contractors and outside consultants by the agency. Under the legislation, DIR must annually analyze its staffing needs; the need for and cost-effectiveness of using staff augmentation contractors or outside consultants; whether the Department could use its own staff to accomplish tasks proposed for the contractors or consultants; and whether and what type of training or additional resources are necessary for its staff to accomplish these tasks. The bill requires DIR to provide the analysis to its Board for approval in conjunction with the budget process and prohibits DIR from hiring or training any consultants or outside staff unless it has been approved.

ISSUE 3

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

Background

DIR manages three major statewide contracts and a cooperative contracts program on behalf of the State. These contracts provide a range of information technology and telecommunications products and services to state agencies, local governments, school districts, universities, and other publicly funded entities. The Legislature has identified major contracts and IT projects as areas of risk for the State, and has directed DIR to help other agencies mitigate these risks. DIR is one of four members of the State's Contract Advisory Team, which reviews major contract solicitations, and provides general statewide contract management guidance.¹ DIR is also one of three agency members of the State's Quality Assurance Team, which approves, reviews, and monitors major IT projects undertaken by state agencies.²

Findings

Despite DIR's recent actions to address contracting concerns, the Sunset Commission's recommendations to improve the agency's contracting practices continue to be appropriate.

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 Sunset's 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.

- **Data Center Services.** In 2010, Sunset found that DIR's data center services contract with IBM, signed in November 2006, had not delivered expected cost savings and in some cases, increased risks and costs to the agencies required to use these services. Survey results and other feedback received from state agency customers at that time revealed deep frustration and concerns with the project. The Sunset review also found that DIR had not adequately tracked or reported project costs and status, leading to conflicting and incomplete data and difficulty in evaluating progress or planning for the future.

In the past two years, the data center services program has undergone significant change. DIR ended its relationship with IBM, re-procured

In 2010, Sunset highlighted significant concerns with DIR's major data center and telecom contracts.

Survey results reflect cautious optimism about the new data center contracts.

the program under a new customer governance and service delivery model, and entered into contracts with new vendors, with services commencing in July 2012. DIR ultimately paid a total of \$815 million to IBM under the previous contract for services provided to state agencies over five years, and expects to spend about \$1.28 billion under the new contracts for services to state agencies over the next eight years, with consolidation scheduled to be completed by 2016. The current Sunset review occurred during the transition to the new contracts, making it difficult to evaluate DIR's ultimate success in correcting the previously identified problems. However, survey results and other feedback received during this review reflect a cautious optimism on the part of the 28 data center agencies and other stakeholders, despite substantial lingering risk due to the failure of the previous contract.

DIR has also taken action to better measure and report cost savings and status for its IT consolidation projects as recommended by the Sunset Commission. DIR has contracted with an outside audit firm to develop a baseline cost assessment and ongoing methodology for measuring consolidation costs and savings. This effort is still in progress, with initial results expected in late 2012 or early 2013. DIR also included provisions in its new data center contracts requiring specific timeframes for consolidation and baselines for measuring consolidation progress. However, the Sunset Commission's statutory recommendations to strengthen contracting practices remain appropriate to ensure DIR completes these efforts and provides for more consistent cost and progress reporting for this project and any future consolidation initiatives DIR may undertake.

- **Texas Agency Network (TEX-AN).** In 2010, Sunset found that DIR's inability to re-bid the TEX-AN contract on time resulted in significant delays in making needed improvements, including offering new services, transitioning customers to updated technologies, and offering more competitive pricing. DIR had been operating this program under the same contract negotiated by the General Services Commission in 1999, and had abandoned a costly attempt to re-bid the contract in 2009, allowing the TEX-AN program to become outdated.

The current Sunset review found that DIR successfully re-bid the operation of the program, with updated vendor services and pricing commencing in September 2011. The new contracts provide significant and long-overdue savings to DIR's customers, resulting in an immediate aggregate reduction of \$1.6 million in the first month of the new contracts' billings alone. The Health and Human Services Commission, DIR's largest customer, realized \$250,000 of these monthly savings as a result of the new contracts' more competitive structure and pricing.

- **Contract oversight and management practices.** The 2010 Sunset review raised concerns about DIR's overall approach to contract oversight and management. The review found DIR's Board lacked sufficient

DIR's new telecom contracts reduced monthly charges to all customers by \$1.6 million in the first month alone.

involvement in and oversight of the agency's major contracts, including approving contracts, monitoring vendor performance, and setting a strategic direction for DIR's many programs. In addition, DIR staff did not have a consistent, best-practices approach to contract management, including up-to-date policies, ethics standards, and training. Though the bill containing the Sunset Commission's recommendations was vetoed by the Governor, two Sunset provisions relating to DIR's contracting ultimately passed in Senate Bill 1, 82nd Legislature, 1st Called Session. Senate Bill 1 required DIR's Board to establish approval requirements for all contracts, including a monetary threshold above which Board approval is required, and clarified that revolving door provisions apply to DIR.

During the past two years, DIR has made significant progress in implementing these and other Sunset Commission recommendations to strengthen and improve DIR's contracting functions. Agency staff developed an enterprise contract management guide, expanded and improved an electronic contract management system, and updated ethics and training policies to include the more strict and comprehensive approach recommended by Sunset. For its part, the DIR Board adopted rules requiring Board approval of all major contracts and contract amendments valued at \$1 million or more, and specified additional reporting requirements for other contracts.³ The Board also created subcommittees to monitor each major agency contract and program. While these changes show DIR's good faith effort to address previous concerns, the Sunset Commission's recommendations remain appropriate. Statutory change is still needed to ensure ongoing implementation of these improvements, particularly given DIR's core responsibility of contract management, the acknowledgment of the many recent concerns, and the continuing high level of risk involved in DIR's contracts.

