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An Audit Report on
**The Texas Enterprise Fund at
the Office of the Governor**

September 2014
Report No. 15-003

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Overall Conclusion

While there were control weaknesses in the Office of the Governor's (Office) administration of the Texas Enterprise Fund from September 2003 through August 2013 (the scope of this audit), the Office made all disbursements auditors tested after the effective dates of the associated Texas Enterprise Fund award agreements. In addition, it safeguarded state resources by ensuring that it disbursed funds only to recipients with award agreements. The Office also recovered \$14,507,385 in funds (referred to as "clawback penalties") from Texas Enterprise Fund award recipients when it became aware of recipients' noncompliance with requirements in award agreements.

Recipients of Texas Enterprise Fund awards reported that they had created 48,317 direct jobs as of December 31, 2012. However, as a result of the control weaknesses identified during this audit, it was not always possible to determine whether award decisions were supported, or to determine the number of jobs that recipients of awards from the Texas Enterprise Fund have created.

The Office should strengthen its control structure for its administration of the Texas Enterprise Fund. The absence of an adequate control structure impaired the Office's ability to consistently administer the awarding, award agreement establishment, monitoring and award agreement termination, and reporting functions for the Texas Enterprise Fund. The following units within the Office administer the Texas Enterprise Fund:

- The Office of Economic Development and Tourism accepts applications for awards, conducts a due diligence review, and prepares information packets for decision

Background Information

The 78th Legislature established the Texas Enterprise Fund in 2003 as a dedicated account of General Revenue to be used for economic development, infrastructure development, community development, job training programs, and business incentives.

According to the Office of the Governor, the Texas Enterprise Fund is a final incentive tool for projects (1) that offer significant projected job creation and capital investment and (2) for which a Texas site is competing with another viable out-of-state option.

Between September 2003 and August 2013, the Texas Enterprise Fund made award agreements totaling \$506,838,696 for 115 projects. (See Appendix 2 for a list of all Texas Enterprise Fund awards made during that time period.)

As of June 30, 2014, the Texas Enterprise Fund had a remaining balance of \$204,591,523, and the Office reported that it had committed \$149,477,000 of that amount to recipients that had not yet qualified for disbursements. Based on that information, the amount remaining in the Texas Enterprise Fund that had not been committed to projects was \$55,114,523.

Approval of Awards

While the Office of the Governor is responsible for administering the Texas Enterprise Fund, the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives must approve awards. Specifically:

- Texas Government Code, Section 481.078(e), states that "The governor may negotiate on behalf of the state regarding awarding, by grant, money appropriated from the fund. The governor may award money appropriated from the fund only with the prior approval of the lieutenant governor and speaker of the house of representatives...an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award the grant before the 91st day after the date of receipt of the proposal from the governor."
- According to the Office of the Governor's *Texas Enterprise Fund 2013 Legislative Report*, the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives must unanimously agree for an award to be granted.

makers (the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives).

- The Office of the General Counsel develops award agreements and related amendments.
- The Compliance and Oversight Division monitors recipients' compliance with award agreements.

One requirement the Office established for receiving a Texas Enterprise Fund award is that a recipient's proposed Texas site must be in competition with another viable out-of-state option. However, auditors were unable to verify applicants' assertions regarding competition outside of Texas because sufficient information to perform that verification was not usually available.

Senate Bill 1390 (83rd Legislature, Regular Session) required the State Auditor's Office to conduct this audit (see Appendix 5).

Auditors communicated other, less significant issues to the Office separately in writing.

Summary of Management's Response

The Office's detailed management's response is presented in Chapter 8 of this report, and the Office provided the following summary of its management's response:

Although the Office of the Governor (OOG) agrees that there are certain administrative areas where the Texas Enterprise Fund (TEF) may improve, many of the key issues the State Auditor's Office (SAO) identifies existed closer to the inception of the TEF in 2004. The OOG has continued to improve the administration of the TEF, including implementation of certain SAO recommendations provided throughout the audit. The process and policies of the TEF have evolved with time to implement a more standard operating procedure.

The TEF is a key economic development tool utilized to assist in competitive recruitment efforts on behalf of the state of Texas. To be responsive to the dynamic global business climate and remain competitive with other states, it is necessary for the program to remain flexible based upon the unique characteristics of each project. This flexibility must include the ability to negotiate with prospective awardees in order to obtain the most advantageous agreement possible for the state.

Auditor Follow-up Comment

The State Auditor's Office stands by its conclusions based on the evidence presented and compiled during this audit.

Summary of Information Technology Review

Auditors reviewed automated controls over access to the Office's Texas Enterprise Fund shared drive and change management controls over key spreadsheets the Office uses to administer the Texas Enterprise Fund. Auditors did not identify significant issues regarding access to the Office's shared drive; however, auditors communicated other, less significant issues in information technology to the Office separately in writing.

Summary of Objectives, Scope, and Methodology

The objectives of this audit were to:

- Determine whether the Office awards and amends grants from the Texas Enterprise Fund in accordance with relevant state laws, rules, and Office policies and procedures.
- Determine whether the Office disburses money from the Texas Enterprise Fund in accordance with Texas Government Code, Section 481.078, and other relevant laws, rules, and standards.
- Determine whether the Office monitors the persons or entities awarded money from the Texas Enterprise Fund for compliance with the terms of any applicable agreements and with the requirements of Texas Government Code, Section 481.078, and other relevant laws, rules, and standards, including any terms related to job creation and capital investment.

The scope of this audit covered (1) projects with Texas Enterprise Fund award effective dates between September 1, 2003, and August 31, 2013, and (2) projects that did not receive Texas Enterprise Fund awards, when documentation related to those projects was available for review.

Because the Office did not consistently include signature dates on its Texas Enterprise Fund award agreements, the audit scope covered the best available information as of March 2014.

The audit methodology included reviewing all projects that received awards from the inception of the Texas Enterprise Fund and that were effective between September 1, 2003, and August 31, 2013. Auditors also reviewed documentation for projects that did not receive Texas Enterprise Fund awards when that information was available. Audit work included collecting information related to the Office's Texas Enterprise Fund award process, reviewing award agreements, reviewing the Office's monitoring information, and performing selected tests and other procedures.

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Summary and Recommendations

The Office Should Strengthen Its Administration of the Texas Enterprise Fund

The summary points below demonstrate that the Office of the Governor (Office) should strengthen several critical aspects of its administration of the Texas Enterprise Fund.

The Office should address weaknesses in its awarding process.

The Office did not consistently maintain key documentation of its Texas Enterprise Fund awarding processes. As a result, it was not always possible to determine how the Office made awarding decisions.

The Office also did not adopt rules related to the Texas Enterprise Fund—such as rules to define its application and evaluation processes—in the Texas Administrative Code.

The Office’s awarding process does not incorporate the use of an objective scoring tool to evaluate applications for awards and make specific recommendations regarding which applicants should receive awards. The Office also did not consistently provide decision makers with complete and accurate information related to potential Texas Enterprise Fund awards.

During the 2004-2005 biennium, the Office did not require recipients to submit applications and/or create direct jobs for 11 projects that received Texas Enterprise Fund awards. Those 11 projects received awards totaling \$222,281,000 (44 percent of the \$505,838,696 in Texas Enterprise Fund awards the Office made between September 2003 and August 2013). For example, a \$40,000,000 award to Sematech, Inc. did not require the recipient to create direct jobs; Sematech, Inc. also did not submit an application for that award.

The Office did not consistently include certain provisions in Texas Enterprise Fund award agreements, and it could not provide documentation that it complied with statute regarding amendment notification.

For example, the Office did not define the term “full-time” for 107 (97 percent) of the 110 award agreements tested that required the recipients to create full-time jobs. The Office also did not consistently include provisions in award agreements enabling it to disburse funds only after recipients have complied with job-creation requirements. Fifteen (13 percent) of 115 award agreements tested included a provision to disburse all funds before recipients had complied with job-creation requirements or other requirements.

In addition, the Office could not provide documentation that it consistently notified the Lieutenant Governor and the Speaker of the House of Representatives in advance of amending awards, as required by statute.

The Office's monitoring of Texas Enterprise Fund award recipients was not always adequate, which affected its ability to impose clawback penalties for recipients' noncompliance with job-creation requirements.

The Office's compliance verification process focused primarily on self-reported information that recipients submitted. For 40 projects that auditors tested, the Office's compliance verification was not adequate because it did not require recipients to provide detailed job-creation information to enable it to perform that verification.

Compliance with job-creation requirements is the primary criterion for determining whether recipients owe clawback penalties. The Office collected 103 clawback penalties that totaled \$14,507,385 for recipients' noncompliance with job requirements for reporting periods that ended between 2004 and 2012. However, weaknesses in the Office's compliance verification process impair the Office's ability to consistently identify recipients' noncompliance with job-creation requirements.

The Office has not developed a process to report the results of its compliance verification process to the Lieutenant Governor and the Speaker of the House of Representatives.

Communicating the results of the Office's compliance verification process is not specifically required. However, providing those results to the Lieutenant Governor and the Speaker of the House of Representatives would enable them to more effectively evaluate each Texas Enterprise Fund award and would enhance accountability.

The Office's award termination processes did not always ensure that the Office recovered all funds due back to the State.

The Office made errors in its calculation of award termination repayments. As of March 2014, the Office had collected a total of \$19,244,450 in termination repayments associated with the 23 award agreements that it had terminated or was in the process of terminating. Auditors estimated that the Office should have collected an additional \$3.8 million in termination repayments.

The Office did not fully comply with statutory requirements for its reports on the Texas Enterprise Fund.

The Office did not include certain information required by Texas Government Code, Section 481.079, in its biennial reports on the Texas Enterprise Fund. Other information it included in those reports was inaccurate. For example, in its January 2013 biennial report, the Office reported the 66,094 jobs that recipients were required to create, but it did not report the 48,317 jobs that

recipients reported they had created. It also did not report (1) the amount of capital investment recipients committed to make and (2) the actual amount of capital investment recipients expended or allocated per project in Texas.

The Office's January 2013 biennial report also did not include other statutorily required information, such as the number of jobs recipients created that provided health benefits to employees and the median wage of the jobs that recipients created.

Recommendations

The report chapters that follow provide more detailed information on the summary points outlined above. The chapters that follow also contain detailed recommendations to strengthen the Office's administration of the Texas Enterprise Fund. Those recommendations are also listed below.

Recommendations regarding the Office's control structure for the Texas Enterprise Fund from Chapter 1 of this report.

The Office should strengthen its control structure to effectively administer the Texas Enterprise Fund. Specifically, it should:

- Maintain key documentation of its awarding and monitoring processes in accordance with its records retention schedule.
- Adopt rules in the Texas Administrative Code to guide its administration of the Texas Enterprise Fund, including rules related to its application, evaluation, award agreement formation, and monitoring processes.
- Implement controls to help ensure that it complies with all statutory requirements for the Texas Enterprise Fund.

Recommendations regarding providing decision makers with information regarding potential awards from Chapter 2 of this report.

The Office should:

- Develop and implement an objective scoring tool to consistently evaluate, and make recommendations regarding, applications for Texas Enterprise Fund awards.
- Require applicants to submit all required components of its Texas Enterprise Fund application prior to completing its due diligence process.
- Modify its records retention schedule to retain all documentation related to the Texas Enterprise Fund awarding process for eight years after award agreement termination, and implement processes to help ensure compliance with that requirement.

- Implement and document a sufficient review process for the information packets it provides to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives to help ensure that it provides accurate and complete information, including all elements required by Office policy and procedures and Texas Government Code, Section 481.080.
- Prepare and maintain a checklist to help ensure that, for each due diligence review it conducts, it prepares and maintains all required items.
- Consistently follow its due diligence process for evaluating applications for Texas Enterprise Fund awards.
- Ensure that all documents in the information packets the Office prepares for consideration by the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives are complete and accurate, including its project summary documents, business climate comparison, economic impact analysis, and financial analysis.
- Verify that applicants are eligible to receive Texas Enterprise Fund awards prior to signing award agreements.
- Establish a process to identify or evaluate conflicts of interest related to applications for Texas Enterprise Fund awards, as recommended by the *State of Texas Contract Management Guide*.
- Obtain all information required by Texas Government Code, Section 481.080, from applicants.
- Establish a specific process to consider Texas Enterprise Fund awards for small businesses.

Recommendations regarding award agreement provisions and amendments from Chapter 3 of this report.

The Office should:

- Revise its Texas Enterprise Fund award agreement template to:
 - Define all key terms (such as “full-time”) in its award agreements.
 - Consistently specify in the award agreements the baseline number of jobs in place at recipients at the time award agreements are signed.
 - Specify the types of costs that are allowable or unallowable.
 - Specify that the annual compliance verification reports recipients submit must include detailed, employee-level data to support job creation (including information that Texas Government Code, Section 481.079, requires the Office to report in its biennial reports).

- Include relevant provisions recommended by the *State of Texas Contract Management Guide*.
- Include a provision regarding its ability to secure liens on projects that require capital investment.
- Include signature dates by all signing parties on Texas Enterprise Fund award agreements.
- Include provisions in Texas Enterprise Fund award agreements requiring recipients to demonstrate that they have complied with key requirements before the Office disburses the full award amount.
- Consider amending existing Texas Enterprise Fund award agreements to address the weaknesses discussed above.
- Consistently provide notifications to the Lieutenant Governor and the Speaker of the House of Representatives regarding amendments to award agreements at least 14 days before it intends to make those amendments, and maintain documentation of those notifications.
- Include signature dates by all signing parties on award amendments and assignments.
- Amend awards only for recipients that the Office has determined to be in compliance with the terms of their existing award agreements.
- Develop procedures to document how it processes assignments of awards to successor companies.

The Legislature should consider requiring the Office to obtain approval from the Lieutenant Governor and the Speaker of the House of Representatives prior to making amendments to award agreements.

Recommendations regarding award monitoring from Chapter 4 of this report.

The Office should:

- Continue to conduct onsite visits at Texas Enterprise Fund recipients, and verify recipients' self-reported information by comparing it with payroll information during those visits.
- Develop and implement a process to assess risk for recipients that are not required to create direct jobs, and evaluate whether it should conduct onsite visits at those recipients.
- Require all Texas Enterprise Fund award recipients to provide detailed, employee-level job-creation data, and consistently verify that data by comparing it to a third-party source.

- Verify recipient compliance with all key provisions in award agreements, such as capital investment requirements and requirements to open or expand facilities.
- Follow its procedures for calculating Texas Enterprise Fund award termination repayments to help ensure that it recovers all principal and interest, as required by Texas Government Code, Section 481.078.
- Develop and implement a process to review its Texas Enterprise Fund termination repayment calculations to help ensure that those calculations are accurate.

The Legislature should consider:

- Requiring the Office to report the results of its compliance verification process to the Lieutenant Governor and the Speaker of the House of Representatives.
- Requiring an independent verification, such as an audit by a third party, of the number of jobs Texas Enterprise Fund recipients report they create in situations that meet certain high-risk parameters that the Legislature defines.

Recommendations regarding award disbursements from Chapter 5 of this report.

The Office should:

- Include signature dates on all Texas Enterprise Fund award agreements, amendments, and assignments.
- Complete compliance verifications prior to disbursing funds when disbursements are contingent on recipients complying with Texas Enterprise Fund award agreement requirements.

Recommendations regarding reporting from Chapter 6 of this report.

The Office should:

- Collect and verify all information from recipients that it is required to report under Texas Government Code, Section 481.079.
- Revise its biennial report to include all statutorily required information, including the number of jobs recipients have created and the actual and committed capital investment amounts required by each award agreement.
- Develop and implement a review process to help ensure that the information in its biennial reports is accurate.

Detailed Results

Chapter 1

The Office Should Strengthen Its Control Structure for the Texas Enterprise Fund

The Office should strengthen its control structure for the administration of the Texas Enterprise Fund. Having an adequate control structure is important to helping ensure compliance with statute and effective administration of the Texas Enterprise Fund. However, from September 2003 through August 2013 (the scope of this audit) the Office:

- Did not consistently maintain key documentation of its awarding and monitoring processes, as required by its records retention schedule. As a result, it was not always possible to determine how the Office made awarding and monitoring decisions.
- Did not adopt rules related to the Texas Enterprise Fund—such as rules to define its application, evaluation, award agreement formation, and monitoring processes—in the Texas Administrative Code. Adopting rules is important because it (1) provides an opportunity for public comment related to proposed rules and (2) allows potential applicants and other stakeholders to become informed about how a program operates. Texas Government Code, Section 481.021, gives the Office the authority to adopt and enforce rules. Texas Government Code, Section 481.075, requires the Office to adopt rules to establish criteria for determining which users may participate in its programs, including the Texas Enterprise Fund.
- Did not implement processes to help ensure that it complied with certain statutory requirements, including requirements related to its biennial reports on the Texas Enterprise Fund.

Without an adequate control structure for the Texas Enterprise Fund, weaknesses existed in the Office's processes for making awards, establishing award agreements, monitoring and terminating awards, and reporting.

The absence of an adequate control structure was particularly evident in the Office's early administration of the Texas Enterprise Fund. During the 2004-2005 biennium, the Office did not require recipients to submit an application and/or did not require recipients to create direct jobs for award agreements associated with 11 projects. The awards associated with those 11 projects totaled \$222,281,000, or 44 percent of the \$505,838,696 in Texas Enterprise Fund awards the Office made between September 2003 and August 2013 (see Table 1 on the next page). All of the award agreements signed after the 2004-

2005 biennium had corresponding applications and requirements to create direct jobs.

Table 1

Projects With No Formal Application and/or No Requirement to Create New, Direct Jobs	
Recipient	Award Amount
Projects That Did Not Submit a Formal Application and Were Not Required to Create New, Direct Jobs	
Board of Regents of the University of Texas System (for the benefit of the University of Texas at Dallas)	\$ 50,000,000
Sematech, Inc.	40,000,000
Lonestar Education and Research Network (LEARN)	9,781,000
Texas Energy Center	3,600,000
Baylor College of Medicine	<u>2,000,000</u>
Subtotal	\$ 105,381,000
Projects That Did Not Submit a Formal Application	
Triumph Aerostructures, LLC	\$ 35,000,000
Board of Regents of the University of Texas System (for the benefit of the University of Texas Health Science Center and the University of Texas M.D. Anderson Cancer Center)	25,000,000
Citgo Petroleum Corporation	5,000,000
Maxim Integrated Products (San Antonio)	1,500,000
Cabela's Retail TX, L.P.	<u>400,000</u>
Subtotal	\$ 66,900,000
Project That Did Not Create New, Direct Jobs	
The Texas Institute for Genomic Medicine (TIGM) - Texas A&M University System/Lexicon Genetics Incorporated ^{a b}	\$ 50,000,000
Total	\$222,281,000
<p>^a One component of this project required a total of 125 direct jobs with Lexicon Genetics Incorporated by December 31, 2012, and a total of 1,616 direct jobs by December 31, 2016. However, as a result of an amendment to the original award agreement, Lexicon was not required to create any jobs between 2007 and 2011 (see Chapter 3-B for more information on that amendment). Lexicon originally reported that it had created 30 new direct jobs in 2005 and 12 new direct jobs in 2006; however, as of December 31, 2012, Lexicon reported that it had not created any direct jobs. Between 2007 and 2012, all jobs created were indirect jobs that the Texas A&M University System had reported.</p> <p>^b In addition to this award, in February 2009 the Office transferred \$50,000,000 from the Texas Enterprise Fund to the Emerging Technology Fund. In March 2009, the Emerging Technology Fund announced an award of \$50,000,000 to the Texas A&M University System for the National Center for Therapeutics Manufacturing.</p>	

Sources: Texas Enterprise Fund award agreements and Office documentation.

Recommendations

The Office should strengthen its control structure to effectively administer the Texas Enterprise Fund. Specifically, it should:

- Maintain key documentation of its awarding and monitoring processes in accordance with its records retention schedule.
- Adopt rules in the Texas Administrative Code to guide its administration of the Texas Enterprise Fund, including rules related to its application, evaluation, award agreement formation, and monitoring processes.
- Implement controls to help ensure that it complies with all statutory requirements for the Texas Enterprise Fund.

The Office Did Not Consistently Provide Decision Makers with Complete and Accurate Information Related to Potential Texas Enterprise Fund Awards

The Office did not consistently provide decision makers with complete and accurate information related to potential Texas Enterprise Fund awards. Specifically, the information packets the Office created for consideration by the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives frequently did not include key components or included incorrect information. That occurred because of (1) weaknesses in the Office's review of applications for Texas Enterprise Fund awards, (2) errors in the Office's due diligence process, and (3) the omission of certain components from that process.