The DIR Board adopted rules requiring approval of contracts over \$1 million.

Recommendations

Change in Statute

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

This recommendation would ensure DIR fully implements a consistent and clear way to measure the costs and progress of any of its IT consolidation initiatives. The recommendation would require DIR to 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 would use this methodology to evaluate and annually report information on actual costs and cost savings to the DIR Board, LBB, and DIR customers. In addition to reporting information about the current status of costs associated with these initiatives, 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. DIR should 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 to help ensure consistent and readily available information to evaluate progress.

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

This recommendation would ensure DIR maintains a contract management guide specifically targeted toward providing an overall, consistent approach on how to procure and manage DIR's major outsourced contracts. Currently, these contracts include Texas.gov, TEX-AN, and data center services. DIR should update this manual regularly, using lessons learned and changing conditions to guide these updates. The manual would continue to serve as a way for DIR to take a consistent approach to administering its most complex contracts, and establish an overarching contract management framework. The manual would be required to include, but not be limited to, the following subjects.

- Definition of DIR's general approach to business case analysis, procurement planning, solicitation, contract execution, and contract monitoring and oversight. While Recommendation 3.3 would require DIR to create customized management plans specific to each contract, the manual would document DIR's general approach.
- Establishment of clear lines of accountability, staff roles and responsibilities and decision-making authority, including program staff, contract management staff, executive management, customer governance structures, and the Board.
- Description of DIR's strict ethics standards and policies, including those required by Recommendation 3.7.
- Establishment of DIR's process for evaluating and managing risk during each stage of contract procurement, implementation, and management.
- Definition of DIR's transition approach when contemplating major changes to a program's internal structure at DIR, or its model for delivering services to customers.
- Description of expectations and standards for obtaining and using stakeholder input during all phases of initial analysis, solicitation development, evaluation, contract award, and contract implementation.
- Coordination with DIR's Internal Audit Division as needed for assistance and guidance in developing procedures for monitoring contracts and individual contractors.

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

This recommendation would ensure DIR continues to develop 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 should 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 should 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. While Recommendation 3.2 would provide DIR's overall approach to managing major contracts, these contract-specific plans would provide the detail and procedures for how DIR will manage each of its unique, outsourced programs.

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

This recommendation would require 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, such as data center services or other outsourced consolidation activities; TEX-AN; and Texas.gov.
- Require the Board to adopt a policy describing the Board's role in setting a strategic direction for DIR's programs, in particular for developing new initiatives and service offerings. Require the Board to evaluate and approve new initiatives or categories of services offered by DIR under its various programs.
- Require the Board to establish a subcommittee(s) 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 meeting customer needs.
- Require the Board to regularly evaluate the operations of the agency, including reviewing analytical data and trend information regarding the agency's revenues and expenses, as well as performance information including 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 ensure DIR maintains a policy establishing contract management training requirements for all staff involved in contract management, including contract managers, program staff, and executive management, as well as members of DIR's Board. The training 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 would ensure DIR maintains 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. This recommendation would require DIR to have a standard, coordinated approach to obtaining the feedback necessary to effectively manage its contracts to best meet customer needs.

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

This recommendation would add 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. The recommendation would ensure DIR maintains these provisions in its recently adopted internal policies, such as its employee and contract management manuals, and in staff training.

Fiscal Implication

The recommendations to strengthen and improve DIR's contract management and Board oversight could be implemented using existing resources.

¹ Sections 2262.101 and 2262.102, Texas Government Code.

² Section 2054.1181, Texas Government Code.

³ 1 T.A.C. Section 201.6.

RESPONSES TO ISSUE 3

Recommendation 3.1

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

DIR Response to 3.1

DIR agrees with this recommendation. DIR has taken appropriate action on this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continuation of this practice. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.1

None received.

Against 3.1

None received.

Recommendation 3.2

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

DIR Response to 3.2

DIR agrees with this recommendation. DIR has completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure ongoing implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.2

None received.

Against 3.2

None received.

Recommendation 3.3

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

DIR Response to 3.3

DIR agrees with this recommendation. DIR has substantially completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continued implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.3

None received.

Against 3.3

None received.

Recommendation 3.4

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

DIR Response to 3.4

DIR agrees with this recommendation. DIR has completed implementation of the recommendation enacted in Senate Bill 1, 82nd Legislature, 1st Called Session and substantially completed other elements found in the 2010 Sunset Report. DIR agrees statutory change would ensure continuation of oversight. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.4

None received.

Against 3.4

None received.

Recommendation 3.5

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

DIR Response to 3.5

DIR agrees with this recommendation. DIR has completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continued implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.5

None received.

Against 3.5

None received.

Recommendation 3.6

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

DIR Response to 3.6

DIR agrees with this recommendation. DIR completed implementation of this recommendation based on the 2010 Sunset Report, and agrees statutory change would ensure continuation of these practices. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.6

None received.

Against 3.6

None received.

Recommendation 3.7

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

DIR Response to 3.7

DIR agrees with this recommendation. DIR has implemented stricter conflict of interest provisions, and agrees statutory change would ensure continuation of such policy. (Karen Robinson, Executive Director – Department of Information Resources)

For 3.7

None received.

Against 3.7

None received.

COMMISSION DECISION ON ISSUE 3

(JANUARY 2013)

Adopted Recommendations 3.1 through 3.7.

FINAL RESULTS ON ISSUE 3

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 3.1 — House Bill 2472 requires DIR to develop a consistent and clear method of measuring the costs and progress of IT consolidation initiatives, and work with any entity involved in a consolidation to develop an agreed upon methodology for evaluating actual costs and cost savings. The bill also requires DIR to evaluate the progress of its information resources consolidation projects compared to initially projected timelines for implementation, and to report this information to entities involved in the consolidation, the DIR Board, the Legislative Budget Board, and on the agency's website. House Bill 2472 requires DIR to report this information on both a statewide and individual agency level, and to coordinate with its Internal Auditor for guidance on developing methodology that provides an objective assessment of costs and project status.

Recommendation 3.2 — House Bill 2472 requires DIR to develop and regularly update a contract management guide to provide an overall, consistent approach to procuring and managing DIR's major outsourced contracts. The bill requires DIR to coordinate with the Internal Auditor as needed for assistance in developing contract monitoring procedures for the guide. The bill authorizes the DIR Board to adopt rules as needed to develop or update the guide. The bill specifies the guide must provide information on certain subjects, including DIR's general approach to contract management, lines of accountability, ethics standards and policies, risk management, stakeholder input, and contract monitoring.

Recommendation 3.3 — House Bill 2472 requires DIR to develop and maintain procedures for contract administration, monitoring, and oversight of each of its major contracts and for managing and mitigating risks inherent in each contract. The bill requires contract management plans for all of DIR's major outsourced contracts (currently Texas.gov, TEX-AN, and data center services, but applies to any future major outsourced contracts as well). Contract administration and program staff must develop these plans jointly, with input from executive management and the board, and approval by the Executive Director.

In each plan, the bill requires DIR to establish clear lines of accountability and coordination of contract activities, and provide details regarding program implementation as well as procedures for contract monitoring, identifying and mitigating risks, and involving and communicating with

customers. The bill requires the management plans to also define DIR's approach to transitioning from one contract to another. The bill requires DIR to revise its management plans as necessary to keep current during the contracting process, and as it reprocures its contracts to ensure the plans remain updated and incorporate any changes resulting from new contracts.

Recommendation 3.4 — House Bill 2472 requires DIR's Board to take the following actions to continue improving its oversight of DIR's contracting functions.

- Approve all major outsourced contracts and any significant amendments with statewide impact.
- 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.
- Establish subcommittees to monitor DIR's major outsourced contracts, including data center services, TEX-AN, and Texas.gov.
- Regularly evaluate the extent to which DIR meets its information technology mission by providing cost effective services and meeting customer needs.
- Regularly evaluate the operations of the agency, including information regarding the agency's revenues and expenses and performance information.

Recommendation 3.5 — House Bill 2472 requires DIR to develop and maintain a policy establishing contract management training requirements 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 must 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. The bill requires contract management training for Board members, while less specific, to be a part of the Board member training already required in statute.

Recommendation 3.6 — House Bill 2472 requires DIR to establish formal procedures to ensure customer involvement in decision making for each of its major contracts, including data center services, TEX-AN, and Texas.gov.

Recommendation 3.7 — House Bill 2472 prohibits DIR employees involved in contracting and procurement from having an interest in or being connected with a DIR contract. The bill also prohibits DIR employees from soliciting or accepting anything of value from a vendor or potential vendor. DIR must maintain these provisions in its internal policies, such as its employee and contract management manuals, and in staff training. The bill also requires the Board to adopt rules to implement this provision.

ISSUE 4

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

Background

The Texas Internal Auditing Act requires state agencies with annual operating budgets of more than \$10 million, more than 100 employees, or that receive and process more than \$10 million annually to have an internal auditing program.¹ DIR meets these criteria.

Internal auditing allows for regular, independent evaluation and scrutiny of an agency's financial, managerial, and compliance risks. The Act requires agency governing boards to ensure internal audit resources are sufficient to cover all identified risk areas within a reasonable period of time. Neither the Act nor the Institute of Internal Auditors describes how to adequately resource an agency's internal audit program. Rather, agency governing boards and management must make this determination based on the size and scope of programs, level of risk, and overall audit responsibilities.² DIR currently has a staff of three full-time internal auditors who report to the Board's Finance and Audit Subcommittee.

Findings

Although DIR has improved its internal audit function, the Sunset Commission's statutory recommendations continue to be appropriate to ensure continued implementation.

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. DIR's contracts involve considerable amounts of public funds, \$2 billion in fiscal year 2011, as shown in the table, *DIR Program Sales and Transactions*. The funds flowing through these contracts are made up of General Revenue and other state funds; federal funds; licensing, registration, and other fees paid by citizens; local tax revenue; and other public funding sources.

The 2010 Sunset review found significant problems with DIR's management of several of its programs, yet the resources dedicated to its internal audit function were insufficient, exposing the Department and the State to an unacceptable level of risk. The previous Sunset review also found that DIR's Board failed to meet the requirements of the Texas Internal Auditing Act to ensure the Department's internal auditing function was prioritized and adequately resourced. Historically, the Board had contracted

***DIR Program Sales and Transactions
FY 2011***

Program	Sales or Transaction Totals
Cooperative Contracts	\$1.6 Billion
Data Center Services	\$183.6 Million
Telecommunications Services	\$112.7 Million
Texas.gov	\$89.5 Million
Total	\$2.0 Billion

with an outside firm for minimal internal audit services that did not provide adequate attention to DIR's greatest areas of risk. As a result, DIR's internal audit function was not able to provide the meaningful and comprehensive scrutiny DIR's increasingly complex programs and responsibilities required.