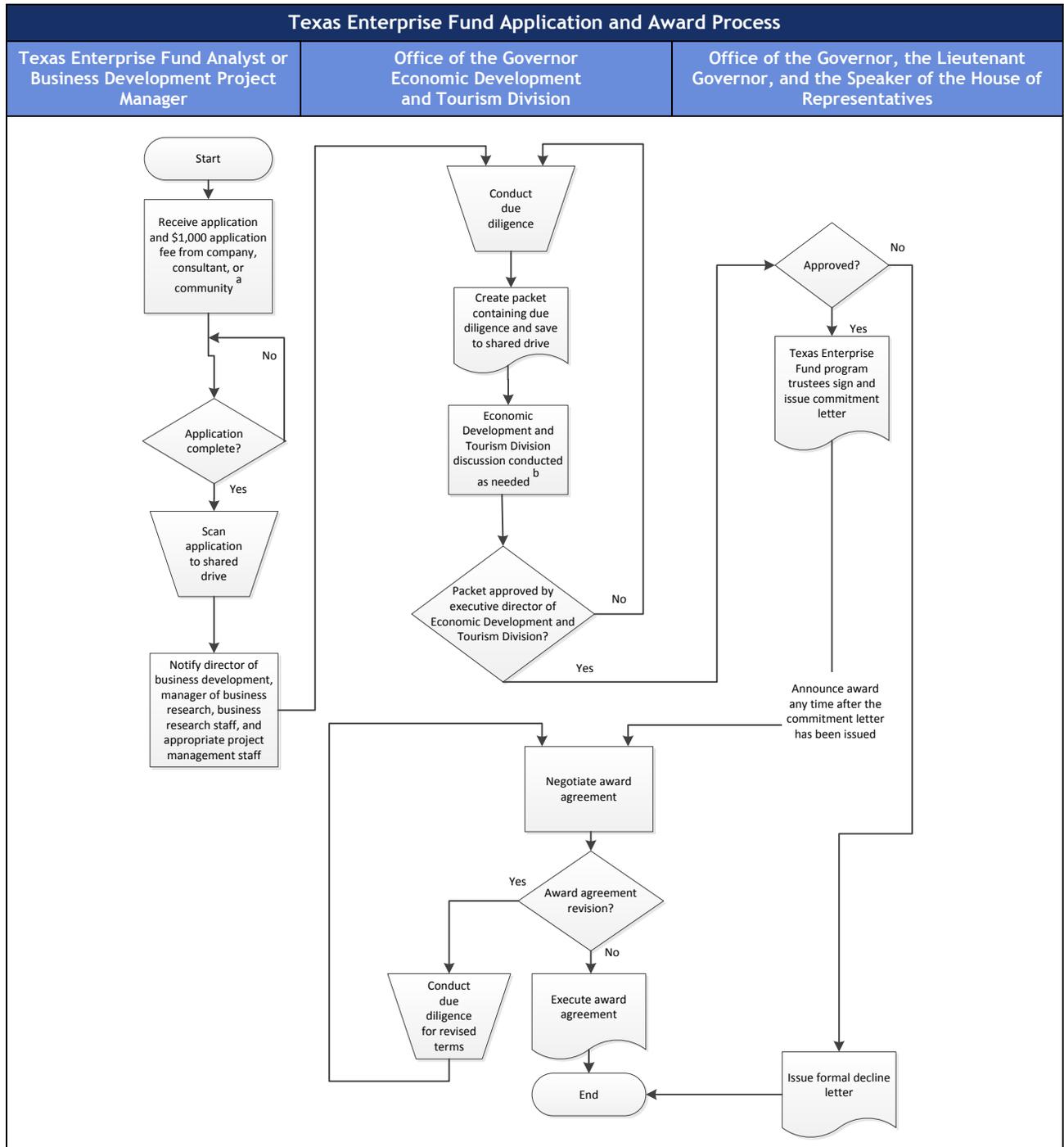
It was not always possible to determine whether award decisions were supported by information in the Office's records and in the information packets the Office prepared for the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.

The Office's process does not incorporate the use of an objective scoring tool to evaluate applications for awards.¹ Although the Office analyzes and prepares information packets for potential awards, those information packets do not provide recommendations regarding whether to make awards. The *State of Texas Contract Management Guide* recommends that grant applications be scored using a scoring matrix and that recommendations for grant funding be documented and based on the scoring results. Although the Office is not required to comply with that guide, that guide includes best practices related to contract and grant management that could be helpful to the Office. Based on information from local governments that have incentive funds, using an objective scoring tool could help the Office evaluate potential awards in a consistent manner and maximize the benefits of the Texas Enterprise Fund.

Figure 1 on the next page summarizes the Texas Enterprise Fund application and award process.

¹ For example, an objective scoring tool would serve as a comprehensive, overall evaluation of all of the individual analyses within the Office's due diligence process and result in a specific recommendation based on that evaluation.

Figure 1



^a An application may be withdrawn at any time prior to a formal decline letter or the signing of an award agreement.

^b Participants in the discussion may include the business development director; the Texas Enterprise Fund analyst; the business research manager; project management staff; the Office of General Counsel; the Office of Compliance; staff from other state agencies, when appropriate; and staff of the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.

Source: Developed by the State Auditor’s Office based on information the Office provided.

Weaknesses in the Office's Review of Applications

For 49 (49 percent) of the 99 project evaluations tested, the Office could not provide documentation that it consistently reviewed all required components of applications for Texas Enterprise Fund awards. For example, the Office could not provide documentation that it (1) reviewed three years of audited financial statements for the applicant or (2) reviewed economic impact reports that the applicants were required to submit. (Two of those 49 projects also did not have applications submitted, as discussed previously in Chapter 1.)

Errors in the Due Diligence Process

The Office's Due Diligence Process

After the Office receives an application for a Texas Enterprise Fund award, it performs a due diligence process to evaluate the potential award. It then incorporates items from that process into an information packet that it provides to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Those items include:

- Cost-benefit analyses, which consider state and local incentives and revenue estimates.
- Project summary documents.
- Business climate comparisons.
- Assessments of applicants' economic impact reports.
- Financial analyses of applicants.
- Applicant background research.

(The content of those items is discussed in more detail throughout this chapter.)

The Office did not consistently follow its due diligence process to evaluate potential projects for Texas Enterprise Fund awards (see text box for a summary of the due diligence process). For all 99 project evaluations² tested, auditors identified errors in key elements of the information packets the Office prepared, including unsupported information, incorrect information, or incomplete information. Those errors are discussed in more detail below.

Cost-benefit analyses. The Office's cost-benefit analyses yielded inconsistent and, in some cases, inaccurate information. Those analyses are important because they are included in the information packet that the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives use to make final award decisions, such as information regarding (1) the estimated amount of time until the state sales tax revenue associated with an award will equal the amount of the award (referred as the "payback period") and (2) the total estimated economic benefit to the entire state from the direct jobs created over a 20-year period. Each cost-benefit analysis includes a proposed award amount that the Office determines based on the payback period it calculates.

For 88 (92 percent) of 96³ cost-benefit analyses tested, auditors (1) identified errors that affected the presentation of the information packets the Office provided to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives or (2) were not able to analyze the cost-benefit analysis because the Office did not retain a copy of the information packet it provided to those individuals. The Office did not retain information packets for 11 (13 percent) of those 88 projects. For the remaining 77 projects, auditors identified the following types of errors:

² Applicants for 72 of those projects accepted award offers, applicants for 13 of those projects did not receive award offers, and applicants for 14 of those projects declined award offers.

³ For 3 of the 99 project evaluations in auditors' sample, the Office did not conduct cost-benefit analyses because it had determined that the applicants would not receive awards prior to the point at which cost-benefit analyses would have been necessary.

- The Office did not consistently consider all state and local incentives or tax revenues in its cost-benefit analyses. That information is important because it could affect the proposed award amount that results from the analysis.
- For some projects, the Office manually changed the estimated sales tax revenue rates associated with (1) new direct jobs to be created and (2) wages paid for construction. Those changes shortened the estimated payback period by one year or more for 23 projects.

The changes the Office made to the estimated sales tax revenue rates were not apparent in the information packets the Office provided to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.⁴

As a result of the errors discussed above and other manual errors that the Office made in its cost-benefit analyses, key items in the executive summary of the cost-benefit analyses—including the estimated benefits the State would receive through future taxes collected and the payback period—were not always accurate. Specifically:

- For 44 (57 percent) of the 77 cost-benefit analyses tested for which auditors identified an error in the accuracy of the analysis, the Office overstated or understated the total estimated direct benefit to the entire state by at least 5 percent. The total estimated direct benefit is an estimate of the tax revenues that all local and state taxing entities will receive from an award recipient.
- For 32 (42 percent) of the 77 cost-benefit analyses tested for which auditors identified an error in the accuracy of the analysis, the Office understated the estimated payback period by at least one year.

Project summary documents. For 61 (62 percent) of 99 project evaluations tested, the project summary documents the Office prepared did not include information required by Office policies and procedures or included information that was inaccurate or unsupported by information in the Office’s documentation.

Business climate comparisons. For 14 (14 percent) of 98⁵ project evaluations tested that required a business climate comparison, the Office (1) could not

⁴ Those changes were not apparent because, in the information packets, the Office reduced the number of decimal places it presented for the sales tax recovery rates, which made those rates appear unchanged. Changing the estimated sales tax revenue resulted in inconsistent payback periods across proposed awards and was not in compliance with the Office’s procedures for estimating that sales tax revenue. Payback periods are a key factor in determining award amounts, and shortening the payback periods could result in an award amount that was higher than it would have been using the correct estimated sales tax rates.

⁵ For 1 of the 99 project evaluations in auditors’ sample, the Office did not conduct a business climate comparison because it had determined that the applicant would not receive an award prior to the point at which a business climate comparison would have been necessary.

provide evidence that it performed that comparison, (2) included unsupported competing locations in that comparison, or (3) did not include competing locations listed in the application in that comparison.

Assessments of applicants' economic impact reports. For 20 (21 percent) of 97 project evaluations tested that required an assessment of the applicant's economic impact report, the Office could not provide documentation that it performed that assessment or could not provide support for documentation that it included in that assessment.

Financial analyses of applicants. For 56 (58 percent) of 96⁶ project evaluations tested, the financial analysis summaries the Office prepared did not include information required by Office policies and procedures or included information that was inaccurate or unsupported by information in the Office's documentation. For those 56 project evaluations, auditors identified the following errors:

- For 4 project evaluations, the Office did not include its financial analysis summary in the information packets it provided to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.
- For 11 project evaluations, the financial analysis summary the Office prepared was not complete or contained other errors when compared to the Office's records.
- For 41 project evaluations, the Office did not maintain sufficient support for the credit rating information it included in the financial analysis summary; therefore, auditors were unable to determine whether that information was presented accurately.

Of the 115 projects that became effective between September 1, 2003, and August 31, 2013, the Office indicated that 2 awards were made to companies (KLN Steel Products, LLC and Latex Foam Internal Holdings, Inc.) that had entered into bankruptcy protection as of June 2014. Another recipient (Coll Materials Exchange, LLC) was no longer in business. (For more information on those three recipients, see Appendix 2.) Although the financial analysis process cannot predict an applicant's future financial condition with certainty, it is still a valuable tool in assessing the applicant's potential financial condition.

Applicant background research. Auditors did not identify significant errors in the background research that the Office performed on applicants, and its background research generally identified significant risks and concerns that the Office included in the information packets it provided to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.

⁶ For 3 of the 99 project evaluations in auditors' sample, the Office did not complete its financial analysis because it had determined that the applicants would not receive awards prior to the point at which a financial analysis would have been necessary.

Noncompliance with Certain Statutory Requirements

For 95 (99 percent) of the 96⁷ projects tested, the Office did not include all elements required by Texas Government Code, Section 481.080, in the information packets or it did not maintain those packets. Specifically:

- As discussed above, for 11 of those projects, the Office did not maintain the information packets it asserted that it provided to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.
- For 84 of those projects, the information packets that the Office provided did not include statutorily required information on the median wage associated with the jobs the applicants would create.

The Office also could not always provide documentation that the information packets it provided included statutorily required information on all sources of estimated tax revenues and incentives offered by all governmental entities of the state.

In addition, the Office could not always provide documentation that it verified whether applicants were eligible to receive Texas Enterprise Fund awards prior to signing award agreements. Specifically:

- For 13 (14 percent) of 92 award agreements tested that were effective after September 1, 2005, the Office could not provide documentation that it verified whether the applicant was in good standing with the Office of the Comptroller of Public Accounts and did not owe delinquent taxes in Texas.
- For 55 (71 percent) of 78 award agreements tested that were effective after September 1, 2005, and for which the applicant was organized outside of Texas, the Office could not provide documentation that it confirmed that the applicant was in good standing with the laws in the state in which it was organized.

**Texas Government Code,
Section 481.078(e)**

Effective September 1, 2005, Texas Government Code, Section 481.078(e), required that, for an entity to be eligible to receive a Texas Enterprise Fund award, the entity must be (1) in good standing under the laws of the state in which the entity was formed or organized, as evidenced by a certificate issued by the secretary of state or the state official having custody of the records pertaining to entities or other organizations formed under the laws of that state, and (2) owe no delinquent taxes to a taxing unit in Texas.

⁷ For 3 of the 99 project evaluations in auditors' sample, the Office did not prepare an information packet because it had determined that the applicants would not receive awards prior to the point at which the preparation of information packets would have been necessary.

The Office's procedures did not require it to obtain information from applicants required by Texas Government Code, Section 481.080, including the median wage of the jobs to be created and information related to the applicants' standing with the laws in the state in which they were organized.

Omission of Conflict of Interest Disclosure Requirements

The Office did not have a sufficient process to identify or evaluate conflicts of interest related to applications for Texas Enterprise Fund awards. For example, the Office did not require applicants to disclose whether any of their employees were formerly employed by the offices of the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. While the Office is not subject to the *State of Texas Contract Management Guide*, that guide recommends that agencies require potential contractors to disclose actual or potential conflicts of interest.

Statutory Definition of a Small Business

"Small Business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

- (1) Is formed for the purposes of making a profit;
- (2) Is independently owned and operated; and
- (3) Has fewer than 100 employees.

Source: Texas Government Code, Section 481.078(l).

No Specific Process for Consideration of Small Businesses

The Office's due diligence process did not include a specific process to enable it to consider Texas Enterprise Fund awards for small businesses (see text box). Texas Government Code, Section 481.078 (k), requires the Office to consider making awards to small businesses.

Although statute does not require a specific process, implementing such a process would help the Office to ensure that it has considered small businesses for awards.

The Office made awards to four small businesses between September 1, 2005, and August 31, 2013. Those small businesses were Trace Engines, L.P.; Coll Materials Exchange, LLC; Green Star Products, Inc.; and Ferris Mfg. Corp.

Recommendations

The Office should:

- Develop and implement an objective scoring tool to consistently evaluate, and make recommendations regarding, applications for Texas Enterprise Fund awards.
- Require applicants to submit all required components of its Texas Enterprise Fund application prior to completing its due diligence process.
- Modify its records retention schedule to retain all documentation related to the Texas Enterprise Fund awarding process for eight years after award agreement termination, and implement processes to help ensure compliance with that requirement.

- Implement and document a sufficient review process for the information packets it provides to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives to help ensure that it provides accurate and complete information, including all elements required by Office policy and procedures and Texas Government Code, Section 481.080.
- Prepare and maintain a checklist to help ensure that, for each due diligence review it conducts, it prepares and maintains all required items.
- Consistently follow its due diligence process for evaluating applications for Texas Enterprise Fund awards.
- Ensure that all documents in the information packets the Office prepares for consideration by the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives are complete and accurate, including its project summary documents, business climate comparison, economic impact analysis, and financial analysis.
- Verify that applicants are eligible to receive Texas Enterprise Fund awards prior to signing award agreements.
- Establish a process to identify or evaluate conflicts of interest related to applications for Texas Enterprise Fund awards, as recommended by the *State of Texas Contract Management Guide*.
- Obtain all information required by Texas Government Code, Section 481.080, from applicants.
- Establish a specific process to consider Texas Enterprise Fund awards for small businesses.

The Office Did Not Consistently Include Certain Provisions in Award Agreements and Amendments to Comply with Requirements for the Texas Enterprise Fund and Protect the State's Financial Interests

The Office did not consistently include key provisions in Texas Enterprise Fund award agreements, which hindered its ability to effectively monitor recipients' compliance with the requirements in those agreements and protect the State's interests. It also made certain unique amendments to award agreements that were not consistent with most of the other types of amendments it made, and it did not always maintain documentation that it complied with statutory requirements and its internal processes when it amended award agreements.

Chapter 3-A

Provisions in Texas Enterprise Fund Award Agreements Did Not Consistently Enable the Office to Perform Its Monitoring Responsibilities and Protect the State's Interests

The Office did not consistently include provisions in award agreements to help it monitor recipients' compliance with requirements.

A lack of clear and measurable provisions in some award agreements prevented the Office from effectively monitoring recipients' compliance with requirements. Specifically:

- The Office did not define the term "full-time" for 107 (97 percent) of the 110 award agreements tested that required the recipients to create full-time jobs. (One additional award agreement allowed the recipient to treat full-time jobs and part-time jobs equally in its reporting of the number of new jobs it created.)
- For 43 (37 percent) of the 115 award agreements tested, the Office either (1) did not include a provision that specified that new jobs would only be counted if they exceeded the total number of jobs at the recipients at the time the award agreements were signed or (2) did not specify the baseline for the number of jobs that existed at the recipients at the time the award agreements were signed.
- For 107 (93 percent) of the 115 award agreements tested, the Office did not specify the types of costs that were allowable or unallowable under the terms of the award agreement.

In addition, award agreements did not consistently specify the elements that recipients were required to include in the annual compliance verification reports they submit to the Office. Most award agreements required recipients to submit compliance verification reports in a form that was reasonably satisfactory to the Office, and some of those award agreements required

recipients to include “appropriate back-up data for the employment position numbers provided and for the threshold”; however, those award agreements did not specifically require recipients to provide employment details, such as hire dates, in their reports.

The award agreements also did not require recipients to provide certain information that the Office was statutorily required to report. For example, Texas Government Code, Section 481.079, requires the Office to include in its required biennial reports on the Texas Enterprise Fund the number of jobs recipients created that provided health benefits to employees; however, the Office did not ask recipients to provide that information (see Chapter 6 for additional information on the Office’s biennial reports).

The Office did not consistently include signature dates in award agreements, and some award agreements became effective prior to the date on their corresponding commitment letters.

The Office did not consistently include signature dates on award agreements. (For the purposes of this report, the signature date of an award agreement is the date on which the parties signed the award agreement. The effective date of an award agreement is a date specified in the award agreement on which the terms of the agreement begin.) For 80 (70 percent) of the 115 award agreements tested, the award agreement did not contain a signature date by either the Office or the recipient. As a result, auditors (1) could not always determine award agreement signature dates and (2) could not evaluate the appropriateness of the effective dates on those agreements. In addition, the Office backdated the signature date of its award agreement with Ascend Performance Materials by almost one year.

In addition, seven award agreements became effective prior to the dates on which the commitment letters for those awards were signed by the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Those seven awards became effective between February 2004 and January 2013. The Office asserted that it backdated the effective dates of multiple award agreements to allow recipients to count jobs they created toward fulfillment of their job-creation requirements while the Office was negotiating their award agreements.

The Office did not consistently include recommended provisions in award agreements.

Texas Enterprise Fund award agreements did not consistently include provisions recommended by the *State of Texas Contract Management Guide* that are necessary to protect the State’s financial interests. While the Office is not subject to the *State of Texas Contract Management Guide*, that guide recommends provisions that could be helpful to the Office. Specifically:

- The *State of Texas Contract Management Guide* recommends that agreements with non-state entities include certain provisions regarding

indemnification to protect the State and the recipients. However, the Office did not include a provision to indemnify the State in 11 (10 percent) of the 111 award agreements with non-state entities.

Indemnity provisions are important because they hold the State harmless for lawsuits and other losses related to the recipients' actions.

- The *State of Texas Contract Management Guide* recommends that agreements with non-state entities include certain provisions regarding public information. However, the Office did not include a provision to notify the recipients of their obligation to provide information under the Texas Public Information Act in 103 (93 percent) of the 111 award agreements with non-state entities.

Provisions about the Texas Public Information Act notify the recipients of potential disclosures of information they may be required to make.

- For 17 (15 percent) of the 115 award agreements tested, the Office did not include an adequate “right to audit” provision to help ensure that recipients' compliance with requirements could be audited.
- For all 115 award agreements tested, the Office did not include a “funding out” provision to specify what would happen if an unexpected loss of funding to the Texas Enterprise Fund occurred.