While DIR's Board had taken initial steps to improve the internal audit function such as hiring one full-time, in-house internal auditor and creating a Finance and Audit Subcommittee, the 2010 review determined they were insufficient to adequately cover DIR's programs. DIR has since taken further steps to improve its internal audit program, including hiring two additional full-time, internal audit staff to support the Department's internal auditor, conducting risk assessments, and developing yearly internal audit plans. DIR has also made progress in planning for and conducting several audits specifically recommended by the Sunset Commission through related 2010 management recommendations, as described in the status chart in Appendix A. These changes are encouraging, 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 simply solidify the Department's and Board's decisions to establish an Internal Audit Division as well as 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 the internal audit activities to improve oversight. The audit subcommittee would be required to determine if allocated resources are adequate to cover the areas of risk identified in the annual audit plan, as required by the Texas Internal Auditing Act. The subcommittee would make recommendations to the full Board regarding the adequacy of DIR's audit resources, and re-evaluate needed resources during DIR's annual budgeting process.

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. The Internal Audit Division could bring issues outside the annual audit plan to the Board that require immediate attention. The Internal Audit Division would also coordinate all audit activity at DIR, including acting as DIR's liaison for external auditing entities, such as the State Auditor's Office, and providing consultation and guidance, but not approval, on the design of audit activities DIR program areas undertake, such as auditing vendors' reported performance information or payments.

Fiscal Implication

The recommendations would not have a fiscal impact to the State.

¹ Chapter 2102, Texas Government Code.

² Institute of Internal Auditors, *The Role of Auditing in Public Sector Governance* (Altamonte Springs, Florida, November 2006), p. 4.

RESPONSES TO ISSUE 4

Recommendation 4.1

Require DIR to establish an Internal Audit Division.

DIR Response to 4.1

DIR agrees with this recommendation. DIR's Board has established an Internal Audit Division, and DIR agrees statutory change would ensure continued implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 4.1

None received.

Against 4.1

None received.

Recommendation 4.2

Require the DIR Board to maintain an audit subcommittee.

DIR Response to 4.2

DIR agrees with this recommendation. The Internal Audit Division reports to the Audit and Finance Subcommittee, and DIR agrees statutory change would ensure continued implementation. (Karen Robinson, Executive Director – Department of Information Resources)

For 4.2

None received.

Against 4.2

None received.

COMMISSION DECISION ON ISSUE 4

(JANUARY 2013)

Adopted Recommendations 4.1 and 4.2.

FINAL RESULTS ON ISSUE 4

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 4.1 and Recommendation 4.2 — House Bill 2472 requires the DIR Board to appoint an Internal Auditor and maintain an audit subcommittee to oversee the Internal Auditor. The bill requires the audit subcommittee to determine if allocated resources are adequate to cover the areas of risk identified in the internal audit plan, and requires the Internal Audit Division 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.

Background

Over the years, Sunset reviews have come to encompass an increasing number of standard elements either from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material summarizes Sunset staff's analysis of applicable standard elements for the Department.

- **Reporting requirements.** The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.¹ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reports required by rider to the General Appropriations Act are included as a matter of law, but under a presumption that the appropriations committees have vetted these requirements each biennium. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.
- **Sunset Across-the-Board provisions.** The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These Across-the-Board Recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

Findings

Two of the Department's reporting requirements have due dates that inhibit the most accurate, consistent, and efficient reporting.

State law requires the Department to produce 13 reports that are specific to the agency and meet the parameters described above. Appendix B lists all of the agency's reporting requirements and Sunset staff's analysis of their need. These reports continue to be useful; however, two reporting requirements relating to DIR's management of the State's website, Texas.gov, have statutory due dates that prevent the most accurate information from being reported.

Statute requires DIR to report year-end data only one day after the close of the fiscal year.

- **Texas.gov reporting requirements.** Statute requires DIR to prepare two reports on the status, progress, benefits, and efficiency gains of the Texas.gov website project, including financial information such as project costs and revenues, and any significant issues regarding contract performance. However, because statute requires this information to be reported on September 1, just one day after the fiscal year ends, DIR must use projections rather than actual financial numbers and cannot provide the most accurate or up-to-date information on the project.

Statute also requires DIR to separately produce a Biennial Performance Report on Information Resources Management by state government overall. This report includes some of the same requirements for the Texas.gov project reports discussed previously, but statute allows DIR to publish this report on November 15 of each even-numbered year rather than September 1. This later date allows DIR to report more accurate information in the Biennial Performance Report than in the Texas.gov reports. Aligning the dates would also allow DIR to streamline these requirements into a single report.

The Department's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

In 2010, the Sunset Commission determined that the Department's statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Commission routinely applies to agencies under review. Although DIR recently adopted rules on August 30, 2012 to implement the intent of this recommendation, a change in law is still needed to apply this provision to the Department's statute and ensure ongoing implementation.²

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 the Texas.gov reporting requirements from September 1 of even-numbered years to November 15 of even-numbered years. This change would align the submission date of this information with DIR's Biennial Performance Report on Information Resources Management by state government, giving DIR the time necessary to compile and present the most accurate and consistent financial information and data about the Texas.gov project. Having a single reporting date would also allow DIR to streamline these reporting requirements by providing the information to state leadership in a single report. To comply with a recent change in law, DIR should provide all reports to the Legislature in electronic format only.

5.2 Apply the standard Sunset across-the-board requirement for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

This recommendation would ensure that DIR continues 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. Because DIR's Board has already adopted a policy by rule for this alternative approach to solving problems, this recommendation would not require additional staffing or other expenses.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

¹ Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

² 1 T.A.C. Section 201.7.

RESPONSES TO ISSUE 5

Recommendation 5.1

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

DIR Response to 5.1

DIR agrees with this recommendation. (Karen Robinson, Executive Director – Department of Information Resources)

For 5.1

None received.

Against 5.1

None received.

Recommendation 5.2

Apply the standard Sunset across-the-board requirement for the Department to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

DIR Response to 5.2

DIR agrees with this recommendation. The DIR Board adopted a rule in August 2012 regarding negotiated rulemaking and alternative dispute resolution, and DIR agrees statutory change would ensure continuation. (Karen Robinson, Executive Director – Department of Information Resources)

For 5.2

None received.

Against 5.2

None received.

COMMISSION DECISION ON ISSUE 5

(JANUARY 2013)

Adopted Recommendations 5.1 and 5.2.

FINAL RESULTS ON ISSUE 5

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 5.1 — House Bill 2472 continues all of DIR's reporting requirements, but changes the due date for Texas.gov reporting requirements from September 1 of even-numbered years to November 15 of even-numbered years.

Recommendation 5.2 — House Bill 2472 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 bill also requires the Department to coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

ISSUE 6

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

Background

Over the years, Sunset reviews have come to encompass an increasing number of standard elements either from direction traditionally provided by the Sunset Commission, or from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material addresses the Sunset Commission's mandate to recommend the abolition or continuation of the reporting requirements for the Comptroller's Texas Procurement and Support Services Division (Division).

- **Reporting requirements.** The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.¹ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. State law requires the Comptroller of Public Accounts to produce five reports specific to the Division's functions. The chart on the following page, *Division Reporting Requirements*, details the Division's reports and Sunset staff's analysis of their need.

Findings

The Division has one reporting requirement that is no longer necessary.

By law, twice a year the Comptroller of Public Accounts must report statistics to Texas Correctional Industries (TCI) relating to the number and type of TCI products sold. Although the Division can provide this type of sales information to TCI upon request, this formal report has not been needed or produced since 2009. TCI has internal processes in place that identify products sold, rendering this formal report no longer necessary.

The Division's report to TCI has not been needed or produced since 2009.

Three of the Division's statutory reporting requirements serve a useful purpose, but have inappropriate due dates and recipients.

The Historically Underutilized Businesses (HUBs) Education and Outreach Report provides valuable information about the Division's efforts to encourage state agencies' use of HUBs. However, statutorily, this year-end report is due not later than the day before each fiscal year ends, making it impossible for

the Division to compile the most accurate information in time to produce the report. Similarly, the Semi-Annual and Annual HUB reports provide legislative leadership needed information relating to the State's success in meeting HUB goals. However, statute requires both reports to be sent to the joint committee charged with monitoring the implementation of HUB goals, which no longer exists.

Division Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Texas Correctional Industries (TCI) Products Sold	Section 497.030, Texas Government Code	Requires the Comptroller to biannually provide a summary of the types and amounts of TCI articles sold in the previous nine months and in the preceding fiscal year.	Texas Correctional Industries	Abolish
2. HUB Education and Outreach Report	Section 2161.126, Texas Government Code	Requires the Division to annually report on education and training efforts made toward HUBs.	Governor, Lieutenant Governor, and Speaker of the House of Representatives	Continue and modify by changing the due date from before September 1 of each year to October 15 of each year
3. Semi-Annual HUB Report	Section 2161.121(d), Texas Government Code	Requires the Division to annually report the number and dollar amount of contracts awarded to HUBs statewide, an analysis of opportunity for HUBs, and information about HUB graduation rates during the previous six-month period.	Joint committee charged with monitoring the implementation of HUB goals	Continue and modify by changing the recipients to the Lieutenant Governor and the Speaker of the House of Representatives
4. Annual HUB Report	Section 2161.121(e), Texas Government Code	Requires the Division to annually report the number and dollar amount of contracts awarded to HUBs statewide, an analysis of opportunity for HUBs, and information about HUB graduation rates during the previous fiscal year.	Lieutenant Governor, Speaker of the House of Representatives, and joint committee charged with monitoring the implementation of HUB goals	Continue and modify by removing the joint committee from the list of recipients
5. Vehicle Fleet Biennial Report	Section 2171.101 (e), Texas Government Code	Requires the Office of Vehicle Fleet Management within the Division to biennially report on the status of agencies' vehicle fleets and the Office's recommendations to improve fleets.	Legislature	Continue

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

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

This recommendation would change the due date for the HUB Education and Outreach Report from before September 1 of each year to October 15 of each year. This change would allow the Division an appropriate amount of time to compile a fiscal year's summary of education and outreach efforts, and match the due date of the Division's other annual HUB report, allowing the Division to combine the two if efficient. In addition, this recommendation would amend 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

These recommendations would not have a fiscal impact to the State.

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¹ Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

RESPONSES TO ISSUE 6

Recommendation 6.1

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

Comptroller Procurement Division Response to 6.1

The Comptroller's office agrees with this recommendation. (The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

For 6.1

None received.

Against 6.1

None received.