The Office did not consistently include provisions in award agreements enabling it to disburse funds only after recipients have complied with job-creation requirements.

Fifteen (13 percent) of 115 award agreements tested included a provision to disburse all funds before recipients had complied with job-creation requirements or other requirements. Ninety (78 percent) of the 115 award agreements tested provided for a partial disbursement of funds prior to the recipients meeting job-creation requirements or other requirements. Some state and local governments that auditors contacted indicated that they included provisions in incentive fund award agreements to specify that recipients would not receive funds until after they had demonstrated that they had met key requirements.

The Office did not consistently include provisions in award agreements to help enforce its ability to secure liens.

Effective September 1, 2005, Texas Government Code, Section 481.078, permitted the Office to secure a lien on the capital improvements that recipients make with Texas Enterprise Fund awards. However, for all three award agreements signed after September 1, 2005, for which recipients planned to make capital investments, the Office did not include provisions in the award agreements regarding its ability to secure liens. (Eighty-nine other award agreements signed after September 1, 2005, did not include specific

capital investment requirements.) Ensuring that the Office has the ability to secure liens helps protect the State’s financial interests.

Recommendations

The Office should:

- Revise its Texas Enterprise Fund award agreement template to:
 - Define all key terms (such as “full-time”) in its award agreements.
 - Consistently specify in the award agreements the baseline number of jobs in place at recipients at the time award agreements are signed.
 - Specify the types of costs that are allowable or unallowable.
 - Specify that the annual compliance verification reports recipients submit must include detailed, employee-level data to support job creation (including information that Texas Government Code, Section 481.079, requires the Office to report in its biennial reports).
 - Include relevant provisions recommended by the *State of Texas Contract Management Guide*.
 - Include a provision regarding its ability to secure liens on projects that require capital investment.
- Include signature dates by all signing parties on Texas Enterprise Fund award agreements.
- Include provisions in Texas Enterprise Fund award agreements requiring recipients to demonstrate that they have complied with key requirements before the Office disburses the full award amount.
- Consider amending existing Texas Enterprise Fund award agreements to address the weaknesses discussed above.

The Office Amended Some Award Agreements for Texas Enterprise Fund Recipients That Had Not Complied with Requirements, and It Did Not Consistently Make Required Notifications About Amendments in a Timely Manner

The Office made 36 amendments to 30 award agreements for awards that were effective between September 1, 2003, and August 31, 2013. In most cases, those amendments (1) reduced both the award amounts and the number of jobs recipients were required to create, (2) extended job-creation schedules to allow recipients additional time to create jobs, or (3) addressed situations in which recipients needed to add subsidiary or affiliate companies to their award agreements. However, as discussed below, certain weaknesses in the Office's amendments process exist.

The Office could not provide documentation that it consistently notified the Lieutenant Governor and the Speaker of the House of Representatives in advance of amending awards.

For 3 (20 percent) of 15 amendments tested that the Office made after September 1, 2011, the Office could not provide documentation that it notified the Lieutenant Governor and the Speaker of the House of Representatives at least 14 days prior to the effective date of the amendment. (Effective September 1, 2011, Texas Government Code, Section 481.078, required that notification 14 days in advance of the date the Office intends to make an amendment.)

The Office also did not always include a signature date on amendments; as a result, auditors were unable to determine how many days in advance of the signature date the Office provided other required notifications.

The Office made certain unique amendments to award agreements that were not consistent with most of the other types of amendments it made.

The Office made certain award amendments that included unique provisions that resulted in reduced clawback penalties or the elimination of clawback penalties. Specifically:

- The Office amended its award agreement with Triumph Aerostructures, to give job-creation credit for salaries that exceeded the salaries that the award agreement required. Auditors estimated that amendment reduced the clawback penalties the recipient owed. (See Chapter 7 for additional information on auditors' site visit to that recipient.)
- The Office amended its agreement with the Texas Energy Center to (1) give job-creation credit for salaries that exceeded the salaries that the award agreement required and (2) remove a requirement that 100 initial jobs be located at the Texas Energy Center. The Office also removed a \$20,000,000 investment requirement and a requirement that the recipient spend award funds solely to provide tenant space to new energy industry

tenants. That amendment eliminated the clawback penalty that the recipient could have owed due to noncompliance, and it removed an option for the Office to terminate the award at key target points for recipient noncompliance. Prior to that amendment, the award agreement included a provision that allowed the Office to require the recipient to repay all \$3,600,000 awarded.

- The Office amended its award agreements with Lexicon and the Texas A&M University System for the Texas Institute for Genomic Medicine to make the Texas A&M University System responsible for all job creation for a longer time period prior to 2015. The original award agreements (1) required Lexicon to create direct jobs and (2) allowed the Texas A&M University System to report indirect jobs created as part of its required jobs. However, under the amendment, the Office replaced the requirement for Lexicon to create direct jobs with a requirement for the Texas A&M University System to create indirect jobs. Without that amendment, auditors estimated that Lexicon would have owed additional clawback penalties.
- The Office amended its award agreement with Huntsman Corporation to reduce the total number of jobs required, to reduce the clawback penalty that recipient was required to pay if it did not create required jobs, and to extend the term of the award agreement by one year. However, that amendment did not reduce the amount of the award. Without that amendment, auditors estimated that the recipient would have owed additional clawback penalties.

The Office should address other weaknesses related to amendments and assignments.

For 31 (86 percent) of the 36 amendments the Office made, its procedures required the Office to verify that the recipients were in compliance with their award agreements prior to making the amendments. However, it did not adequately perform that verification prior to making 4 (13 percent) of those 31 amendments.

The Office also did not have procedures to document how it processed assignments, which are made when an award recipient fully transfers its responsibilities under an award agreement to another company or companies.

Recommendations

The Office should:

- Consistently provide notifications to the Lieutenant Governor and the Speaker of the House of Representatives regarding amendments to award agreements at least 14 days before it intends to make those amendments, and maintain documentation of those notifications.

- Include signature dates by all signing parties on award amendments and assignments.
- Amend awards only for recipients that the Office has determined to be in compliance with the terms of their existing award agreements.
- Develop procedures to document how it processes assignments of awards to successor companies.

The Legislature should consider requiring the Office to obtain approval from the Lieutenant Governor and the Speaker of the House of Representatives prior to making amendments to award agreements.

The Office's Monitoring of Texas Enterprise Fund Award Recipients Was Not Always Adequate, and Its Award Agreement Termination Processes Did Not Always Comply with Requirements

The Office has developed and implemented a compliance verification process to monitor Texas Enterprise Fund recipients' compliance with award agreements and recover funds when recipients do not comply with the requirements in those award agreements. However, that process was not always adequate to (1) identify noncompliance with requirements in award agreements and (2) help ensure that the Office recovered all funds when it terminated award agreements with recipients.

Several factors impair the overall effectiveness of the Office's compliance verification process. That process focused primarily on self-reported information that recipients submitted, and the Office did not consistently require recipients to submit detailed information regarding job creation such as information on hire dates, annual compensation, location information, and transfer information. The Office also did not incorporate an independent assessment of the accuracy of job-creation information that higher risk recipients submit. In addition, the Office did not consistently verify that recipients complied with other requirements in their award agreements regarding items such as capital investment and the opening of new facilities.

As a result of the weaknesses in the Office's monitoring, it was not possible to determine the number of jobs that recipients of awards from the Texas Enterprise Fund have created. Those weaknesses also affected the Office's ability to impose clawback penalties on recipients for noncompliance with the requirements in their award agreements.

The Office's Annual Compliance Verification Process

Texas Enterprise Fund award agreements generally require recipients to submit annual compliance verification reports to the Office. Those reports contain information on recipients' job creation and information regarding their compliance with other requirements in their award agreements.

The Office's compliance verification policy requires it to perform annual reviews to verify job-creation information and other information that recipients report. If the Office determines that a recipient has not met job-creation requirements, it can (1) require the recipient to pay a clawback penalty or (2) terminate the award and require the recipient to make a termination repayment.

The Office has improved its monitoring of recipients' compliance with requirements in award agreements over time; however, it should make additional improvements.

The Office performed five site visits at recipients between 2005 and 2013. However, the procedures it performed during those site visits were generally limited and did not always include comparing the number of jobs recipients reported they had created to payroll records.

Prior to 2008, the Office had not established a policy related to its compliance monitoring. In 2008, the Office developed and implemented an annual compliance verification process (see text box for additional details).

During this audit, the Office implemented a risk assessment process that it used to select recipients at which it conducted site visits in 2014. Although the Office used that process to assess most recipients,

it excluded three projects⁸ that were not required to create direct jobs from that process (the award amounts for those three projects totaled \$99,781,000).

The Office has not developed a process to report the results of its compliance verification process to the Lieutenant Governor and the Speaker of the House of Representatives.

Communicating the results of the Office's compliance verification process is not specifically required. However, providing those results to the Lieutenant Governor and the Speaker of the House of Representatives would enable them to more effectively evaluate each Texas Enterprise Fund award and would enhance accountability.

Although the Office improved its monitoring of recipients, it did not consistently implement its procedures to monitor Texas Enterprise Fund award recipients.

For 87 (99 percent) of the 88 projects tested⁹, the recipients submitted their annual compliance verification reports for the year tested; in addition, when the Office did not receive those reports by the due date, it followed up with the recipients to ensure that it received the reports. The Office did not receive a compliance verification report for 1 of the 88 projects auditors attempted to test, and it terminated the award agreements associated with 2 of the 88 projects auditors attempted to test.

For the remaining 85 projects, auditors determined the following:

- For 81 (95 percent) of those 85 projects, the Office assessed the recipients' compliance with requirements in award agreements using its compliance verification worksheet.
- For 3 (4 percent) of those 85 projects, auditors could not assess the Office's compliance verification because the Office did not use its verification worksheet. In those cases, the compliance verification reports were for periods prior to December 31, 2006, which was before the Office had implemented its compliance verification worksheet.
- The Office also did not complete its compliance verification process for the Texas Institute for Genomic Medicine (TIGM) project, for which the Office entered into an award agreement for a total of \$50,000,000 with the Texas A&M University System and Lexicon Genetics, Incorporated. Weaknesses in the provisions of that award agreement prevented the Office from determining whether those two recipients had complied with

⁸ The recipients of those three projects were (1) Lonestar Education and Research Network (LEARN) and TIGRE Institutions - Lonestar Education and Research Network (LEARN - TIGRE), with a total award amount of \$9,781,000; (2) Sematech, Inc., with a total award amount of \$40,000,000; and (3) the University of Texas System and Texas Instruments, with a total award amount of \$50,000,000.

⁹ For each of those 88 projects, which had award agreements that were effective between September 1, 2003, and August 31, 2013, auditors tested the Office's compliance verification process for one annual compliance verification report.

the requirements of the award agreement prior to December 31, 2015.¹⁰ (The award agreement was effective on July 15, 2005; for more information on the TIGM project, see Table 8 in Appendix 2.)

The Office did not consistently require recipients to provide detailed information to verify the number of jobs they reported they had created, and it did not always perform adequate verifications.

The Office relies on award recipients to report information on the number of jobs they create. It reviews recipients' self-reported information to determine whether the recipients have met job-creation requirements in their award agreements and, when necessary, to assess clawback penalties.

However, for 40 (49 percent) of the 81 projects tested for which the Office completed a compliance verification, that verification was not adequate because it did not require recipients to provide detailed job-creation information to enable it to perform that verification. The Office's policy requires it to obtain the following information from recipients: employee identifiers, job functions or titles, hire dates, annual compensation, and transfer information. However, the Office did not always require recipients to submit that information and, in some cases, recipients submitted only a summary of jobs they had created. The Office also did not always obtain information related to job locations. Although that information is not required by the Office's policy, it is necessary to determine whether the jobs met requirements in the award agreements.¹¹

Not sufficiently verifying the number of jobs that recipients report they create could prevent the Office from imposing clawback penalties. See Chapter 7 for information related to the results of job-creation information verification that auditors performed during site visits to six Texas Enterprise Fund award recipients.

The Office's verification process did not consistently include an independent verification for higher risk recipients.

The Office's compliance verification process did not consistently include an independent verification of the number of jobs created by higher risk recipients, such as recipients with multiple locations in Texas. In its compliance verification worksheets, the Office frequently noted that the number of jobs a recipient reported it had created at the location(s) specified in its award agreement was not comparable with the total number of employees in Texas that the recipient had reported to the Texas Workforce

¹⁰ For example, the award agreement allowed the Texas A&M University System and Lexicon Genetics, Incorporated to offset clawback penalties if they received additional funding from other sources for the project by December 31, 2015. The award agreement also allowed the Texas A&M University System to report indirect jobs in the biotechnology and pharmaceutical industries. The Office has not yet developed a methodology to verify the creation of those indirect jobs, although it previously identified concerns with the methodology used to identify indirect jobs.

¹¹ Transfer and location information shows when employees transferred to the location of the project and where they transferred from; that information determines whether those employees can be counted in the jobs that recipients report they created.

Commission.¹² (For example, one compliance verification worksheet specified that comparison “cannot be used for verification purposes for this project.”) However, in those cases, the Office did not perform additional procedures to address that risk. Seventy-one (62 percent) of 115 projects that were effective between September 1, 2003, and August 31, 2013, had multiple locations in Texas.

The Office did not always adequately verify recipients’ compliance with other requirements.

The Office did not always adequately verify recipients’ compliance with award agreement requirements, including (1) requirements related to capital investment (when it required recipients to make those investments) and (2) requirements related to facilities that recipients were required to open or expand. In addition, it did not always ensure that recipients provided their annual compliance verification reports to the Office of the Lieutenant Governor and the Speaker of the House of Representatives, as required by statute. The Office recovered funds from recipients when it determined they did not create the number of jobs required by their award agreements.

Clawback Penalties

Each time the Office enters into a Texas Enterprise Fund award agreement that requires job creation, it calculates a clawback penalty amount for each job in each year and includes that amount in the award agreement.

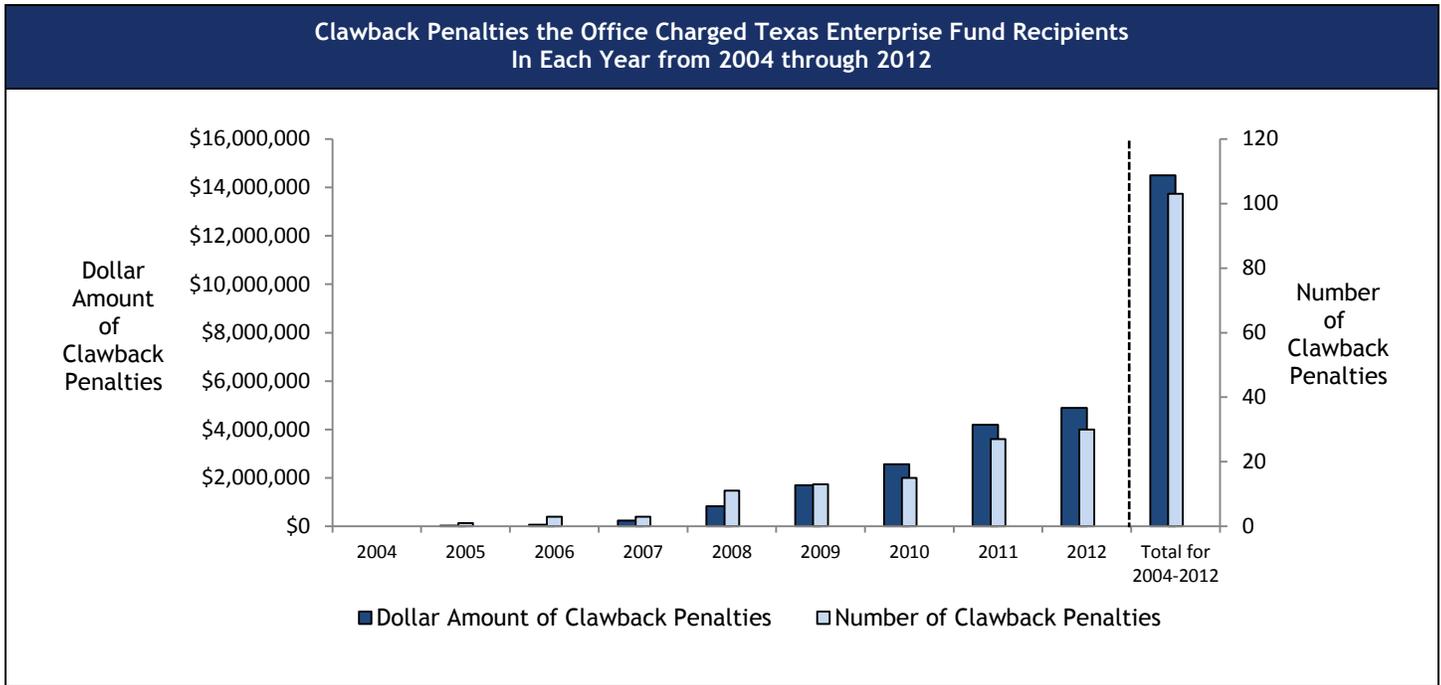
If the Office later determines that a recipient has not complied with job-creation requirements, it calculates the amount of the clawback penalty the recipient must pay by multiplying the job shortage for the year by the clawback penalty specified in the award agreement.

Compliance with job-creation requirements is the primary criterion for determining whether recipients owe clawback penalties. The Office imposed clawback penalties as stipulated in award agreements when it became aware that recipients did not meet job-creation requirements (see text box for additional details). The Office collected 103 clawback penalties that totaled \$14,507,385 for recipients’ noncompliance with job requirements for reporting periods that ended between 2004 and 2012. However, as discussed above and as described further in Chapter 7, weaknesses in the Office compliance verification process impair the Office’s ability to consistently identify recipients’ noncompliance with job-creation requirements.

¹² The Office receives information from the Texas Workforce Commission at a statewide, summary level. That information is not location-specific for companies that have multiple locations in Texas.

Figure 2 shows the amount and number of clawback penalties the Office charged recipients in each year from 2004 through 2012.

Figure 2



Source: Prepared by auditors based on Office information.

The Office did not always recover all required funds from recipients with which it terminated award agreements.

As of February 26, 2014, the Office had terminated 20 award agreements that became effective between September 1, 2003, and August 31, 2012. The Office was in the process of terminating three additional award agreements, and the recipients associated with those award agreements had not yet repaid

all funds they owed (two of those recipients were in bankruptcy). As of March 2014, the Office had collected a total of \$19,244,450 in termination repayments associated with the 23 award agreements it had terminated or was in the process of terminating (see text box for additional information on termination repayments). Auditors estimated that the Office should have collected an additional \$3.8 million in termination repayments.

Termination Repayments

When a Texas Enterprise Fund award recipient or the Office terminates an award prior to the recipient meeting the requirements in the award agreement, the Office may require the recipient to repay all or a portion of the entire award, including interest. According to the Office’s policy, the Office calculates termination repayments by adjusting the amount of funds it already disbursed by an interest rate specified in the award agreement (to recover interest the State could have received on those funds). It then reduces that amount by (1) estimated sales tax collection and (2) any clawback penalties that the recipient paid.

Most award agreements include an option to terminate the award agreement when recipients do not comply with certain requirements, including requirements to create jobs and, in some cases, requirements to open a new facility. Recipients also can elect to terminate award agreements.

However, the Office did not consistently calculate termination repayments correctly. For 18 (90 percent) of the 20 terminated

award agreements tested, auditors identified errors in the Office's calculation of the termination repayment. As a result, in some cases, the Office did not recover all funds as required by Texas Government Code, Section 481.078. For example:

- The Office's calculation of the termination repayment amount that Bank of America¹³ owed did not include all funds due back to the State. The Office's calculation of the termination repayment was not based on its actual disbursement schedule and used an incorrect interest rate. The Office was unable to explain the basis of its calculation. Auditors estimated that Bank of America should have repaid approximately \$11.8 million, but the Office required Bank of America to repay only \$8.5 million upon termination.
- Auditors estimated that the Office potentially undercharged 6 other award recipients a total of \$516,750 in termination repayments and potentially overcharged 11 other award recipients a total of \$123,310 in termination repayments.

Recommendations

The Office should:

- Continue to conduct onsite visits at Texas Enterprise Fund recipients, and verify recipients' self-reported information by comparing it with payroll information during those visits.
- Develop and implement a process to assess risk for recipients that are not required to create direct jobs, and evaluate whether it should conduct onsite visits at those recipients.
- Require all Texas Enterprise Fund award recipients to provide detailed, employee-level job-creation data, and consistently verify that data by comparing it to a third-party source.
- Verify recipient compliance with all key provisions in award agreements, such as capital investment requirements and requirements to open or expand facilities.
- Follow its procedures for calculating Texas Enterprise Fund award termination repayments to help ensure that it recovers all principal and interest, as required by Texas Government Code, Section 481.078.
- Develop and implement a process to review its Texas Enterprise Fund termination repayment calculations to help ensure that those calculations are accurate.