Recommendation 6.2

Modify the due date of the HUB Education and Outreach Report and update the recipients of the Semi-Annual and Annual HUB Reports.

Comptroller Procurement Division Response to 6.2

The Comptroller's office agrees with this recommendation.

Agency Modification

1. Change the due dates for the Semi-Annual and Annual HUB reports from April 15 and October 15 to May 15 and November 15, respectively. To produce these valuable reports, the Division must take the data reported by all state agencies, just one month prior, combine it with Treasury data, get the agencies to verify each item, and quality check the data before compiling the report. Getting this done in 30 days is difficult and increases the risk of error. Extending the due dates by one month will provide the time needed to properly prepare these reports.

(The Honorable Susan Combs, Comptroller of Texas – Texas Comptroller of Public Accounts)

For 6.2

None received.

Against 6.2

None received.

COMMISSION DECISION ON ISSUE 6

(JANUARY 2013)

Adopted Recommendations 6.1 and 6.2 with Modification 1.

FINAL RESULTS ON ISSUE 6

(JULY 2013)

Legislative Action — H.B. 2472

Recommendation 6.1 — House Bill 2472 eliminates the Division's required report on Texas Correctional Industries products sold.

Recommendation 6.2 with Modification 1 — House Bill 2472 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. The bill 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, the bill 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 bill requires the Division to send both reports to the Lieutenant Governor and the Speaker of the House of Representatives, consistent with the statutory recipients of the Annual HUB Report.

NEW ISSUES

NEW ISSUES

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

7. Require DIR to analyze the historical spending for information technology (IT) commodities and services, and to develop contracts that leverage this spend. Require DIR to 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, require DIR to document why this pricing scheme was necessary. (Senator Robert Nichols, Vice Chair – Sunset Advisory Commission)
8. For any solicitation DIR submits to the Contract Advisory Team (CAT) for review, require DIR to either adopt CAT's recommendations or provide an explanation in writing as to why the recommendation cannot be implemented. (Senator Robert Nichols, Vice Chair – Sunset Advisory Commission)

COMMISSION DECISION ON NEW ISSUES

(JANUARY 2013)

Adopted New Issues 7 and 8.

FINAL RESULTS ON NEW ISSUES

(JULY 2013)

Legislative Action— H.B. 2472

New Issue 7 — House Bill 2472 requires DIR to analyze historical spending for information technology commodities and services to secure the best value for the state. The bill requires DIR to negotiate specific pricing, when reasonable, for commonly purchased IT commodities and services. If DIR selects a vendor based on a discount from the list price of commodity items, the bill requires DIR to document in writing how this arrangement obtains the best value for the state.

New Issue 8 — For any solicitation DIR is required to submit to the Contract Advisory Team (CAT) for review, House Bill 2472 requires DIR to either implement CAT's recommendations on the solicitation or provide an explanation in writing as to why CAT's recommendations cannot be implemented.

**PROVISIONS ADDED BY THE
LEGISLATURE**

PROVISIONS ADDED BY THE LEGISLATURE

None added.

APPENDICES

APPENDIX A

Status of 2010 Sunset Commission Recommendations on the Department of Information Resources

2010 Recommendation	Status
Issue 1 – Texas Has a Continuing Need for DIR, but the Department Lacks Needed Focus and Oversight.	
Change in Statute	
1.1 Transfer the cooperative contracts program from DIR to the Comptroller's Office.	Not Implemented — See Issue 1 of this report for alternative recommendations.
Management Action	
1.2 Direct the Comptroller's Office to report on Historically Underutilized Business (HUB) participation in the statewide purchasing programs.	Implemented — This recommendation was made in conjunction with Recommendation 1.1 to monitor the effect on HUB participation in statewide purchasing programs from transferring DIR's cooperative contracts program to the Comptroller's Office. Although the transfer did not occur, the Comptroller's Office does report the State's use of HUBs in purchasing biannually. Additionally, Sunset staff reviewed this information during the review of the Comptroller's Texas Procurement and Support Services Division as discussed in this report.
Change in Statute	
1.3 Require the appointment of a new DIR Board with seven members representing specific areas of expertise and three ex officio state agency members, one of whom would represent a state agency with less than 100 staff.	<p>Not Implemented — This recommendation was made in conjunction with Recommendation 1.1 to establish a new DIR board with the expertise necessary to set policy for and successfully oversee the newly focused agency following the recommended transfer of DIR's cooperative contracts program to the Comptroller's Office.</p> <p>Although the transfer did not occur, the DIR Board and agency staff have taken a number of steps, many based on 2010 Sunset recommendations, to improve Board attention on and oversight of agency functions, such as the formation of Board subcommittees, hiring of additional internal audit staff, and adoption of rules and policies relating to Board approval of contracts and administrative fees. Therefore, this change is no longer recommended.</p>
1.4 Require DIR's Board to establish a customer advisory committee.	<p>In Progress / Statutory Change Still Needed — See Issue 1 of this report.</p> <p>The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.</p>