¹³ The Office originally made that award to Countrywide Home Loans, Inc.

The Legislature should consider:

- Requiring the Office to report the results of its compliance verification process to the Lieutenant Governor and the Speaker of the House of Representatives.
- Requiring an independent verification, such as an audit by a third party, of the number of jobs Texas Enterprise Fund recipients report they create in situations that meet certain high-risk parameters that the Legislature defines.

The Office Disbursed Funds from Texas Enterprise Fund Awards in Accordance with Requirements, But Certain Weaknesses Exist

For all 161 disbursements tested, the Office made the disbursements after the effective dates of the corresponding Texas Enterprise Fund award agreements. Due to the absence of signature dates on award agreements, auditors could not always determine whether the Office made disbursements after the award agreements were signed; however, auditors did not identify any disbursements made prior to the effective dates of the award agreements tested.

In addition, the Office consistently ensured that it obtained required internal approvals prior to disbursing funds from Texas Enterprise Fund awards. The Office uses a disbursement approval form to document review and approval of those disbursements. For 160 (99 percent) of the 161 disbursements tested, the Office prepared and maintained disbursement approval forms. For the remaining disbursement, which the Office made in March 2004, the Office was unable to provide that form and asserted that it had not maintained that form.

For 46 (96 percent) of 48 disbursements tested that were contingent on the recipients complying with job-creation or other requirements, the Office determined that the recipients complied with key requirements prior to making the disbursements. For the remaining two disbursements, which totaled \$3,125,000, the Office could not provide documentation that it verified that the recipients complied with key requirements prior to making the disbursements.

Recommendations

The Office should:

- Include signature dates on all Texas Enterprise Fund award agreements, amendments, and assignments.
- Complete compliance verifications prior to disbursing funds when disbursements are contingent on recipients complying with Texas Enterprise Fund award agreement requirements.

The Office Did Not Fully Comply with Statutory Requirements for Its Reports on the Texas Enterprise Fund

The Office submitted biennial reports on the Texas Enterprise Fund prior to each regular legislative session, as required by Texas Government Code, Section 481.079. In those reports, the Office consistently reported the total amount of Texas Enterprise Fund awards.

However, the Office did not include certain information required by Texas Government Code, Section 481.079, in its reports. Other information it included in those reports was inaccurate. Without complete and accurate information, it is difficult for decision makers to assess the success of the Texas Enterprise Fund.

The biennial report the Office submitted in January 2013 omitted statutorily required information and contained errors.

For the most recent biennial report the Office submitted in January 2013¹⁴, auditors identified the following:

- The Office is statutorily required to report the number of direct jobs each recipient created in Texas. However, in its report, the Office did not distinguish between “direct jobs committed” and “direct jobs created.”

Although the report included a column labeled “Direct Jobs,” the Office reported the 66,094 jobs that recipients were required to create, rather than the 48,317 jobs that recipients reported they had created. In addition, for some recipients, the Office incorrectly reported indirect jobs that the recipients were required to create or made other errors in the “Direct Jobs” column.

- The Office is statutorily required to report (1) the amount of capital investment each recipient committed to make and (2) the actual amount of capital investment each recipient expended or allocated per project in Texas. However, the Office reported neither of those items in its report. Although the report included a column labeled “Capital Investment,” most

Texas Enterprise Fund Biennial Report Requirements

Texas Government Code, Section 481.079, was effective on September 1, 2005, and requires the Office to report the following information to the Speaker of the House of Representatives, the Lieutenant Governor, and members of the legislature prior to each regular session of the legislature:

- The number of direct jobs each recipient committed to create in Texas.
- The number of direct jobs each recipient created in Texas.
- The median wage of the jobs each recipient created in Texas.
- The amount of capital investment each recipient committed to expend or allocate per project in Texas.
- The amount of capital investment each recipient expended or allocated per project in Texas.
- The total amount of awards made to each recipient.
- The average amount of funds for each job recipients created in Texas.
- The number of jobs created in Texas by recipients in each sector of the North American Industry Classification System.
- Of the number of direct jobs each recipient created in Texas, the number of positions that provide health benefits to employees.

¹⁴ The biennial report that the Office submitted in January 2013 covered the time period from the initiation of the Texas Enterprise Fund through December 2012.

of the amounts in that column were amounts referred to in the background information in award agreements that were neither committed amounts nor actual amounts.

- The Office did not report other statutorily required information, including:
 - The number of jobs recipients created that provided health benefits to employees.
 - The median wage of the jobs recipients created.
 - The average amount of awarded funds for each job that recipients created.
- The Office underreported the amount of funds it disbursed to recipients between 2010 and 2012. It also overreported the amount of funds it awarded and underreported the amount of funds recipients paid back to the Office for terminated awards; that occurred because the Office did not include revisions to award amounts and repayments that it received in December 2012.

Table 2 summarizes the inaccuracies in the 2013 biennial report.

Table 2

Summary of Errors in the Office's Texas Enterprise Fund 2013 Legislative Report			
Item Reported	Number the Office Reported in the 2013 Biennial Report	Information in the Office's records as of December 31, 2012	Overreported/ (Underreported)
Items Related to Job Creation			
Total direct jobs required by all award agreements (through the end date of all award agreements)	66,094	53,590	12,504
Total direct jobs required as of December 31, 2012	Not required to be reported ^a	36,680	Not applicable
Total direct jobs created as of December 31, 2012	Not reported	48,317 ^b	Not applicable
Items Related to Funding			
Total amount of awards	\$487,409,696	\$485,059,696	\$2,350,000
Total disbursements	\$384,242,196	\$391,112,196	\$(6,870,000)
Total recipient repayments on terminated award agreements	\$22,493,027	\$22,863,978	\$(370,951)
Total clawback penalties received when recipients did not comply with award agreement terms	\$9,621,982	\$9,621,982	\$0
^a Although this information is not required by Texas Government Code, Section 481.079, it would enable a report reader to evaluate award recipients' progress in job creation. ^b This is the number of direct jobs that the Office accepted based on its 2012 compliance verification. See Chapters 4 and 7 for information related to the reliability of the Office's compliance verification.			

Sources: The Office's Texas Enterprise Fund 2013 Legislative Report and other Office information.

Biennial reports the Office submitted prior to January 2013 also omitted statutorily required information.

Auditors did not evaluate the accuracy of all of the information in the biennial reports the Office submitted prior to January 2013. However, auditors noted that the biennial reports the Office submitted in 2011, 2009, and 2007 included some information related to the number of jobs recipients reported they had created. However, those reports did not consistently include all of the statutorily required information.

Recommendations

The Office should:

- Collect and verify all information from recipients that it is required to report under Texas Government Code, Section 481.079.
- Revise its biennial report to include all statutorily required information, including the number of jobs recipients have created and the actual and committed capital investment amounts required by each award agreement.
- Develop and implement a review process to help ensure that the information in its biennial reports is accurate.

Results from Site Visits at Six Texas Enterprise Fund Award Recipients Demonstrated Inconsistencies in the Office's Awarding Processes and Monitoring

Auditors conducted site visits at six Texas Enterprise Fund award recipients from February 2014 to March 2014 to (1) evaluate the sufficiency of compliance monitoring that the Office performed on those recipients for the year ending December 31, 2012, and (2) determine the accuracy of the information those recipients had reported to the Office. During those visits, the recipients provided auditors with access to their records. Auditors also reviewed the process that the Office used to make awards to each of those six recipients.

The results of the site visits demonstrated inconsistencies in the Office's awarding processes and monitoring, which are discussed below. The results also provide specific examples of some of the issues presented in more detail in the preceding chapters of this report.

Triumph Aerostructures (original award to Vought Aircraft Industries), \$35.0 million awarded effective February 26, 2004

The recipient did not meet the job-creation requirement established in its award agreement for the period that ended on December 31, 2012.

The Office accepted job-creation numbers in the recipient's 2012 compliance verification report that contained significant errors. Specifically:

- Auditors could not determine the actual number of new jobs the recipient created because of weaknesses in the provisions of the award agreement and in the recipient's process for identifying and reporting jobs created. However, based on the best available information, auditors estimated that the Office should have disqualified 450 jobs that the recipient reported it had created. The Office erroneously accepted the following as new jobs:

Background Information on the Triumph Aerostructures Award

The award agreement, originally with Vought Aircraft Industries, was effective on February 26, 2004, and awarded the recipient \$35,000,000. It required the recipient to create 3,000 new jobs by December 31, 2009, and to maintain a total of 6,000 new and existing jobs through December 31, 2019. The award agreement also acknowledged that the recipient's expansion plans were contingent on additional state and local support, including the recipient's ability to secure favorable terms on agreements with other governmental entities related to its occupancy of its facility in Dallas, Texas. The recipient also was required to pay an average annual wage of \$53,000. Triumph Aerostructures acquired Vought Aircraft Industries in 2010.

The Office disbursed all \$35,000,000 to the recipient on April 9, 2004.

The Office made two amendments to the award agreement. The first amendment, which did not contain a signature date, was effective on December 22, 2009, and gave Vought job-creation credit for salaries that exceeded the salaries that the original award agreement required. The second amendment was dated July 6, 2010, and was effective as of December 31, 2009. That amendment reduced the total number of jobs the recipient was required to create and maintain from 6,000 to 5,968.

The award agreement is scheduled to end on December 31, 2019.

- 8 jobs in Everett, Washington.
 - 144 jobs that were not filled for 12 consecutive months as required by the award agreement.
 - 110 jobs that were not full-time jobs.
 - 174 contractor jobs that did not meet the terms of the award agreement.
 - 14 jobs that should not have been counted for other, unique reasons.
- The Office charged the recipient a clawback penalty; however, as a result of the deficiencies in counting jobs discussed above, auditors estimated that the Office undercharged the recipient by approximately \$993,000. (That estimate was based on the \$1,000 clawback penalty noted in the award agreement, which is discussed in more detail below.)
 - The Office did not require the recipient to provide detailed job-creation data to support the compliance verification report it submitted. As a result, the Office did not identify the errors in the report.

The compliance verification reports the recipient submitted for other years contained a level of detail that was similar to the 2012 compliance verification report discussed above.

The Office made errors in the awarding and award agreement execution processes for this award. Specifically:

- Based on information the Office provided, the recipient did not submit an application using the Office's formal application process. Additionally, the Office could not provide documentation that it completed key elements of its due diligence process prior to making the award.
- The award agreement included provisions that were inconsistent with other award agreements, and it did not include other key provisions to protect state financial resources, such as provisions related to the recipient's obligations under the Texas Public Information Act and provisions to indemnify the State against potential losses by the recipient related to the agreement. In addition, the Office included in the award agreement a provision for a clawback penalty amount of \$1,000 per year per job for each job the recipient did not create. However, that penalty was understated because of errors in the Office's calculations. Based on auditors' calculation, that penalty should have been approximately \$3,298 per year per job.
- The Office amended the award agreement to reduce the recipient's required clawback penalties in a manner that was inconsistent with other

award agreements. (See Chapter 3-B for more information regarding that amendment.)

Scott & White Memorial Hospital, \$7.5 million awarded effective September 1, 2007

The recipient exceeded the job-creation requirements in its award agreement for the period that ended December 31, 2012. However, there were errors in the number of jobs that the Office allowed the recipient to count as new jobs on its 2012 compliance verification report. Those errors incorrectly inflated the surplus job credit that the Office allocated to the recipient in its verification process. (Recipients can use surplus job credits to end their award agreements earlier than originally planned.)

Specifically:

- The automated process the recipient used to count jobs in Bell County incorrectly included an estimated 554 jobs located outside of that county.
- The recipient included 96 jobs that it had incorrectly reported as a result of a merger with another hospital.

Background Information on the Scott & White Memorial Hospital Award

The award agreement was effective on September 1, 2007, and awarded the recipient \$7,500,000. It required the recipient to build the Cancer Research Institute in Bell County, Texas; to create 1,485 new jobs at the Cancer Research Institute and other Scott & White facilities in Bell County by December 31, 2016; and to maintain those jobs through December 31, 2022. As of December 31, 2012, the recipient was required to pay an average annual wage of \$49,651.

The Office made three disbursements totaling \$7,500,000. It made the first disbursement of \$3,000,000 on November 7, 2007; it made the second disbursement of \$2,500,000 on March 30, 2009; and it made the final disbursement of \$2,000,000 on April 6, 2011.

The award agreement is scheduled to end on January 31, 2023.

Auditors identified inconsistencies in the Office’s awarding process for this award. Specifically:

- The Office’s due diligence review was based on incomplete information and contained inaccuracies. For example, the Office did not include the name of the consultant who worked with the recipient on the application, the recipient’s annual revenue, or the average weekly wages for Bell County in the information packet it prepared. In addition, the business climate comparison the Office prepared (1) excluded two locations that the recipient had listed on one version of its application as other locations it was considering and (2) included one potential location that was not listed on the application.
- The Office did not maintain a copy of the packet it submitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Therefore, auditors were unable to determine the accuracy of the cost-benefit analysis that the Office prepared for that packet.

- The award agreement allowed the recipient to include all jobs it created in Bell County, Texas as new jobs. The award agreement also required the recipient to create a total of 1,485 jobs by December 31, 2016. As of March 5, 2014, the Cancer Research Institute had a total of 9 employees, and the recipient reported that it had 8,403 jobs in Bell County; it asserted that 2,899 of those jobs qualified as new jobs under its award agreement.
- The award agreement between the Office and the recipient did not contain certain provisions to protect state resources, including provisions related to the recipient's obligations under the Texas Public Information Act.
- One of the requirements in the award agreement between the Office and Scott & White Memorial Hospital, which was signed on November 5, 2007, required Scott & White Memorial Hospital to build a Cancer Research Institute. However, the recipient's application indicated that it had already established the Cancer Research Institute in 2005.
- Although one version of the application listed some competitive locations, there was no other documentation that the recipient considered locating out of state.

Tyson Fresh Meats, Inc., \$7 million awarded effective April 11, 2005

Background Information on the Tyson Fresh Meats, Inc. Award

The award agreement was effective on April 11, 2005, and awarded the recipient \$7,000,000. It required the recipient to create 1,600 new jobs at its Sherman, Texas facility by December 31, 2009, and to maintain those jobs through December 31, 2022. As of December 31, 2012, the recipient was required to pay an average annual wage of \$27,028.

The Office made two disbursements totaling \$7,000,000. It made the first disbursement of \$3,500,000 on May 2, 2005, and it made the second disbursement of \$3,500,000 on December 12, 2006.

The award agreement is scheduled to end on January 31, 2023.

The recipient did not meet the job-creation requirements established in its award agreement for the period that ended on December 31, 2012. In addition, there were minor errors in the number of jobs that the Office allowed the recipient to report as new jobs for that period.

The Office's due diligence review for this award was based on incomplete information and contained inaccuracies. For example, the cost-benefit analysis that the Office prepared did not consider all state and local incentives available to the recipient and tax revenues. As a result, the Office (1) understated the total estimated financial benefit to the State and (2) understated the length of time for the State to recover the awarded funds. The cost-benefit analysis also did not include the median wages of the jobs to be created, as required by Texas Government Code, Section 481.080.

In addition, the award agreement did not contain certain provisions necessary to protect state resources, including provisions related to the recipient's obligations under the Texas Public Information Act.

Comerica Incorporated, \$3.5 million awarded effective August 29, 2007

The recipient exceeded the job-creation requirement in its award agreement. The Office reviewed a detailed list of jobs that the recipient provided. The recipient accurately reported the number of new jobs it created based on the terms of the award agreement in its 2012 compliance verification report.

Auditors identified inconsistencies in the Office’s awarding process for this award. Specifically:

- The Office conducted its due diligence review based on an incomplete application. The recipient submitted its application in late February 2007, and the Office announced the award and issued a commitment letter signed by the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives on March 6, 2007, the same date that the recipient announced its relocation. However, the recipient subsequently submitted two revised applications, and it did not provide an application that listed other competitive locations until May 2007.
- The Office could not provide documentation that it prepared a financial data analysis to evaluate the recipient’s financial position during its due diligence review. In addition, the Office did not maintain a copy of the packet it submitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Therefore, auditors were unable to determine the accuracy of the cost-benefit analysis that the Office prepared for that packet.
- The award agreement did not contain certain provisions to protect state resources, including provisions related to the recipient’s obligations under the Texas Public Information Act.
- The award agreement stated that jobs would only be counted as “new” jobs if the number of jobs reported exceeded the number of jobs at the time the award agreement was signed. However, in a separate 2007 letter, the Office also allowed the recipient to count 32 jobs that relocated to Texas prior to the effective date of the award agreement. Effective December 28, 2012, the Office formally amended the award agreement to allow the recipient to count only 15 of those 32 existing jobs as new jobs.

Background Information on the Comerica Incorporated Award

The award agreement was effective on August 29, 2007, and awarded the recipient \$3,500,000. It required the recipient to establish its corporate headquarters in Dallas, Texas; to create 200 new jobs directly related to its newly established headquarters by December 31, 2010; and to maintain those jobs through December 31, 2017. As of December 31, 2012, the recipient was required to pay an average annual wage of \$158,661.

The Office disbursed all \$3,500,000 to the recipient on September 24, 2007.

Effective December 28, 2012, an amendment to the award agreement clarified that 15 jobs that existed at the time the original agreement was signed were eligible to be counted as new jobs created under the terms of the award agreement.

The award agreement is scheduled to end on January 31, 2018.

Rackspace US, Inc., \$22 million awarded effective August 1, 2007

Background Information on the Rackspace Award

The award agreement was effective on August 1, 2007, and awarded the recipient \$22,000,000. It required the recipient to establish a facility in Windcrest, Texas; to create 4,000 new jobs directly related to its newly established headquarters by December 31, 2012; and to maintain those jobs through December 31, 2018. As of December 31, 2012, the recipient was required to pay an average annual wage of \$57,120.

The Office has disbursed \$14,000,000 to the recipient. It made the first disbursement of \$5,000,000 on August 29, 2007; it made the second disbursement of \$3,500,000 on March 9, 2012; and it made the third disbursement of \$5,500,000 on March 13, 2014. The recipient has not yet qualified for the remaining funds.

Effective July 24, 2009, an amendment to the award agreement (1) provided several funding options to the recipient depending on the number of jobs it created and (2) extended the job-creation schedule to allow the recipient additional time to create the required jobs. That amendment also extended the award agreement termination date three years.

The award agreement is scheduled to end on January 31, 2022.

The recipient exceeded the job-creation requirement in its award agreement. However, auditors identified minor errors related to part-time and temporary jobs that the Office permitted the recipient to count as new jobs in its 2012 compliance verification report.

The Office's due diligence review for this award was based on incomplete information. For example, the Office could not provide documentation that it reviewed the recipient's financial statements. The Office also did not maintain a copy of the packet it submitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives. Therefore, auditors were unable to determine the accuracy of the cost-benefit analysis that the Office prepared for that packet.

In addition, the award agreement did not contain certain provisions necessary to protect state resources, including provisions related to the recipient's obligations under the Texas Public Information Act.

Samsung Austin Semiconductor, LLC, \$10.8 million awarded effective October 1, 2005

Background Information on the Samsung Austin Semiconductor, LLC Award

The award agreement was effective on October 1, 2005, and awarded the recipient \$10,800,000. It required the recipient to establish its new fabrication facility in Austin, Texas and to create a total of 900 new jobs directly related to its newly established headquarters by December 31, 2009. Of those 900 jobs, 600 were required to be direct jobs and 300 could be contractor jobs. The recipient was also required to maintain 1,895 jobs from 2010 through 2019. As of December 31, 2012, the recipient was required to pay an average annual wage of \$72,337 for its direct jobs.

The Office made two disbursements totaling \$10,800,000. It made the first disbursement of \$8,000,000 on May 22, 2006, and it made the second disbursement of \$2,800,000 on October 26, 2007.

The award agreement is scheduled to end on January 31, 2020.

The recipient exceeded the job-creation requirement in its award agreement. The Office reviewed a detailed list of jobs that the recipient provided. In its 2012 compliance verification report, the recipient accurately reported the number of new jobs it created based on the terms of its award agreement.

The Office's due diligence review for this award was based on incomplete information and contained inaccuracies. For example, the Office could not provide documentation that it performed a financial data analysis. In addition, the cost-benefit analysis the Office performed (1) did not include a local incentive available to the recipient, (2) understated the total estimated financial benefit to the State, and (3) understated the estimated length of time for the State to recover the awarded funds. The cost-benefit analysis also did not include the median wages of the jobs to be created in

the state, as required by Texas Government Code, Chapter 481.080.

In addition, the award agreement did not contain certain provisions necessary to protect state resources, including provisions related to the recipient's obligations under the Texas Public Information Act.



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

Summary of Management Response

Although the Office of the Governor (OOG) agrees that there are certain administrative areas where the Texas Enterprise Fund (TEF) may improve, many of the key issues the State Auditor's Office (SAO) identifies existed closer to the inception of the TEF in 2004. The OOG has continued to improve the administration of the TEF, including implementation of certain SAO recommendations provided throughout the audit. The process and policies of the TEF have evolved with time to implement a more standard operating procedure.

The TEF is a key economic development tool utilized to assist in competitive recruitment efforts on behalf of the state of Texas. To be responsive to the dynamic global business climate and remain competitive with other states, it is necessary for the program to remain flexible based upon the unique characteristics of each project. This flexibility must include the ability to negotiate with prospective awardees in order to obtain the most advantageous agreement possible for the state.

Management Response

The Office of the Governor (OOG) appreciates the State Auditor's Office (SAO) review of the Texas Enterprise Fund (TEF). The Legislature directed the SAO to determine whether: 1) money from the TEF is disbursed in compliance with requirements, and 2) awardees are monitored to determine compliance with award terms, relevant law, and rules. The members of the SAO's audit team were courteous and professional throughout the course of the engagement.

The OOG agrees that disbursements were made after the effective dates of TEF award agreements and that the OOG safeguarded state resources by ensuring it disbursed funds only to recipients with award agreements. The SAO calls on the OOG to "*strengthen its administration of the Texas Enterprise Fund*" and provides specific recommendations. The OOG agrees with many of the SAO's recommendations, but believes it is important to establish additional context for the report's overall message to help the reader understand the findings and significance of the issues discussed.

Information Accuracy and Completeness

Most importantly, the SAO reported concerns of "key" information being unavailable to decision-makers in Chapter 2 (page 10) of the report. The reader could wrongfully infer that the OOG intentionally did not provide the Governor, Lieutenant Governor, and Speaker of the House of Representatives (the decision-makers) with critical information for their awarding decisions. At all times, the information provided to the Governor, Lieutenant Governor, and Speaker of the House of Representatives was what OOG staff believed to be the most up-to-date information available.

The OOG has regular communications with the Governor, and staff of the Lieutenant Governor, and Speaker of the House of Representatives and makes any and all information it has available to them upon request. They are aware that the OOG collects volumes of information on every applicant and awardee as part of its due diligence procedures. To require the OOG to deliver information that is not routinely

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requested, as a matter of procedure, is unnecessary. The OOG summarizes and delivers briefing materials to the decision-makers for their awarding determinations, and is not aware of any instance where they needed or required information that was not provided. If the decision-makers at any time are unsatisfied with the completeness or accuracy of information provided to them, they can simply request clarification, request additional information (which they often do), or not approve a proposal.

Chapter 2 also references the briefing materials themselves that are delivered to the decision makers. These items were extensively reviewed by the SAO and include among other things, the: 1) Business Climate Comparison, 2) Economic Impact Analysis, 3) Financial Data Analysis, 4) Financial Score Sheet, 5) Cost Benefit Analysis, 6) Clawback Analysis and 7) Termination Calculations. The OOG provides the most accurate and complete briefings possible to decision-makers. The accompanying briefing documents are administrative tools that consist of informative research, computations, and estimations. It's important to note that their results are not the statutory or otherwise compulsory basis for award approvals. Treating the results of these tools as the determinant factors of TEF awards would debilitate the professional judgment required by the OOG and statutory decision makers to administer the TEF.

Professional Judgment

The SAO also reports concerns of monitoring not always being "adequate" in Chapter 4 of its report. The Legislature directed the SAO to determine whether awardees are monitored to determine compliance with award terms, relevant law, and rules. While the condition cited confirms the existence of monitoring, the OOG believes the determination of "adequacy" is subjective and can be applied unevenly.

For example, in the Objectives, Scope, and Methodology description (page 43), the SAO describes its selection of six (6) projects for on-site visits on the basis of "professional judgment." A greater number of on-site visits may have provided the SAO with a greater degree of assurance, however, it is highly likely that the SAO used professional judgment to limit its number of on-site visits after considering 1) its available resources, 2) risk information, and 3) the benefit of a greater level of assurance in relation to the cost of additional audit procedures. Similarly, the OOG, considering 1) its available resources, 2) risk information, and 3) the benefit of a greater level of assurance in relation to the cost of additional compliance procedures, used professional judgment to conduct monitoring activities as recorded. OOG monitoring resulted in at least 103 clawback penalties and collections totaling \$14.5 million as reported in the SAO report (page 28).

Negotiation Authority

Government Code 481.078(f) specifies multiple provisions that are legislatively mandated to be included in written TEF agreements. Pursuant to Government Code 481.078(e), the governor is otherwise authorized to negotiate on behalf of the state, and does so through the OOG in order to get the best outcome for the taxpayer for each and every award. Provisions of award agreements that are not mandated are subject to negotiation between the parties and vary among the awards, as evidenced by the final agreements. Appropriate negotiation authority is necessary for the effective administration of the TEF, both in the deal-making process, and in compliance enforcement.

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Standards of Consistency

The audit scrutinized TEF awarding, due diligence and monitoring activities (along with associated policies and procedures and record-keeping), which occurred between September 2003 and August 2013 (a ten year period). Over this time span, more than 100 organizations, offering diverse goods and services ranging from food products to aerospace solutions were approved for TEF awards. The award agreements resulted from unique negotiations with each of these organizations. During this time span, the policies and procedures of TEF administration and monitoring also matured significantly given the steadily increasing number of awardees. Because informal procedures used for early awards were not fully documented, the SAO applied the most current (and mature) standards found in current written OOG policies and procedures to evaluate all records since the TEF's inception. The OOG believes these to be significant and relevant facts that give context to the recurring themes of "*did not consistently*" and "*did not always*" used by the SAO to describe observations and conditions.

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The following is the OOG response to recommendations by chapter. The majority of recommendations made by the SAO, with which the OOG agrees, have been implemented. OOG disagreement with SAO recommendations can generally be attributed to the broad perspectives offered in this overview.

Table of Recommendations and Responses

Recommendations Regarding the Office's Control Structure for TEF from Chapter 1	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
<p>The SAO's precise references to shortcomings "During the 2004-2005 biennium" or "in the Office's early administration," refers to control structures for TEF that have matured significantly since the TEF's inception.</p>			
<ul style="list-style-type: none"> Maintain key documentation of its awarding and monitoring processes in accordance with its records retention files 	<p>Agree</p>	<p>Current procedures are in place to help ensure that the OOG maintains key documentation.</p>	<p>Economic Development & Tourism (EDT) and Compliance & Oversight Division (COD) Directors Corrective Action Implemented</p>
<ul style="list-style-type: none"> Adopt rules in Texas Administrative Code to guide its administration of the Texas Enterprise fund, including rules related to its application evaluation, award agreement formation, and monitoring processes. 	<p>Disagree</p>	<p>Adopting rules related to application evaluation, award agreement formation, and monitoring processes inhibit TEF's ability to adapt to changing business climates. OOG will review adopting rules covering certain areas of the program.</p>	<p>NA</p>
<ul style="list-style-type: none"> Implement controls to help ensure that it complies with all statutory requirements of the Texas Enterprise Fund. 	<p>Agree</p>	<p>The office has updated procedures to help ensure statutory compliance.</p>	<p>General Counsel, EDT, and COD Directors Corrective Action Implemented</p>

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Recommendations Regarding Providing Decision Makers with Information from Chapter 2	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
<ul style="list-style-type: none"> Develop and implement an objective scoring tool to consistently evaluate, and make recommendations regarding applications for Texas Enterprise Fund awards. 	Disagree	<p>Adopting this recommendation could result in the OOG offering award amounts based off of scoring results (as opposed to the best interest of the state) that are greater than award totals reached through negotiation. Companies could tailor their applications to the scoring tools.</p> <p>Adopting this recommendation could also prevent complete information (in the form of unique or unforeseen opportunities) from ever being considered by the Governor, Lieutenant Governor, and Speaker of the House of Representatives simply because the opportunity falls outside strict criteria, standards or eligibility requirements (as required by objective scoring tools).</p>	NA
<ul style="list-style-type: none"> Require applicants to submit all required components of its Texas Enterprise Fund application prior to completing its due diligence process. 	Agree	<p>The OOG is strengthening its procedures to clearly document its review of application components (audited financial statements, economic impact reports).</p> <p>Applicant information and</p>	<p>Economic Development & Tourism (EDT) Director</p> <p>Corrective Action 1st Quarter FY15</p>

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		clarifications are commonly collected throughout the due diligence process.	
<ul style="list-style-type: none"> Modify its records retention schedule to retain all documentation related to the Texas Enterprise Fund awarding process for eight years after award agreement termination, and implement processes to help ensure compliance with that requirement. 	Disagree	<p>Current procedures ensure compliance with the existing retention period of five years after award agreement termination.</p> <p>This recommendation would result in additional costs, and without additional justification as to the benefit of this recommendation, which is not provided in the SAO report, its adoption would result in an excessive retention period.</p>	NA
<ul style="list-style-type: none"> Implement and document a sufficient review process for the information packets it provides to the Governor, Lieutenant Governor, and Speaker of the House of Representatives to help ensure that it provides accurate and complete information, including all elements required by Office policy and procedures and Texas Government Code, Section 481.080. 	Agree	The OOG has strengthened its procedures by documenting a review of the information packets provided to the Governor, Lieutenant Governor, and Speaker of the House of Representatives.	<p>Economic Development & Tourism (EDT) Director</p> <p>Corrective Action Implemented</p>
<ul style="list-style-type: none"> Prepare and maintain a checklist to help ensure that, for each due diligence review it conducts, it prepares and maintains all required items. 	Agree	The OOG is strengthening its procedures by developing, using, and maintaining a checklist to standardize baseline TEF due-diligence and associated record keeping.	<p>EDT Director</p> <p>Corrective Action 1st Quarter FY15</p>
<ul style="list-style-type: none"> Consistently follow its due diligence process for evaluating applications for the Texas Enterprise Fund awards. 	Agree	The OOG is strengthening its procedures by developing, using, and maintaining a checklist to standardize baseline TEF	<p>EDT Director</p> <p>Corrective Action 1st Quarter</p>

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		due-diligence and associated record keeping	FY15
<ul style="list-style-type: none"> Ensure that all documents in the information packets the Office prepares for consideration by the Governor, Lieutenant Governor, and Speaker of the House of Representatives are complete and accurate, including its project summary documents, business climate comparison, economic impact analysis, and financial analysis. 	Agree	The OOG has strengthened its procedures by documenting a review of the information packets provided to the Governor, Lieutenant Governor, and Speaker of the House of Representatives.	EDT Director Corrective Action Implemented
<ul style="list-style-type: none"> Verify that applicants are eligible to receive Texas Enterprise Fund awards prior to signing award agreements. 	Agree	The OOG is strengthening its procedures by developing, using, and maintaining a checklist to standardize baseline TEF due-diligence and associated record keeping.	EDT Director Corrective Action 1 st Quarter FY15
<ul style="list-style-type: none"> Establish a process to identify or evaluate conflicts of interest related to applications for Texas Enterprise fund awards, as recommended by the State of Texas Contract Management Guide. 	Agree	The OOG will establish a process to identify and evaluate conflict of interest related to applications for TEF awards.	General Counsel & EDT Director Corrective Action 1 st Quarter FY15
<ul style="list-style-type: none"> Obtain all information required by Texas Government Code, Section 481.080, from applicants. 	Agree	The OOG is strengthening its procedures by developing, using, and maintaining a checklist to standardize baseline TEF due-diligence and associated record keeping.	EDT Director Corrective Action 1 st Quarter FY15
<ul style="list-style-type: none"> Establish a specific process to consider Texas Enterprise Fund awards for small businesses. 	Disagree	Adopting this recommendation is not necessary as the current process is inclusive and considers small business applications. Additionally, the OOG's Office of Small Business	NA

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		performs outreach and refers prospective applicants as necessary.	
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Recommendations Regarding Agreement and Amendment Provisions from Chapter 3	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
<ul style="list-style-type: none"> • The office should revise its Texas Enterprise Fund award agreement template to: <ul style="list-style-type: none"> ○ Define all key terms (such as full-time) in its award agreements 	Agree	The OOG will ensure that all key terms are defined in the award agreements.	General Counsel & Economic Development & Tourism (EDT) Director Corrective Action Implemented
<ul style="list-style-type: none"> ○ Consistently specify in the award agreements the baseline number of jobs in place at recipients at the time award agreements are signed. 	Disagree	OOG currently uses verified job number data from the Texas Workforce Commission which is reported by companies on a quarterly basis. Adopting this recommendation as <u>written</u> would require the use of unverified data directly from the company. OOG will include in the agreement the most current verified data from TWC at the time the award agreements are signed as the baseline number in the agreement.	NA
<ul style="list-style-type: none"> ○ Specify the types of costs that are allowable and unallowable reports. 	Partially Agree	Adopting this recommendation as written would be extensively resource intensive, and of little	NA

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		<p>benefit. With few exceptions, awards are intended to ensure that companies locate or expand in the state. Most modern contracts provide that if a required facility is not constructed, or baseline jobs are not created, then all amounts may be clawed back from the company.</p> <p>Performing compliance on company expenditures would be of little value because companies receiving TEF awards must meet financial requirements to receive the award and would be capable of using funding from any source to pay allowable costs.</p>	
<ul style="list-style-type: none"> ○ Specify that the annual compliance verification reports recipients submit must include detailed, employee-level data to support job creation (including information that Texas Government code, Section 481.079, requires the Office to report in its biennial 	Agree	<p>Current contracts permit OOG access to all information OOG determines necessary to complete compliance monitoring. The OOG will identify specific baseline compliance documentation requirements in future award agreements. The OOG will continue to contractually obligate companies to provide other unspecified information in cases the OOG determines it is necessary.</p>	<p>General Counsel & EDT Director</p> <p>Corrective Action 1st Quarter FY15</p>
<ul style="list-style-type: none"> ○ Include relevant provisions 	Agree	All relevant provisions identified by the SAO	General Counsel

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recommended by the State of Texas contract Management Guide.		have been added.	Corrective Action Implemented
<ul style="list-style-type: none"> ○ Include a provision regarding its ability to secure liens on projects that require a capital investment. 	Disagree	Adopting this recommendation as written would prevent the OOG's use of professional judgment and negotiation authority to determine the need for specific agreement provisions. Should the awardee be unable to meet its contractual obligations for any reason, it will be subject to clawback and termination of the agreement.	NA
<ul style="list-style-type: none"> • Include signature dates by all signing parties on Texas Enterprise Fund award agreements. 	Agree	Signature dates have been added to all TEF templates.	General Counsel Corrective Action Implemented
<ul style="list-style-type: none"> • Include provision in Texas Enterprise Fund award agreements requiring recipients to demonstrate that they have complied with key requirements before the Office disburses the full award amount. 	Disagree	Implementing this recommendation would place the state of Texas at a competitive disadvantage. The state's authority to recover TEF funds is not precluded by any disbursement condition or schedule.	NA
<ul style="list-style-type: none"> • Consider amending existing Texas Enterprise Fund award agreements to address the weaknesses discussed above. 	Agree	If there is an opportunity to amend an agreement, the OOG will consider all SAO recommendations.	General Counsel Corrective Action Implemented
<ul style="list-style-type: none"> • Consistently provide notifications to the Lieutenant Governor and Speaker of the House of Representatives regarding amendments to award agreements at least 14 days 	Agree	The OOG is strengthening its procedures by developing, using, and maintaining a checklist to standardize TEF amendment processing	EDT Director Corrective Action 1 st Quarter FY15

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before it intends to make those amendments, and maintain documentation of those notifications.		and associated record keeping.	
<ul style="list-style-type: none"> • Include signature dates by all signing parties on award amendments and assignments. 	Agree	Signature dates have been added to all TEF templates.	General Counsel Corrective Action Implemented
<ul style="list-style-type: none"> • Amend awards only for recipients that the Office has determined to be in compliance with terms of their existing award agreements. 	Agree	<p>Current OOG procedures require verification that recipients comply with the terms of their award agreements prior to executing amendments.</p> <p>The SAO identified only four grantees that <u>did not</u> include documentation of a compliance review prior to the amendment, each of which occurred in 2005 (one amendment), 2008 (one amendment) and 2009 (two amendments).</p>	<p>EDT & Compliance & Oversight Division (COD) Directors</p> <p>Corrective Action Implemented</p>
<ul style="list-style-type: none"> • Develop procedures to document how it processes assignments of awards to successor companies. 	Agree	The OOG will develop procedures to document how it processes assignments of awards.	EDT Director Corrective Action 1 st Quarter FY15
<ul style="list-style-type: none"> • The Legislature should consider requiring the Office to obtain approval from the Lieutenant Governor and the Speaker of the House of Representatives prior to making amendments to award agreements. 	NA		

Recommendations Regarding Award Monitoring from Chapter 4	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
• Continue to conduct onsite visits	Agree	The recommendation	Compliance &

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<p>at Texas Enterprise Fund recipients, and verify recipients' self-reported information by comparing it with payroll information during those site visits.</p>		<p>describes the OOG's current procedures. The OOG will continue to follow current procedures regarding on-site visits.</p>	<p>Oversight Division (COD) Director Corrective Action Implemented</p>
<ul style="list-style-type: none"> Develop and implement a process to access risk for recipients that are not required to create direct jobs, and evaluate whether it should conduct onsite visits at those recipients. 	<p>Agree</p>	<p>The recommendation describes the OOG's current procedures.</p> <p>The OOG's TEF Risk Assessment and Monitoring procedures already include a requirement for Economic Development & Tourism, General Counsel and Compliance and Oversight Division staff to assess risk for all recipients, including those that are not required to create direct jobs, and determine whether OOG should conduct site visits at those recipients.</p>	<p>Economic Development & Tourism (EDT) & COD Directors Corrective Action Implemented</p>
<ul style="list-style-type: none"> Require all Texas Enterprise Fund award recipients to provide detailed, employee-level job-creation data, and consistently verify that data by comparing it to a third-party source. 	<p>Agree</p>	<p>Current OOG procedures already require all TEF award recipients (with job creation goals) to provide detailed, employee-level job-creation data. These reports are compared against data provided by the Texas Workforce Commission (TWC), a third-party source.</p> <p>If the OOG is unable to compare grantee-reported numbers sufficiently with TWC data, it scores the grantee higher on the annual Risk Assessment,</p>	<p>General Counsel, COD, & EDT Directors Corrective Action Implemented</p>

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		<p>increasing the probability of further review via a site visit.</p> <p>The office concludes that current processes provide reasonable assurance, adequately ensuring grantee compliance with job creation requirements.</p>	
<ul style="list-style-type: none"> Verify recipient compliance with all key provisions in award agreements, such as capital investment requirements and requirements to open or expand facilities. 	Agree	Current OOG procedures and internal controls ensure adequate verification of grantees' compliance with award agreement.	<p>COD Director</p> <p>Corrective Action Implemented</p>
<ul style="list-style-type: none"> Follow its procedures for calculating Texas Enterprise Fund award termination repayments to help ensure that it recovers all principal and interest, as required by Texas Government Code, Section 481.078. 	Agree	Current OOG procedures ensure accuracy.	<p>EDT Director</p> <p>Corrective Action Implemented</p>
<ul style="list-style-type: none"> Develop and implement a process to review its Texas Enterprise fund termination repayment calculation to help ensure that those calculations are accurate. 	Agree	The OOG has implemented an additional review by OOG Financial Services Division to help ensure that termination calculations are accurate.	<p>EDT & Accounting Director</p> <p>Corrective Action Implemented</p>
<ul style="list-style-type: none"> The Legislature should consider requiring the Office to report the results of its compliance verification process to the Lieutenant Governor and Speaker of the House of Representatives 	NA		
<ul style="list-style-type: none"> The Legislature should consider requiring an independent verification, such as an audit by a third party, of the number of jobs Texas Enterprise Fund recipients report they create in 	NA		