Appendix A

2010 Recommendation	Status
1.5 Continue the Department of Information Resources for six years.	Not Implemented — See Issue 1 of this report. This recommendation requires a change in statute to continue the Department.
1.6 Apply the standard Sunset across-the-board requirement for DIR to develop a policy regarding negotiated rulemaking and alternative dispute resolution.	In Progress / Statutory Change Still Needed — See Issue 5 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
Management Action	
1.7 Direct DIR's Board and executive management to refocus the Department on its original mission and purpose, serving state agencies.	In Progress — See Issue 1 of this report. The Department has made progress but continued follow up as part of the Sunset Commission's compliance report to the 84th Legislature is needed to ensure full implementation of this recommendation.
1.8 Direct DIR to take steps to improve its performance, efficiency, and customer service.	In Progress — See Issue 1 of this report. The Department has made progress but continued follow up as part of the Sunset Commission's compliance report to the 84th Legislature is needed to ensure full implementation of this recommendation.
Issue 2 – DIR Lacks Needed Incentives and Oversight to Reduce Its Costs and Spend Taxpayer Funds More Efficiently.	
Change in Appropriations	
2.1 Request that the Legislature transfer a portion of the surplus fund balances in DIR's accounts to General Revenue.	Implemented — In February 2011, the Sunset Commission sent a letter to the House Appropriations Committee and Senate Finance Committee with these requests. The Legislature adopted Recommendation 2.1 as part of House Bill 4, 82nd Legislature, Regular Session, the supplemental appropriations bill, which resulted in a gain of \$4.3 million to the General Revenue Fund in fiscal year 2011. The Legislature also adopted Recommendation 2.2 as part of House Bill 1, 82nd Legislature, Regular Session, the General Appropriations Act for the 2012-13 biennium. The Legislature did not take action on Recommendation 2.3.
2.2 Request that the Legislature require DIR to adhere to a "not to exceed" level of appropriations.	
2.3 Request that the Legislature fund DIR directly with General Revenue and offset the overall costs to the General Revenue Fund.	
Change in Statute	
2.4 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.	In Progress / Statutory Change Still Needed — See Issue 2 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.

Appendix A

2010 Recommendation	Status
2.5 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.	In Progress / Statutory Change Still Needed — See Issue 2 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
2.6 Establish each of DIR's accounts in statute and limit expenditures to program purposes.	Not Implemented — See Issue 2 of this report. This recommendation requires a change in statute.
2.7 Require DIR to develop a clear policy governing the appropriate use of staff augmentation contractors and outside consultants.	In Progress / Statutory Change Still Needed — See Issue 2 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
Management Action	
2.8 DIR should take steps to ensure it offers the most competitive pricing possible.	In Progress — See Issue 2 of this report. The Department has made progress but continued follow up as part of the Sunset Commission's compliance report to the 84th Legislature is needed to ensure full implementation of this recommendation.
Issue 3 – DIR's Management and Enforcement of Major Statewide Contracts Have Increased Costs and Risks to the State.	
Change in Statute	
3.1 Require DIR to consistently measure and report cost savings and project status for IT consolidation projects.	In Progress / Statutory Change Still Needed — See Issue 3 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
3.2 Require DIR to create a contract management guide to provide a clear, overall approach to managing its major outsourced contracts.	In Progress / Statutory Change Still Needed — See Issue 3 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
3.3 Require DIR to create management plans specific to each of its major outsourced contracts.	In Progress / Statutory Change Still Needed — See Issue 3 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.

Appendix A

2010 Recommendation	Status
3.4 Strengthen and improve the Board’s oversight of DIR’s contracting functions.	<p>In Progress / Statutory Change Still Needed — See Issue 3 of this report.</p> <p>The Legislature adopted part of this recommendation in Senate Bill 1, 82nd Legislature, 1st Called Session to require the DIR Board to establish approval requirements for all contracts. In response, the Board has adopted rules requiring Board approval of all contracts over \$1 million. However, the Department needs additional statutory and legislative direction to ensure full and continued implementation of other provisions in this recommendation.</p>
3.5 Require DIR to develop and implement an agencywide training policy for all staff involved in contract management and Board members.	<p>In Progress / Statutory Change Still Needed — See Issue 3 of this report.</p> <p>The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.</p>
3.6 Require DIR to establish formal contract governance structures for each of its major contracts.	<p>In Progress / Statutory Change Still Needed — See Issue 3 of this report.</p> <p>The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.</p>
3.7 Establish stricter conflict of interest provisions in DIR’s statute.	<p>In Progress / Statutory Change Still Needed — See Issue 3 of this report.</p> <p>The Legislature adopted part of this recommendation in Senate Bill 1, 82nd Legislature, 1st Called Session to clarify that revolving door provisions apply to DIR. However, the Department needs additional statutory and legislative direction to ensure full and continued implementation of other provisions in this recommendation.</p>
Management Action	
3.8 DIR’s Board should immediately establish a subcommittee to monitor to TEX-AN re-procurement process and implementation of the new contract(s).	<p>Implemented — The Board established a TEX-AN subcommittee at its October 28, 2010 meeting.</p>
3.9 DIR should immediately develop transition plans for upcoming changes to the TEX-AN and data center services contracts.	<p>Implemented — DIR completed re-procurements and developed transition plans for both the TEX-AN and data center programs. Services for both programs commenced under the new contracts on September 1, 2011 for TEX-AN and July 1, 2012 for data center services.</p>

Appendix A

2010 Recommendation	Status
Issue 4 – DIR Has Failed to Prioritize and Provide Adequate Resources to Its Internal Audit Function, Putting Both the Department and the State at Risk.	
Change in Statue	
4.1 Require DIR to establish an Internal Audit Department.	In Progress / Statutory Change Still Needed — See Issue 4 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
4.2 Require the DIR Board to maintain an audit subcommittee.	In Progress / Statutory Change Still Needed — See Issue 4 of this report. The Department has taken appropriate action but needs statutory and legislative direction to ensure continued implementation of this recommendation.
Management Action	
4.3 DIR should dedicate at least three additional full-time staff to its Internal Audit Department.	In Progress — See Issue 4 of this report. The Department has made progress but continued follow up as part of the Sunset Commission's compliance report to the 84th Legislature is needed to ensure full implementation of this recommendation.
4.4 Direct DIR's Internal Audit Department to evaluate DIR's contract management policies and procedures.	In Progress — See Issue 4 of this report. The Department has made progress but continued follow up as part of the Sunset Commission's compliance report to the 84th Legislature is needed to ensure full implementation of this recommendation.
4.5 DIR should contract for an independent and comprehensive audit of its telecommunications program.	Implemented — DIR contracted with KPMG in May 2012 to conduct this audit according to criteria included in the Sunset recommendation. The results of the audit were provided to the DIR Board's Finance and Audit Subcommittee in September 2012.