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situations that meet certain high-risk parameters that the Legislature defines.			
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Recommendations Regarding Award Disbursements from Chapter 5	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
<p>The SAO identified only two incidents where the OOG did not verify compliance prior to disbursing funds. There is documentation that demonstrates the OOG conducted a compliance verification prior to disbursement for one of the two grantees, but the review did not appear to be complete. Subsequent reviews confirmed that both grantees were in compliance for the reporting periods in question.</p>			
<ul style="list-style-type: none"> • Include signature dates on all Texas Enterprise Fund award agreements, amendments, and assignments 	Agree	Signature dates have been added to all TEF templates.	General Counsel Corrective Action Implemented
<ul style="list-style-type: none"> • Complete compliance verifications prior to disbursing funds when disbursements are contingent on recipients complying with Texas Enterprise Fund award agreement requirements. 	Agree	<p>Current OOG procedures already require verifying compliance prior to disbursing funds when disbursements are contingent on recipients complying with TEF award agreement requirements.</p> <p>With only two exceptions, the recommendation describes the OOG's history of compliance verification prior to disbursing funds.</p>	<p>Compliance & Oversight Division (COD) Director</p> <p>Corrective Action Implemented</p>

Recommendations Regarding Reporting from Chapter 6	Agree Disagree Partially Agree	Comment	Responsible Person & Timeline
<ul style="list-style-type: none"> • Collect and verify all information from recipients that it is required to report under Texas Government Code, Section 	Agree	Current policy has been updated to collect and verify statutorily required information in the annual	Economic Development & Tourism (EDT) Director

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481.079		compliance reports.	Corrective Action Implemented
<ul style="list-style-type: none"> Revise its biennial report to include all statutorily required information including the number of jobs recipients have created and the actual and committed capital investment amounts required by each award agreement. 	Agree	The biennial report template has been changed to include all statutorily required information.	EDT Director Corrective Action Implemented
<ul style="list-style-type: none"> Develop and implement a review process to help ensure that the information in its biennial reports is accurate. 	Agree	Current process has sufficient quality controls to ensure completeness and accurateness.	EDT Director Corrective Action Implemented

Responses to SAO Site Visits to Six Texas Enterprise Fund Award Recipients from Chapter 7	Comment
<ul style="list-style-type: none"> Triumph Aerostructures, LLC 	<p>The OOG is in the process of addressing the compliance monitoring issues identified as part of standard award administration.</p> <p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2004) of the program. Current procedures ensure that inconsistencies in the office's awarding process are unlikely in the future.</p>
<ul style="list-style-type: none"> Scott & White Memorial Hospital 	<p>The SAO identified only two positions that were located outside of Bell County. When applied to the population, the SAO estimated that the grantee incorrectly reported 554 employees that were located outside of the county. However, the SAO indicated that they could not measure the accuracy of their estimate.</p> <p>The grantee acknowledged that they incorrectly reported positions due to a weakness with their human resource management system. OOG is working with the awardee to address the issues, which will include a requirement for the grantee to resubmit corrected compliance verification reports for prior years.</p> <p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2007) of the program. Current procedures ensure that inconsistencies in the office's awarding process are unlikely in the future.</p>

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<ul style="list-style-type: none"> • Tyson Fresh Meats, Inc. 	<p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2005) of the program. Current procedures ensure that inconsistencies in the office’s awarding process are unlikely in the future.</p>
<ul style="list-style-type: none"> • Comerica Incorporated 	<p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2007) of the program. Current procedures ensure that inconsistencies in the office’s awarding process are unlikely in the future.</p>
<ul style="list-style-type: none"> • Rackspace US, Inc. 	<p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2007) of the program. Current procedures ensure that inconsistencies in the office’s awarding process are unlikely in the future.</p>
<ul style="list-style-type: none"> • Samsung Austin Semiconductor, LLC 	<p>The inconsistencies in awarding processes identified by the SAO occurred in the early years (i.e., 2005) of the program. Current procedures ensure that inconsistencies in the office’s awarding process are unlikely in the future.</p>

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Determine whether the Office of the Governor (Office) awards and amends grants from the Texas Enterprise Fund in accordance with relevant state laws, rules, and Office policies and procedures.
- Determine whether the Office disburses money from the Texas Enterprise Fund in accordance with Texas Government Code, Section 481.078, and other relevant laws, rules and standards.
- Determine whether the Office monitors the persons or entities awarded money from the Texas Enterprise Fund for compliance with the terms of any applicable agreements and with the requirements of Texas Government Code, Section 481.078, and other relevant laws, rules, and standards, including any terms related to job creation and capital investment.

Scope

The scope of this audit covered (1) projects with Texas Enterprise Fund award effective dates between September 1, 2003, and August 31, 2013, and (2) projects that did not receive Texas Enterprise Fund awards, when documentation related to those projects was available for review. As established in the Office's records retention schedule, the Office maintains documentation of projects for which it does not make award agreements for only one year after the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives decide not to offer awards or companies decline to accept award offers.

Because the Office did not consistently include signature dates on its signed Texas Enterprise Fund award agreements, the audit scope covered the best available information that the Office provided.

Methodology

The audit methodology included reviewing all projects that received awards from the inception of the Texas Enterprise Fund and that were effective between September 1, 2003, and August 31, 2013. Auditors also reviewed documentation for projects that did not receive Texas Enterprise Fund awards when that information was available (as discussed above, the Office maintains

that documentation for only one year). Audit work included collecting information related to the Office's Texas Enterprise Fund award process, reviewing award agreements, reviewing the Office's monitoring information, and performing selected tests and other procedures. Auditors also reviewed available statutes, Office of the Comptroller of Public Accounts procurement recommendations, and Office policies and procedures. Auditors gathered incentive fund best practices information from 10 other states and 4 local governments in Texas; auditors selected the 10 states using professional judgment and selected the 4 local governments based on the number of Texas Enterprise Fund awards made to recipients in those local areas and professional judgment.

Sampling

To test the Office's Texas Enterprise Fund awarding process, auditors used professional judgment to select and review:

- All projects that did not receive awards for which the Office maintained documentation, and all projects that received awards during the 2010-2011 and 2012-2013 bienniums.
- Non-statistical samples of projects that received awards during the 2004-2005, 2006-2007, and 2008-2009 bienniums. Auditors selected those samples primarily through random selection designed to be representative of the population. In those cases, results may be extrapolated to the population, but the accuracy of the extrapolation cannot be measured.
- Six additional projects that received Texas Enterprise Fund awards. Auditors selected those projects for on-site visits based on professional judgment. (The results of audit testing from on-site visits were generally consistent with the information reported in Chapter 2 of this report and, when appropriate, those results were included in Chapter 7 of this report.)

To test the Office's process for developing and making award agreements, auditors tested Texas Enterprise Fund award agreements that became effective between September 1, 2003, and August 31, 2013. Auditors did not test backdated projects that became effective between September 1, 2003, and August 31, 2013, but were signed after August 31, 2013, including at least one project (with an award to Ascend Performance Materials) discussed in Chapter 3 of this report.

To test the Office's monitoring process, auditors reviewed all Texas Enterprise Fund award agreements to identify award agreements with reporting requirements that were effective for the period ending December 31, 2012. Auditors selected a non-statistical, random sample of one compliance verification report that each recipient was required to submit as of December 31, 2012, for a total of 88 compliance verification reports. The results for that

sample may be extrapolated to the population, but the accuracy of the extrapolation cannot be measured.

Auditors also tested 41 compliance reports submitted by the six recipients at which auditors conducted site visits and 1 additional compliance verification report that auditors selected using professional judgment. (The results of that testing were generally consistent with the information reported in Chapter 4 of this report and, when appropriate, those results were included in Chapter 7 of this report.)

To test the Office's award agreement amendment and termination processes, auditors tested all Texas Enterprise Fund amendments and terminations that the Office asserted it had executed as of March 2014. Auditors also tested the accuracy of all clawback penalties the Office charged to Texas Enterprise Fund recipients based on the results of the Office's compliance verification process. (However, auditors could not evaluate whether those clawback penalties accurately reflected the total amount the recipients should have paid because of weakness in the Office's verification process discussed in Chapter 4 of this report.)

Data Reliability

To assess the reliability of data used to select a sample of projects to test, auditors compared all projects to which the Office asserted that it had made Texas Enterprise Fund awards to disbursement and deposit dates in the Uniform Statewide Accounting System (USAS). Based on that comparison, auditors determined that the population of projects was sufficiently reliable for purposes of selecting projects to test for all phases of awarding and project administration. Auditors also compared deposit and disbursement dates in the Office's internal accounting data system (Micro Information Products, or MIP) to USAS and determined that data was sufficiently reliable for the purposes of testing those transactions, including tests of disbursements from the Texas Enterprise Fund, clawback penalties charged to Texas Enterprise Fund recipients, and termination repayments charged to Texas Enterprise Fund recipients.

While the list of projects was sufficiently reliable for the purposes of testing and analysis, the Office frequently did not include signature dates on Texas Enterprise Fund award agreements. The Office also backdated the effective dates of some award agreements as discussed in Chapter 3 of this report. As a result, audit testing reflected the best information available for projects that were effective between September 1, 2003, and August 31, 2013; however, it may not have included all award agreements during that period if the Office backdated the effective dates of award agreements that it signed after August 31, 2013. As discussed above, auditors identified at least one project (Ascend Performance Materials) with an award agreement for which the effective date was backdated after August 31, 2013.

Information collected and reviewed included the following:

- The Office's Texas Enterprise Fund shared drive, including information related to each award and information for projects that did not receive awards, when available.
- The Office's Texas Enterprise Fund application.
- The Office's policies and procedures.
- MIP deposit and disbursement information for the Texas Enterprise Fund.
- The Office's annual financial reports and encumbrance reports.
- USAS deposits and disbursements for the Texas Enterprise Fund (Fund 5107).
- The Office's Texas Enterprise Fund user access lists and roles.
- The Office's employee conflict of interest statements.
- Job-creation information submitted by the six Texas Enterprise Fund recipients at which auditors performed site visits.
- Legislative reports on the Texas Enterprise Fund that the Office issued in 2007, 2009, 2011, and 2013.

Procedures and tests conducted included the following:

- Interviewed Office staff regarding all phases of Texas Enterprise Fund administration.
- Tested the Office's Texas Enterprise Fund application information to determine (1) whether recipients of awards and applicants that did not receive awards had submitted applications and (2) whether those entities and the Office completed key components of the application process.
- Tested the Office's Texas Enterprise Fund due diligence process to determine whether the Office (1) performed and documented each step in its due diligence process and (2) completed key steps accurately.
- Tested the Office's Texas Enterprise Fund project approval process to determine whether the Office obtained required internal and external approvals prior to making awards.
- Reviewed Texas Enterprise Fund award agreements to determine whether they (1) included defined and enforceable provisions and (2) included provisions necessary to protect state financial resources as recommended by the *State of Texas Contract Management Guide*.

- Analyzed and summarized information related to each Texas Enterprise Fund award agreement tested.
- Reviewed the Office's authority to charge a Texas Enterprise Fund application fee.
- Reviewed Texas Enterprise Fund award amendments to determine whether the Office (1) provided required notifications to the Lieutenant Governor and the Speaker of the House of Representatives for awards signed after September 1, 2011, and (2) determined the recipients' compliance status prior to signing each amendment.
- Reviewed disbursements from the Texas Enterprise Fund to determine (1) whether the Office had signed an award agreement prior to disbursement and (2) when required, whether the Office determined that the recipients had complied with the requirements of their award agreements prior to making disbursements.
- Tested key controls related to Texas Enterprise Fund disbursement approvals and compliance verifications to determine whether the Office obtained required approvals when necessary.
- Tested the Office's Texas Enterprise Fund compliance verifications to determine whether the Office adequately verified each recipient's compliance with requirements in award agreements.
- Tested the Office's Texas Enterprise Fund compliance verifications during site visits at six recipients, including testing key controls over the compliance verification reports those recipients had submitted and verifying the accuracy of the jobs reported by each of those recipients and verified by the Office.
- Reviewed documentation of five site visits the Office conducted at Texas Enterprise Fund recipients.
- Reviewed the Office's 2013 risk assessment process for the Texas Enterprise Fund.
- Tested the Office's termination payment calculations for terminated and inactive Texas Enterprise Fund award agreements.
- Tested the Office's Texas Enterprise Fund clawback calculations and penalty recovery.
- Analyzed Texas Enterprise Fund clawback penalties the Office received for periods ending between 2004 and 2012.

- Reviewed the Office’s 2007, 2009, 2011, and 2013 legislative reports on the Texas Enterprise Fund to determine whether those reports included statutorily required information.
- Compared the Office *Texas Enterprise Fund 2013 Legislative Report* with Office records to determine whether key elements of that report were accurate.
- Interviewed individuals from ten other states and reviewed available information for ten additional states to gather information on best practices for administering incentive funds.
- Interviewed individuals from four local governments in Texas to gather information on best practices for administering incentive funds.
- Reviewed the *State of Texas Contract Management Guide* and *Uniform Grant Management Standards* to identify best practices.
- Tested the Texas Enterprise Fund shared drive user access list to determine whether the Office appropriately restricted access to information to current employees with a business need for that access.
- Tested change management controls over the Office’s Texas Enterprise Fund cost-benefit analysis electronic spreadsheet and its clawback penalty calculation spreadsheet.
- Reviewed the Office’s conflict of interest process to determine whether the Office developed a sufficient process to evaluate and monitor potential conflicts of interest related to the Texas Enterprise Fund.

Criteria used included the following:

- Texas Government Code, Chapter 481.
- Texas Government Code, Chapter 489.
- *State of Texas Contract Management Guide*, versions 1.1 through 1.11.
- *Uniform Grant Management Standards*.
- Texas Enterprise Fund award agreements and amendments.
- The Office’s policies and procedures related to Texas Enterprise Fund due diligence and project analysis, project approval, records and reporting, and amendments.
- The Office’s policies and procedures related to preparing and routing new Texas Enterprise Fund agreements, compliance verification, disbursements, and risk assessment and monitoring.

- Best practice information gathered from other states and local governments.
- Title 1, Texas Administrative Code, Chapter 202.

Project Information

Audit fieldwork was conducted from January 2014 through July 2014. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Lieutenant Governor and the Speaker of the House of Representatives are required to approve Texas Enterprise Fund awards before the Office enters into award agreements. The Lieutenant Governor and the Speaker of the House of Representatives are the joint chairs of the Legislative Audit Committee, which oversees the State Auditor's Office. Our audit work did not include procedures at the offices of the Lieutenant Governor and the Speaker of the House of Representatives because the Texas Enterprise Fund is administered by the Office of the Governor.

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

- Audrey O'Neill, CIA, CGAP (Project Manager)
- Rebecca Franklin, CISA, CFE, CGAP, CICA (Assistant Project Manager)
- Kelsey Arnold
- Robert H. (Rob) Bollinger, CPA, CFE
- Jeffrey D. Criminger
- Norman G. Holz II
- Lucien Hughes
- Scott Labbe
- Amadou N'gaide, MBA, CFE, CIDA, CICA
- Valentine A. Reddic, MBA
- Michael C. Apperley, CPA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)

Projects That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013

Between September 1, 2003, and August 31, 2013, the Office of the Governor (Office) made Texas Enterprise Fund awards that totaled \$506,838,696 to 115 projects. Auditors categorized the status of those projects as of August 31, 2013, as follows:

- **Terminated and inactive projects.** Twenty-three projects with \$53,891,000 in awards had award agreements that (1) had been terminated by the Office or by the recipients or (2) were inactive because they were in the process of being terminated by the Office. Fourteen of those 23 projects had also been charged clawback penalties totaling \$2,088,285 for not meeting the jobs requirements in the award agreements.
- **Completed projects.** Twelve projects with \$31,351,000 in awards were completed. Of those projects, 2 did not include jobs requirements, 3 were completed early due to surplus job credits that the Office reported the recipients had earned, and 7 were completed when the projects reached the termination dates in the award agreements. Of the 7 projects completed when they reached the termination dates in the award agreements, 3 were charged clawback penalties totaling \$390,751 for not meeting the jobs requirements in the award agreements.
- **Active projects.** Eighty projects with \$421,596,696 in awards were active. Of those projects:
 - Twenty-four projects with \$141,084,196 in awards had award agreements that had been amended. Fifteen of those 24 projects had also been charged clawback penalties totaling \$8,960,214 for not meeting the jobs requirements in the award agreements.
 - Sixteen projects with \$45,650,500 in awards had no amendments to their award agreements; however, the Office had charged those projects a total of \$3,349,732 in clawback penalties for not meeting the jobs requirements in the award agreements.
 - Forty projects with \$234,862,000 in awards had no amendments to their award agreements and had not been charged clawback penalties. Nineteen of the recipients associated with those 40 projects were not yet required to have created new jobs as of December 31, 2012 (the date of the Office's most recent compliance verification).

Table 3 summarizes all terminated and inactive projects that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013. Table 4 lists each terminated and inactive project that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013.

Table 3

SUMMARY OF TERMINATED AND INACTIVE PROJECTS That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013						
Total Number of Projects	Total Amount Awarded	Total Disbursements as of December 31, 2013	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status as of the Office of the Governor's December 31, 2012, Compliance Verification or the Award Termination Date	
					Number of New Jobs Required	Number of New Jobs the Office Counted
23	\$53,891,000	\$36,975,000	14,221 direct jobs and 200 other jobs	\$3,737 ^a	7,360	4,556

^a Auditors calculated the average cost per new direct job or other job by dividing the total amount awarded by the sum of the direct jobs and other jobs.

Source: Texas Enterprise Fund award agreements and Office documentation.

Table 4

TERMINATED AND INACTIVE PROJECTS That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013							
Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Bank of America Corporation \$20,000,000 January 1, 2005	\$20,000,000	December 31, 2009	Terminated	7,500 direct jobs and 0 other jobs	\$2,667	5,500 as of December 31, 2008	3,876 as of December 31, 2008
Note: The original recipient was Countrywide Home Loans, Inc., which Bank of America Corporation acquired in 2008. 2008 was the last year for which the Office performed a compliance verification for Bank of America Corporation. Bank of America Corporation repaid the Office \$8,450,351 prior to terminating its agreement.							
Hewlett-Packard Company \$5,000,000 October 10, 2006	\$3,000,000	February 12, 2008	Terminated	420 direct jobs and 0 other jobs	\$11,905	Not applicable	Not applicable
Note: The award agreement was terminated before the jobs requirement became effective. Hewlett-Packard Company repaid the Office \$3,210,847 on February 29, 2008, after terminating its agreement.							

**TERMINATED AND INACTIVE PROJECTS
That Received Texas Enterprise Fund Awards
Between September 1, 2003, and August 31, 2013**

Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Maxim Integrated Products, Inc. (Irving) \$5,000,000 May 2, 2007	\$2,000,000	June 4, 2008	Terminated	1,000 direct jobs and 0 other jobs	\$5,000	Not applicable	Not applicable
Note: The award agreement was terminated before the jobs requirement became effective. Maxim Integrated Products, Inc. repaid the Office \$2,107,149 on July 1, 2008, after terminating its agreement.							
Lockheed Martin Corporation (amended) \$4,000,000 April 15, 2007	\$4,000,000	December 19, 2013	Terminated	350 direct jobs and 200 other jobs	\$7,273	550	305
Note: An amendment to the original award agreement, which was effective on December 1, 2008, reduced the required jobs from 800 to 550. The amendment provided a basic funding amount of \$4,000,000 and allowed Lockheed Martin the option of receiving an additional \$1,480,000 if it created a total of 800 new jobs. The original award agreement allowed for 300 of the required jobs to be with other businesses that directly related to a NASA contract. The amendment to the award agreement allowed for 200 of the required jobs to be with other businesses that directly related to a NASA contract. Lockheed Martin Corporation paid one clawback penalty of \$354,456, and it repaid an additional \$416,069 upon terminating its agreement.							
Sino Swearingen Aircraft Corporation \$2,500,000 June 28, 2006	\$0	August 14, 2007	Terminated	1,131 direct jobs and 0 other jobs	\$2,210	Not applicable	Not applicable
Note: No funds were disbursed or requested for this award agreement prior to its termination. The Office did not complete a compliance verification worksheet for this award.							
Nationwide Mutual Insurance Company \$2,500,000 January 22, 2010	\$1,200,000	January 27, 2011	Terminated	550 direct jobs and 0 other jobs	\$4,545	Not applicable	Not applicable
Note: The Office did not complete a compliance verification worksheet for this award because the award agreement was terminated. Nationwide Mutual Insurance Company repaid the Office \$1,209,219 upon termination of the award agreement.							
SunPower Corporation \$2,500,000 November 19, 2010	\$1,000,000	February 10, 2012	Terminated	450 direct jobs and 0 other jobs	\$5,556	Not applicable	Not applicable
Note: The Office did not complete a compliance verification worksheet for this award because the award agreement was terminated. SunPower Corporation repaid the Office \$1,035,698 upon termination of the award agreement.							

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
VCE Company, LLC \$2,450,000 October 1, 2010	\$1,000,000	December 14, 2012	Terminated	434 direct jobs and 0 other jobs	\$5,645	334	130
<p>Note: The final compliance report that VCE Company, LLC submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. VCE Company LLC paid one clawback penalty of \$436,926, and it repaid an additional \$208,558 upon termination of its award agreement.</p>							
Lorimer, LLC \$1,500,000 May 1, 2010	\$750,000	April 25, 2012	Terminated	400 direct jobs and 0 other jobs	\$3,750	170	28
<p>Note: The final compliance report that Lorimer, LLC submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. Lorimer, LLC paid a clawback penalty of \$40,757 and it repaid an additional \$720,902 upon termination of its award agreement.</p>							
Latex Foam International Holdings, Inc. \$1,060,000 October 1, 2010	\$350,000	January 31, 2022	Inactive	190 direct jobs and 0 other jobs	\$5,579	30	1
<p>Note: Latex Foam International Holdings, Inc. no longer reports jobs created to the Office and is in the process of terminating its award agreement. The numbers of jobs required and created are from 2010, when Latex Foam International Holdings, Inc. stopped reporting jobs that it created and when the Office performed its last compliance verification for this award agreement. As of January 27, 2014, the Office had collected \$212,000 in repayments from Latex Foam International Holdings, Inc. Latex Foam International Holdings, Inc. notified the Office that it had filed for bankruptcy in June 2014.</p>							
HelioVolt Corporation (amended) \$1,000,000 March 21, 2008	\$500,000	June 18, 2013	Terminated	158 direct jobs and 0 other jobs	\$6,329	158	51
<p>Note: Two amendments were made to the award agreement prior to its termination. The first amendment was effective on December 1, 2008, and decreased the amount of clawback penalties that HelioVolt was required to pay if it did not meet job-creation requirements from \$1,396 per job to \$1,340 per job. The second amendment was effective on December 30, 2009, and increased the clawback penalties from \$1,340 per job to \$1,353 per job; it also changed the job-creation schedule to allow HelioVolt Corporation additional time to create the required jobs, and it required HelioVolt Corporation to maintain those jobs for a longer time period. HelioVolt Corporation paid the Office \$294,512 in clawback penalties for not meeting job-creation requirements between 2008 and 2012, and it paid the Office an additional \$60,253 upon termination of the award agreement.</p>							
McLane Advanced Technologies, LLC \$1,000,000 November 2, 2009	\$500,000	February 28, 2011	Terminated	225 direct jobs and 0 other jobs	\$4,444	Not applicable	Not applicable
<p>Note: The Office did not complete a compliance verification worksheet that included a verification of jobs because this award agreement was terminated before the job requirements became effective. McLane Advanced Technologies, LLC repaid the Office \$522,374 upon termination of the award agreement.</p>							

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Martifer-Hirschfeld Energy Systems LLC (amended) \$845,000 September 9, 2008 Note: The original recipient of this award was Martifer Energy Systems, LLC, which merged with Martifer-Hirschfeld Energy Systems LLC in 2009. An amendment to the award agreement, effective January 31, 2009, allowed Martifer Energy Systems LLC to postpone its initial job-creation requirement. A second amendment, effective December 11, 2009, reduced the original award amount from \$945,000 to \$845,000 and changed the job-creation schedule to allow the recipient additional time to create the required jobs. As of the reporting period that ended on December 31, 2012, Martifer-Hirschfeld Energy Systems LLC had paid 5 clawback penalties totaling \$264,180. It also paid the Office \$182,875 in clawback penalties associated with its job requirements for 2013 and an additional \$26,187 upon termination of the award agreement.	\$500,000	February 26, 2014	Terminated	225 direct jobs and 0 other jobs	\$3,756	184	48
Gulfstream Aerospace Services Corporation \$750,000 February 22, 2008 Note: The Office did not complete a compliance verification worksheet for this award because the award agreement was terminated. Gulfstream Aerospace Services Corporation repaid the Office \$379,949 upon termination of the award agreement.	\$375,000	December 18, 2009	Terminated	150 direct jobs and 0 other jobs	\$5,000	Not applicable	Not applicable
FlightSafety International, Inc. \$720,000 April 16, 2009 Note: No funds were disbursed or requested for this award agreement prior to its termination. The job numbers reported above reflect the final report FlightSafety International, Inc. submitted and the final compliance verification the Office performed for the period ending December 31, 2009.	\$0	February 1, 2011	Terminated	125 direct jobs and 0 other jobs	\$5,760	25	0
Coll Materials Exchange, LLC \$550,000 April 5, 2011 Note: The Office asserted that it had referred this award to the Office of the Attorney General and is waiting on the final award agreement termination payment from Coll Materials Exchange, LLC. As of the reporting period ending December 31, 2011, Coll Materials Exchange, LLC had paid clawback penalties of \$22,950.	\$200,000	January 31, 2012	Inactive	111 direct jobs and 0 other jobs	\$4,955	95	0
Trace Engines, LP \$456,000 August 8, 2006 Note: The final compliance report Trace Engines, LP submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. Trace Engines, LP paid clawback penalties of \$245,641 for not meeting job-creation requirements in the award agreement between 2008 and 2011. The Office determined that Trace Engines, LP did not owe an additional amount at the termination of the award agreement.	\$250,000	December 6, 2012	Terminated	114 direct jobs and 0 other jobs	\$4,000	74	24

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
KLN Steel Products Company, LLC (amended) \$450,000 August 4, 2008 Note: An amendment to this award was effective on November 1, 2010, and reduced the original award amount from \$900,000 to \$450,000 and reduced the total jobs required from 300 to 156. The final compliance report KLN Steel Products Company, LLC submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. KLN Steel Products Company, LLC paid clawback penalties of \$47,744 for not meeting job-creation requirements for 2009. The Office determined that KLN Steel Products Company, LLC owed additional clawback penalties for 2011, and that it owed additional funds for terminating the agreement. KLN Steel Products Company, LLC filed for bankruptcy in November 2011, and in 2012, the Office referred a total claim of \$377,547 to the Office of the Attorney General for collection.	\$450,000	January 31, 2017	Inactive	156 direct jobs and 0 other jobs	\$2,885	81	0
Zarges Aluminum Systems, LLC \$400,000 November 17, 2009 Note: The final compliance report Zarges Aluminum Systems, LLC submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. Zarges Aluminum Systems, LLC paid clawback penalties of \$36,518 for not meeting job-creation requirements in the award agreement for 2011, and it repaid an additional \$162,375 upon termination of the award agreement.	\$200,000	December 14, 2012	Terminated	100 direct jobs and 0 other jobs	\$4,000	47	9
idX San Antonio, LLC \$360,000 February 28, 2011 Note: The original recipient of this award was idX Corporation, which assigned its rights and responsibilities under the agreement to idX San Antonio, LLC in 2012. idX San Antonio, LLC paid \$8,076 in clawback penalties to the Office for not meeting job-creation requirements in the award agreement for 2012, and it repaid an additional \$108,591 upon termination of the award agreement.	\$125,000	February 26, 2014	Terminated	125 direct jobs and 0 other jobs	\$2,880	40	28
Green Star Products, Inc. \$350,000 June 1, 2010 Note: The final compliance report Green Star Products, LLC submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2010. Green Star, LLC paid clawback penalties of \$15,180 for not meeting job-creation requirements in the award agreement for 2010, and it repaid an additional \$169,271 upon termination of the award agreement.	\$175,000	March 8, 2012	Terminated	118 direct jobs and 0 other jobs	\$2,966	20	0

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Albany Engineered Composites, Inc. (amended) \$300,000 January 24, 2008 Note: An amendment to this award was effective on December 30, 2009, and reduced the award amount from \$1,000,000 to \$300,000. It also reduced the total jobs required from 337 jobs to 137 jobs. The final compliance report Albany Engineered Composites, Inc. submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2009. Albany Engineered Composites, Inc. paid clawback penalties of \$29,716 for the period ending December 31, 2008, and it repaid an additional \$200,841 upon termination of the award agreement.	\$300,000	April 12, 2011	Terminated	137 direct jobs and 0 other jobs	\$2,190	0	0
Alloy Polymers, Inc. \$200,000 October 12, 2006 Note: The final compliance verification worksheet the Office completed was for the period ending December 31, 2009. Alloy Polymers, Inc. paid clawback penalties of \$10,032 for the period ending December 31, 2007, and it repaid an additional \$43,816 upon termination of the award agreement.	\$100,000	July 9, 2010	Terminated	52 direct jobs and 0 other jobs	\$3,846	52	56

Source: Texas Enterprise Fund award agreements and Office documentation.

Table 5 summarizes all completed projects that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013. Table 6 lists each completed project that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013.

Table 5

SUMMARY OF COMPLETED PROJECTS That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013						
Total Number of Projects	Total Amount Awarded	Total Disbursements as of December 31, 2013	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status as of the Office of the Governor's December 31, 2012, Compliance Verification or the Award Termination Date	
					Number of New Jobs Required	Number of New Jobs the Office Counted
12	\$31,351,000	\$31,046,000	4,820 direct jobs and 1,515 other jobs	\$4,949 ^a	5,935	7,388
^a Auditors calculated the average cost per new direct job or other job by dividing the total amount awarded by the sum of the direct jobs and other jobs.						

Source: Texas Enterprise Fund award agreements and Office documentation.

Table 6

COMPLETED PROJECTS That Received Texas Enterprise Fund Awards the Office Made to Projects Between September 1, 2003, and August 31, 2013							
Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
The Home Depot, Inc. \$8,500,000 July 31, 2004	\$8,500,000	November 6, 2013	Completed early due to surplus jobs created	843 direct jobs and 0 other jobs	\$10,083	843	901
The following project had two components:							
Lonestar Education and Research Network (LEARN) \$7,281,000 February 28, 2005	\$7,281,000	December 6, 2013	Completed	Not applicable	Not applicable	Not applicable	Not applicable
Note: The award agreement did not have a jobs requirement. Instead, the agreement required LEARN to design, develop, and deploy the LEARN optical network to specific city pairings in Texas as listed in its agreement.							

COMPLETED PROJECTS
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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
TIGRE Institutions - Lonestar Education and Research Network (LEARN - TIGRE) \$2,500,000 March 21, 2005	\$2,500,000	December 17, 2007	Completed	Not applicable	Not applicable	Not applicable	Not applicable
Note: The award agreement did not have a jobs requirement. In addition, three of the five higher education institutions that were recipients of funds from the award returned \$275,610.36 they had not spent.							
Texas Energy Center (TxEC) (amended) \$3,600,000 February 1, 2004	\$3,600,000	August 14, 2013	Completed early due to surplus jobs created	0 direct jobs and 1,500 other jobs	\$2,400	1,100	1,894
Note: The award agreement required the recipient to be significantly responsible for creating 1,500 jobs with other companies that provide an "Opportunity Certificate" describing the proposed TxEC-related project expected to create jobs, the estimated date of the job creation, the number of jobs expected to be created, the number of jobs expected to qualify as jobs under the agreement, and the manner in which TxEC could be deemed significantly responsible for creating such jobs. Of the 1,500 required jobs, 100 were required to be located at TxEC prior to August 31, 2005. All 1,500 required jobs were indirect jobs. In addition, an amendment that was effective on December 1, 2005, gave TxEC job-creation credit for salaries that exceeded the salaries that the award agreement required. The numbers of jobs required and created presented above are from the final compliance verification the Office performed during 2013 for the reporting period ending January 1, 2013.							
T-Mobile USA, Inc. \$2,150,000 November 8, 2005	\$2,150,000	January 30, 2012	Completed early due to surplus jobs created	855 direct jobs and 0 other jobs	\$2,515	855	803
Note: T-Mobile USA, Inc. used surplus job credits that it received between 2006 and 2010 to fulfill its job-creation requirements and terminate its award agreement early. The numbers of jobs required and created presented above are from the final compliance verification the Office performed during 2012 for the reporting period ending December 31, 2011.							
Baylor College of Medicine \$2,000,000 March 1, 2004	\$2,000,000	October 30, 2009	Completed	Not applicable	Not applicable	Not applicable	Not applicable
Note: The award agreement did not have a jobs requirement; however, it required the Baylor College of Medicine to lead the research on a project related to genome sequencing.							
Maxim Integrated Products (San Antonio) \$1,500,000 December 22, 2004	\$1,500,000	January 31, 2012	Completed	500 direct jobs and 0 other jobs	\$3,000	500	470
Note: The final compliance report Maxim Integrated Products submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. The information presented above reflects that reporting period. Maxim Integrated Products used surplus job credits to fulfill its job-creation requirements for 2011 and, as a result, it did not owe a clawback penalty.							

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Raytheon Company \$1,000,000 August 31, 2005	\$1,000,000	January 31, 2012	Completed	200 direct jobs and 0 other jobs	\$5,000	200	106
Note: The final compliance report Raytheon Company submitted and the final compliance verification worksheet the Office completed were for the period ending December 31, 2011. The information presented above reflects that reporting period. Raytheon Company used surplus job credits to fulfill its job-creation requirements for 2011 and, as a result, it did not owe a clawback penalty.							
INEOS USA, LLC \$750,000 April 30, 2005	\$750,000	January 31, 2010	Completed	150 direct jobs and 0 other jobs	\$5,000	150	150
Note: The original recipient was O&D USA LLC, a stand-alone entity established by BP America, Inc. The award agreement expired in 2010, and the numbers of jobs required and created are from the final compliance verification the Office performed for 2009.							
United States Bowling Congress, Inc. \$610,000 May 28, 2009	\$305,000	January 31, 2014	Completed	160 direct jobs and 15 other jobs	\$3,486	160 direct and 15 other	120 direct and 33 other
Note: The award agreement specified that the required 15 other jobs must be with the Bowling Proprietors' Association of America, Inc. and with the International Bowling Museum and Hall of Fame, Inc. As of the reporting period ending December 31, 2012, the United States Bowling Congress, Inc. had paid four clawback penalties totaling \$131,572.							
Nationstar Mortgage, LLC \$560,000 July 1, 2010	\$560,000	January 31, 2014	Completed	400 direct jobs and 0 other jobs	\$1,400	400	1,558
Sanderson Farms, Inc. \$500,000 March 10, 2006	\$500,000	January 31, 2010	Completed	1,312 direct jobs and 0 other jobs	\$381	1,312	1,112
Note: The award agreement required 102 direct salaried positions and 1,210 direct non-salaried positions for a total of 1,312 jobs. The award agreement expired in 2010, and the numbers of jobs required and created presented above are from the final compliance verification the Office performed for the period ending December 31, 2009. As of that reporting, Sanderson Farms, Inc. had paid two clawback penalties totaling \$81,891.							
Cabela's Retail TX, L.P. \$400,000 November 10, 2004	\$400,000	March 1, 2009	Completed	400 direct jobs and 0 other jobs	\$1,000	400	241
Note: The award agreement expired in 2009, and the numbers of jobs required and created presented above are from the final compliance report Cabela's Retail TX, L.P. submitted for the period ending December 31, 2008. As of that reporting period, Cabela's Retail TX, L.P. had paid four clawback penalties totaling \$177,288.							

Source: Texas Enterprise Fund award agreements and Office documentation.

Table 7 summarizes all active projects that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013. Table 8 lists each active project that received Texas Enterprise Fund awards between September 1, 2003, and August 31, 2013.

Table 7

SUMMARY OF ACTIVE PROJECTS That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013						
Total Number of Projects	Total Amount Awarded	Total Disbursements as of December 31, 2013	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status as of the Office of the Governor's December 31, 2012, Compliance Verification or the Award Termination Date	
					Number of New Jobs Required	Number of New Jobs the Office Counted
80	\$421,596,696	\$338,319,696	47,009 direct jobs and 9,370 other jobs ^a	\$7,478 ^b	30,408	40,985
<p>^a Based on the terms of the award agreements, 9,169 of the 47,009 direct jobs also could have been indirect jobs or other jobs.</p> <p>^b Auditors calculated the average cost per new direct job or other job by dividing the total amount awarded by the sum of the direct jobs and other jobs.</p>						

Source: Texas Enterprise Fund award agreements and Office documentation.

Table 8

ACTIVE PROJECTS That Received Texas Enterprise Fund Awards Between September 1, 2003, and August 31, 2013							
Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Board of Regents of the University of Texas System (for the benefit of the University of Texas at Dallas) \$50,000,000 March 1, 2004	\$50,000,000	Not specified	Active	Not applicable	Not applicable	Not applicable	Not applicable
<p>Note: The award agreement does not have a termination date or a jobs requirement; however, it required the University of Texas System and the University of Texas at Dallas to use their best efforts to achieve a top 50 ranking for the Erik Jonsson School of Engineering and Computer Science by March 1, 2009. It also required the University of Texas System to substantially complete a new research building by December 31, 2006. In addition, this project had a related award agreement with Texas Instruments dated March 1, 2004. The award agreement with Texas Instruments did not have a jobs requirement and did not provide funds to Texas Instruments Incorporated; instead, it acknowledged that Texas Instruments would invest approximately \$300,000,000 in a research, development, and manufacturing facility and that the University of Texas at Dallas would receive \$50,000,000.</p>							

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Sematech, Inc. \$40,000,000 January 1, 2004	\$40,000,000	May 31, 2015	Active	0 direct jobs and 4,000 other jobs	\$10,000	0	0
<p>Note: The award agreement requires the recipient to remain in Texas for seven years from the effective date of the agreement and to <u>maintain</u> an average of at least 400 jobs at Sematech or the Texas Advanced Materials Research Center (AMRC), Sematech and ARMC subsidiaries, or non-member affiliates for that period. It also requires the creation of 4,000 new indirect employment positions within Texas at high technology employers other than Sematech, which Sematech was significantly responsible for creating, by December 31, 2014.</p>							
<p>The Texas Institute for Genomic Medicine (TIGM) project had two components:</p>							
Lexicon Genetics Incorporated (amended) \$35,000,000 July 15, 2005	\$35,000,000	January 31, 2028	Active	1,616 direct jobs and 0 other jobs	\$21,658	125	0
<p>Note: Direct jobs presented above include jobs at businesses in which Lexicon Genetics Incorporated has a 50 percent ownership interest. Prior to an amendment to the award agreement (drafted by Lexicon Pharmaceuticals and signed by the Office on April 30, 2008), Lexicon Genetics Incorporated was responsible for a larger portion of the total job-creation requirement between 2007 and 2015. Lexicon Genetics Incorporated paid one clawback penalty of \$16,905 associated with its job-creation requirement for 2006.</p>							
Texas A&M University System (amended) \$15,000,000 July 15, 2005	\$15,000,000	January 31, 2028	Active	0 direct jobs and 3,384 other jobs	\$4,433	1,676	0
<p>Note: Other jobs include jobs with TIGM and TIGM members, jobs with employers in the biotechnology or pharmaceutical industries, and jobs that TIGM or TIGM members are significantly responsible for creating through efforts specifically targeted at attracting or creating biotechnology and pharmaceutical industry-related jobs in Texas. Prior to an amendment to the award agreement (drafted by Lexicon Pharmaceuticals and signed by the Office on April 30, 2008), the Texas A&M University System was responsible for a smaller portion of the total job-creation requirements between 2007 and 2015. As of the reporting period ending on December 31, 2012, Texas A&M University System reported a net decrease of 288 in jobs created in the industry sectors it uses to calculate indirect job growth, reported as "0" above.</p>							
Triumph Aerostructures, LLC (amended) \$35,000,000 February 26, 2004	\$35,000,000	December 31, 2019	Active	3,000 direct or other jobs	\$11,667	3,000	367
<p>Note: The original recipient was Vought Aircraft Industries, Inc., which Triumph Aerostructures, LLC acquired in 2010. New jobs created can be either direct or contract-labor positions. An amendment to the award agreement, effective on December 22, 2009, gave Vought Aircraft Industries, Inc. credit for salaries that exceeded the salaries that the award agreement required. Another amendment, effective on December 31, 2009 and was signed on July 6, 2010, reduced the total jobs required to be maintained from 6,000 to 5,958. As of the reporting period ending on December 31, 2012, Triumph Aerostructures had paid four clawback penalties totaling \$6,935,000.</p>							