APPENDIX B

Department of Information Resources Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Biennial Financial Report – Texas.gov	Section 2054.260(b), Texas Government Code	Requires the Department to biennially report on financial matters regarding the state electronic web portal, Texas.gov, including project costs and revenues, and on any significant issues regarding contract performance on the project.	Lieutenant Governor, Speaker of the House of Representatives, and Legislative Oversight Committees of each house of the Legislature	Continue and modify by changing the due date from September 1 to November 15 of even-numbered years
2. Biennial Performance Report – Texas.gov	Section 2054.260(a), Texas Government Code	Requires the Department to biennially report on the status, progress, benefits, and efficiency gains of the state electronic web portal project, Texas.gov.	Governor, Lieutenant Governor, Legislative Oversight Committees of each house of the Legislature, and project participants	Continue and modify by changing the due date from September 1 to November 15 of even-numbered years
3. Biennial Performance Report on State Information Resources Management	Sections 2054.055 and 2054.157, Texas Government Code	Requires the Department to biennially report on the use of information resources technologies by state government including state agencies' progress in developing and implementing project management practices. The Department may also make interim reports as needed.	Governor and Legislature	Continue
4. Report on the Placement of Information Resource Managers in Agency Hierarchies	Section 2054.075(b), Texas Government Code	Requires the Department to report, as needed, the extent and results of state agencies' compliance with the requirement to include Information Resources Managers as part of each agency's executive management. DIR provides this information, as necessary, as part of the non-compliance report required under Texas Government Code Section 2054.102(c).	Legislature	Continue
5. State Strategic Plan for Information Resources Management	Sections 2054.091 – 2054.094, Texas Government Code	Requires the Department to develop a biennial strategic plan for the management of the information resources of state government.	Governor and Legislative Budget Board	Continue

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
6. Report on Corrective Action Plans to Information Resources Deployment Reviews	Section 2054.097(a-1), Texas Government Code	Requires the Department to report, as needed, on state agency corrective action plans not meeting Department standards. Agencies must submit corrective action plans if the Department determines non-compliance with the State Strategic Plan for Information Resources Management, a state statute, or Department rules or standards.	Legislative Budget Board and State Auditor	Continue
7. Report on Non-Compliant Agencies	Section 2054.102(c), Texas Government Code	Requires the Department to provide, as needed, a list of agencies that have not complied with Department standards regarding biennial operating plans, provisions of the State Strategic Plan for Information Resources Management, or corrective action plans under Section 2054.097(a-1), Texas Government Code.	Legislative Budget Board and State Auditor	Continue
8. Notification of a State Agency's Disuse of a Statewide Technology Center	Section 2054.391(b), Texas Government Code	Requires the Department to report, as needed, a state agency not using a statewide technology center for operations or services in accordance with an interagency contract.	Legislative Budget Board, Comptroller of Public Accounts, State Auditor, and affected agency	Continue
9. Biennial Report – Texas Computer Security Network System	Section 2059.057, Texas Government Code	Requires the Department to report, biennially, on its accomplishment of service objectives and other performance measures relating to the network security system, including status and financial performance.	Governor, Lieutenant Governor, Speaker of the House of Representatives, and State Auditor	Continue
10. Texas.gov Monthly Financial Reports	Rider 6, page I-76, Article I (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Department to provide monthly financial reports and expenditures for the Texas.gov project within 60 days of the close of each month.	Legislative Budget Board	Continue

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
11. State Data Center Administrative Costs	Rider 9, page I-77, Article I (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Department to report all actual and proposed administrative costs collected and cost percentage charged to each state agency and other users of statewide technology centers, every six months.	Governor and Legislative Budget Board	Continue
12. Cost Recovery Activities	Rider 15, page I-80, Article I (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Department to annually report all revenues and expenditures out of the DIR Clearing Fund and the Telecommunications Revolving and Statewide Technology accounts; estimated unexpended and unobligated balances in these accounts; and any expenditures that exceed the amounts appropriated to DIR out of these accounts. The report must also include the fees charged to state agencies and other users of DIR's cooperative contracts, telecommunications, and data center services, and the methodology used to evaluate and set the respective fees.	Governor and Legislative Budget Board	Continue
13. DIR Fund Balances	Sec. 18.15, page IX-76, Article IX (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires the Department, by December 1 of each fiscal year, to report unexpended and unobligated balances carried forward in the DIR Clearing Fund, and the Telecommunications Revolving and Statewide Technology accounts.	Governor, Legislative Budget Board, and Comptroller of Public Accounts	Continue

Sunset Staff Reviews of the
Department of Information Resources
and
Comptroller Procurement and Support Services Division

————— *REPORT PREPARED BY* —————

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