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						Number of New Jobs Required	Number of New Jobs the Office Counted
Board of Regents of the University of Texas System (for the benefit of University of Texas Health Science Center and the University of Texas M.D. Anderson Cancer Center) \$25,000,000 July 29, 2005	\$25,000,000	July 29, 2025	Active	2,252 direct jobs and 0 other jobs	\$11,101	2,252	3,644
Rackspace US, Inc. (amended) \$22,000,000 August 1, 2007 Note: Effective on July 24, 2009, an amendment to the award agreement (1) provided several funding options to Rackspace depending on the number of jobs it created and (2) extended the job-creation schedule to allow Rackspace additional time to create the required jobs. That amendment also extended the termination date three years. The numbers presented above are the highest numbers specified in amended award agreement. An additional \$5,500,000 disbursement for this award was made on March 13, 2014, and is not reflected in the total amount disbursed presented above.	\$8,500,000	January 31, 2022	Active	4,000 direct jobs and 0 other jobs	\$5,500	1,225	2,041
Apple Inc. \$21,000,000 March 5, 2012 Note: The jobs requirement in the award agreement becomes effective on December 31, 2016. New jobs can be either direct or contract-labor jobs at Apple's new facility in Texas.	\$5,250,000	January 31, 2028	Active	3,635 direct or other jobs	\$5,777	Not yet required	Not yet required
JPMorgan Chase Bank & Co. \$15,000,000 August 31, 2005 Note: The original recipient was Washington Mutual Bank, which JPMorgan Chase Bank & Co. acquired in 2008.	\$15,000,000	January 31, 2016	Active	4,200 direct jobs and 0 other jobs	\$3,571	4,200	14,393
Chevron U.S.A., Inc. \$12,000,000 June 25, 2013 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$3,000,000	January 31, 2023	Active	1,752 direct jobs and 0 other jobs	\$6,849	Not yet required	Not yet required

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
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Samsung Austin Semiconductor, LLC \$10,800,000 October 1, 2005	\$10,800,000	January 31, 2020	Active	600 direct jobs and 300 other jobs	\$12,000	1,895	2,358
Note: Three hundred of the required other jobs can be can be full-time contract jobs in Texas with Samsung Austin Semiconductor, LLC. The award agreement required Samsung Austin Semiconductor LLC to maintain a total of 1,895 jobs at its facilities in Austin, Texas as of December 31, 2012, including 900 positions that it was required to create prior to December 31, 2009. The jobs the Office counted that are presented above include both the maintained and new positions.							
Caterpillar, Inc. (Seguin) \$8,500,000 August 18, 2009	\$2,250,000	January 31, 2023	Active	1,714 direct or other jobs	\$4,959	1,579	1,135
Note: New jobs can be either direct or contract-labor jobs in Texas directly or indirectly supporting a new engine manufacturing facility in Seguin. As of the reporting period ending on December 31, 2012, Caterpillar, Inc. had paid two clawback penalties totaling \$398,991.							
Visa U.S.A., Inc. \$7,900,000 January 1, 2013	\$1,975,000	March 31, 2023	Active	794 direct jobs and 0 other jobs	\$9,950	Not yet required	Not yet required
Note: The jobs requirement in the award agreement became effective on December 31, 2013.							
Hilmar Cheese Company \$7,500,000 November 30, 2005	\$7,500,000	January 31, 2021	Active	376 direct jobs and 1,586 other jobs	\$3,823	1,407	979
Note: The award agreement allows 1,586 of the required jobs to be with other businesses and cooperatives that supply milk to Hilmar Cheese Company. As of the reporting period that ended on December 31, 2012, Hilmar Cheese Company had paid seven clawback penalties totaling \$1,778,140.							
Scott & White Memorial Hospital \$7,500,000 September 1, 2007	\$7,500,000	January 31, 2023	Active	1,485 direct jobs and 0 other jobs	\$5,051	662	2,899
Tyson Fresh Meats, Inc. \$7,000,000 April 11, 2005	\$7,000,000	January 31, 2023	Active	1,600 direct jobs and 0 other jobs	\$4,375	1,600	1,451
Note: As of the reporting period ending on December 31, 2012, Tyson Fresh Meats, Inc. had paid four clawback penalties totaling \$434,746.							

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MiniMed Distribution Corp. \$6,000,000 June 1, 2009	\$6,000,000	May 31, 2029	Active	1,384 direct jobs and 0 other jobs	\$4,335	1,106	815
<p>Note: MiniMed Distribution Corp. is required to submit its annual compliance report on April 30 each year from May 2010 until May 2029. The information reported above reflects MiniMed Distribution Corp.'s new job requirements and compliance report for the year ending April 30, 2013. As of the reporting period ending on April 30, 2012, MiniMed Distribution Corp. had paid one clawback penalty of \$45,448.</p>							
Maverick Tube Corporation \$6,000,000 February 14, 2013	\$0	January 31, 2026	Active	600 direct jobs and 0 other jobs	\$10,000	Not yet required	Not yet required
<p>Note: The jobs requirement in the award agreement becomes effective on December 31, 2015.</p>							
Citgo Petroleum Corporation \$5,000,000 December 6, 2004	\$5,000,000	February 28, 2015	Active	820 direct or other jobs	\$6,098	700	803
<p>Note: New jobs can be either direct or contract-labor jobs. Of those jobs, 700 must be at Citgo Petroleum Corporation's new headquarters in Houston, Texas and 120 must be at its expanded refinery in Corpus Christi, Texas. (The requirement to create 120 jobs in Corpus Christi, Texas became effective on December 31, 2013.)</p>							
Fidelity Global Brokerage Group, Inc. (amended) \$4,500,000 February 5, 2007	\$8,500,000	January 31, 2018	Active	850 direct jobs and 0 other jobs	\$5,294	400	1,205
<p>Note: Fidelity Global Brokerage Group, Inc. repaid \$4,000,000 when an amendment to the award agreement, which was effective on December 31, 2009, decreased the award amount from \$8,500,000 to \$4,500,000, and reduced the required jobs from 1,535 direct jobs to 850 direct jobs. As of the reporting period ending on December 31, 2012, Fidelity Global Brokerage Group, Inc. had paid one clawback penalty of \$484,068.</p>							
Comerica Incorporated (amended) \$3,500,000 August 29, 2007	\$3,500,000	January 31, 2018	Active	200 direct jobs and 0 other jobs	\$17,500	200	254
<p>Note: An amendment to the award agreement that was effective December 28, 2012, clarified that certain jobs that relocated from outside of Texas to Comerica Incorporated's new headquarters in Dallas prior to August 29, 2007, were eligible to count as "employment positions" under the terms of the award agreement.</p>							
PETCO Animal Supplies, Inc. \$3,100,000 November 1, 2010	\$1,050,000	January 31, 2022	Active	400 direct jobs and 0 other jobs	\$7,750	300	255
<p>Note: As of the reporting period ending December 31, 2012, PETCO Animal Supplies, Inc. had paid one clawback penalty of \$35,148. An additional \$1,050,000 disbursement for this award was made on January 6, 2014, and is not included in the total amount disbursed above.</p>							

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ADP, Inc. \$3,000,000 May 31, 2006	\$3,000,000	January 31, 2015	Active	1,028 direct jobs and 0 other jobs	\$2,918	1,028	1,111
G-Con, LLC \$3,000,000 May 1, 2010	\$3,000,000	January 31, 2025	Active	408 direct jobs and 0 other jobs	\$7,353	88	29
Note: As of the reporting period ending December 31, 2012, G-Con, LLC had paid two clawback penalties totaling \$146,064.							
eBay Inc. \$2,800,000 March 30, 2011	\$1,400,000	March 31, 2019	Active	1,050 direct jobs and 0 other jobs	\$2,667	250	247
Note: As of the reporting period ending December 31, 2012, eBay, Inc. had paid one clawback penalty of \$3,078.							
Zah Group, Inc. (amended) \$2,800,000 October 1, 2010	\$1,000,000	January 31, 2024	Active	585 direct jobs and 0 other jobs	\$4,786	150	164
Note: This award agreement was amended effective December 30, 2013, to allow Zah Group, Inc. additional time to create the required jobs.							
Huntsman Corporation (amended) \$2,750,000 August 8, 2005	\$2,750,000	January 31, 2017	Active	285 direct jobs and 0 other jobs	\$9,649	285	401
Note: This award agreement was amended effective November 1, 2010, to reduce the number of jobs required from 326 to 285, to reduce the clawback amount per job, and to extend the award period by one year. As of the reporting period ending December 31, 2012, Huntsman Corporation had paid one clawback penalty of \$106,811.							
ADP, Inc. \$2,400,000 December 10, 2012	\$0	January 31, 2024	Active	585 direct jobs and 0 other jobs	\$4,103	Not yet required	Not yet required
Note: The jobs requirement in the award agreement becomes effective on December 31, 2014.							
CH2M Hill, Inc. \$2,300,000 January 2, 2012	\$1,150,000	January 31, 2021	Active	285 direct jobs and 0 other jobs	\$8,070	100	94
Note: As of the reporting period ending December 31, 2012, CH2M Hill, Inc. had paid one clawback penalty of \$9,330.							

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General Electric Company (amended) \$2,100,000 May 12, 2011 Note: The original award agreement was amended effective December 28, 2012, to reduce the award amount from \$4,200,000 to \$2,100,000 and to decrease the total new jobs required from 775 to 330. A prior amendment, effective December 16, 2011, also clarified that new jobs required must be with GE Transportation and GE Engine Services, LLC at the redeveloped locomotive manufacturing facility in Fort Worth, Texas. As of the reporting period ending on December 31, 2012, General Electric Company had paid two clawback penalties totaling \$82,231.	\$1,300,000	January 31, 2023	Active	330 direct jobs and 0 other jobs	\$6,364	280	260
GGNSC Holdings, LLC (Golden Living) (amended) \$2,100,000 February 16, 2011 Note: An amendment to the award agreement that was effective November 28, 2012, allowed Golden Living to include jobs with its subsidiary and affiliate companies in its count of jobs created. As of the reporting period ending on December 31, 2012, Golden Living had paid one clawback penalty of \$3,522.	\$1,400,000	January 31, 2023	Active	100 direct jobs and 0 other jobs	\$21,000	75	97
Motiva Enterprises, LLC (amended) \$2,000,000 May 25, 2006 Note: An amendment to the award agreement, effective on December 1, 2009, allowed Motiva Enterprises, LLC to report up to 100 indirect positions as required jobs and changed the job-creation schedule to allow Motiva Enterprises, LLC additional time to create the required jobs. The original award agreement allowed Motiva Enterprises, LLC to report up to 50 indirect positions. A second amendment, effective on December 1, 2013, clarified that indirect positions were positions at Motiva's Port Arthur, Texas refinery that were with Motiva's contractors or subcontractors.	\$2,000,000	January 31, 2016	Active	200 direct jobs and 100 other jobs	\$6,667	300	524
Torchmark Corporation \$2,000,000 March 10, 2006	\$2,000,000	January 31, 2016	Active	500 direct jobs and 0 other jobs	\$4,000	500	521
HID Global Corporation \$1,900,000 August 31, 2012 Note: The jobs requirement in the award agreement becomes effective on December 31, 2014.	\$500,000	January 31, 2025	Active	239 direct jobs and 0 other jobs	\$7,950	Not yet required	Not yet required

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CGI Technologies and Solutions, Inc. (amended) \$1,800,000 October 10, 2011 Note: An amendment to the award agreement was effective on November 30, 2012, and allowed CGI Technologies and Solutions Inc. to include jobs created at three subsidiary and affiliate companies within the number of jobs it created.	\$1,200,000	January 31, 2023	Active	350 direct jobs and 0 other jobs	\$5,143	125	125
The James Skinner Co. \$1,800,000 December 19, 2012 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$0	January 31, 2023	Active	393 direct jobs and 0 other jobs	\$4,580	Not yet required	Not yet required
Santana Textiles, LLC (amended) \$1,650,000 August 4, 2008 Note: An amendment to the award agreement, effective June 15, 2010, postponed the second disbursement of funds to Santana Textiles, LLC, and changed the job-creation schedule to allow Santana Textiles, LLC additional time to create the required jobs. As of the reporting period ending December 31, 2012, Santana Textiles, LLC had paid four clawback penalties totaling \$280,370.	\$800,000	January 31, 2019	Active	800 direct jobs and 0 other jobs	\$2,063	359	38
Borusan Mannesmann Pipe U.S., Inc. \$1,625,000 March 11, 2013 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$0	January 31, 2023	Active	250 direct jobs and 0 other jobs	\$6,500	Not yet required	Not yet required
Health Management Systems, Inc. (amended) \$1,600,000 August 1, 2010 Note: An amendment to the award agreement, effective on December 31, 2010, and dated on September 15, 2011, allowed Health Management Systems, Inc. to include jobs created at one subsidiary company within the jobs it had created.	\$1,600,000	January 31, 2019	Active	350 direct jobs and 0 other jobs	\$4,571	200	465
Becton, Dickinson & Company \$1,560,000 August 12, 2010 Note: An additional \$375,000 disbursement was made on March 13, 2014, and is not reflected in the total amount disbursed above.	\$750,000	January 22, 2022	Active	296 direct jobs and 0 other jobs	\$5,270	224	226

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Ruiz Food Products, Inc. \$1,500,000 May 13, 2005	\$1,500,000	January 31, 2018	Active	423 direct jobs and 0 other jobs	\$3,546	423	679
Hanger, Inc. \$1,500,000 January 8, 2010	\$1,500,000	March 31, 2018	Active	236 direct jobs and 0 other jobs	\$6,356	176	261
The Dow Chemical Company (Project 2) \$1,500,000 July 19, 2013 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$500,000	January 31, 2023	Active	96 direct jobs and 0 other jobs	\$15,625	Not yet required	Not yet required
Facebook, Inc. \$1,400,000 February 24, 2010	\$1,000,000	January 31, 2022	Active	200 direct jobs and 0 other jobs	\$7,000	140	183
Centene Corporation \$1,381,500 May 2, 2012 Note: As of the reporting period ending on December 31, 2012, Centene Corporation had paid one clawback penalty of \$23,751.	\$460,500	March 31, 2023	Active	307 direct jobs and 0 other jobs	\$4,500	42	13
Layne Christensen Company \$1,300,000 December 5, 2012 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$450,000	January 31, 2019	Active	210 direct jobs and 0 other jobs	\$6,190	Not yet required	Not yet required
Consolidated Electrical Distributors, Inc. (amended) \$1,200,000 October 1, 2010 Note: An amendment to the award agreement, effective on May 1, 2013, allowed Consolidated Electrical Distributors, Inc. to include jobs created at one affiliate company within jobs it had created.	\$1,000,000	January 31, 2023	Active	120 direct jobs and 0 other jobs	\$10,000	80	85

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TD Ameritrade Holding Corporation \$1,200,000 March 31, 2011 Note: As of the reporting period ending December 31, 2012, TD Ameritrade Holding Corporation had paid two clawback penalties totaling \$210,405.	\$600,000	January 31, 2017	Active	490 direct jobs and 0 other jobs	\$2,449	250	40
Continental Automotive Systems, Inc. (amended) \$1,200,000 January 27, 2012 Note: An amendment to the award agreement, effective on December 31, 2013, changed the job-creation schedule to allow Continental Automotive Systems, Inc. additional time to create the required jobs. That amendment also extended the term of the award agreement by three years. (That amendment also removed the requirement to create 45 jobs by December 31, 2012, and postponed future job-creation requirements until December 31, 2015. The job-creation numbers reported above are based on the Office's compliance verification for the period ending December 31, 2012.)	\$0	January 31, 2027	Active	300 direct jobs and 0 other jobs	\$4,000	45	0
Caterpillar, Inc. (Victoria) (amended) \$1,175,000 February 5, 2011 Note: An amendment to the award agreement, effective on December 28, 2012, allowed Caterpillar, Inc. to include jobs created at specified affiliate companies within jobs it had created.	\$1,175,000	March 1, 2022	Active	238 direct jobs and 0 other jobs	\$4,937	177	315
Frito-Lay North America, Inc. \$1,125,000 December 1, 2009	\$1,125,000	January 31, 2016	Active	125 direct jobs and 0 other jobs	\$9,000	125	156
Allstate Insurance Company (amended) \$1,100,000 February 1, 2010 Note: An amendment to the award agreement, effective on December 30, 2013, allowed Allstate Insurance Company to include jobs created at one subsidiary company within jobs it had created. As of the reporting period ending December 31, 2012, Allstate Insurance Company had paid two clawback penalties totaling \$67,550.	\$550,000	January 31, 2020	Active	200 direct jobs and 0 other jobs	\$5,500	200	191
TEKsystems Global Services, LLC \$1,100,000 December 13, 2012 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$400,000	January 31, 2021	Active	500 direct jobs and 0 other jobs	\$2,200	Not yet required	Not yet required

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Authentix, Inc. (amended) \$1,000,000 October 25, 2007	\$750,000	January 31, 2018	Active	120 direct jobs and 0 other jobs	\$8,333	103	36
Note: An amendment to the award agreement, effective December 18, 2009, postponed the second disbursement of funds to Authentix, Inc., and changed the job-creation schedule to allow Authentix, Inc. additional time to create the required jobs. As of the reporting period ending on December 31, 2012, Authentix, Inc. had paid five clawback penalties totaling \$416,206.							
LegalZoom.com Texas, LLC (amended) \$1,000,000 February 1, 2010	\$500,000	January 31, 2018	Active	465 direct jobs and 0 other jobs	\$2,151	192	207
Note: An amendment to the award agreement, effective on October 29, 2013, allowed LegalZoom.com Texas, LLC to include jobs created at one affiliate company. As of the reporting period that ended on December 31, 2012, LegalZoom.com Texas, LLC had paid two clawback penalties totaling \$48,545. An additional \$500,000 disbursement for this award was made on March 18, 2014, and is not reflected in the total amount disbursed above.							
The Dow Chemical Company (Project 1) \$1,000,000 April 30, 2012	\$500,000	January 31, 2024	Active	150 direct jobs and 0 other jobs	\$6,667	Not yet required	Not yet required
Note: The jobs requirement in the award agreement became effective on December 31, 2013.							
Emerson Process Management Valve Automation, Inc. \$1,000,000 January 1, 2013	\$400,000	January 31, 2023	Active	126 direct jobs and 0 other jobs	\$7,937	Not yet required	Not yet required
Note: The jobs requirement in the award agreement became effective on December 31, 2013.							
Ascend Performance Materials Texas, Inc. \$1,000,000 February 22, 2013	\$0	January 31, 2021	Active	100 direct jobs and 0 other jobs	\$10,000	Not yet required	Not yet required
Note: The jobs requirement becomes effective December 31, 2014. The award agreement was signed in February 2014, but the Office backdated the effective date of the award agreement to February 2013. An initial \$350,000 disbursement for this award was made on March 11, 2014, and is not reflected in the amount disbursed above.							
Kuraray America, Inc. \$965,000 May 24, 2012	\$320,000	January 31, 2022	Active	107 direct jobs and 0 other jobs	\$9,019	10	14

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Pactiv, LLC \$930,000 October 1, 2012 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$0	January 31, 2023	Active	200 direct jobs and 0 other jobs	\$4,650	Not yet required	Not yet required
Jyoti Americas, LLC \$865,000 October 28, 2010 Note: Jyoti Americas, LLC was required to create 157 jobs by March 31, 2012. It reported that it had met that requirement in the compliance report it submitted for the period ending December 31, 2012.	\$865,000	January 31, 2023	Active	157 direct jobs and 0 other jobs	\$5,510	157	160
Kohl's Department Stores, Inc. (Dallas) \$864,000 June 11, 2013 Note: The jobs requirement in the award agreement becomes effective on December 31, 2014.	\$288,000	January 31, 2023	Active	144 direct jobs and 0 other jobs	\$6,000	Not yet required	Not yet required
Rockwell Collins, Inc. (amended) \$839,196 November 13, 2007 Note: An amendment to the award agreement, effective on March 17, 2008, reduced the threshold of jobs that existed at the time that the original agreement was signed. Another amendment, effective on December 1, 2008, reduced the original award amount from \$1,678,392 to \$839,136 and reduced the total jobs required in the agreement from 334 to 105. As of the reporting period ending December 31, 2012, Rockwell Collins, Inc. had paid two clawback penalties totaling \$283,176.	\$839,196	February 28, 2017	Active	105 direct jobs and 0 other jobs	\$7,992	105	0
Forum Energy Services, Inc. (amended) \$800,000 October 29, 2007 Note: The original recipient of this award was Allied Production Solutions, LP, which merged into Forum US, Inc. in 2011 and subsequently assigned its rights and responsibilities under the agreement to Forum Energy Services. An amendment to the award agreement, effective on August 18, 2009, changed the job-creation schedule to allow the recipient additional time to create the required jobs. As of the reporting period ending on December 31, 2012, Forum Energy Services, Inc. had paid three clawback penalties totaling \$94,520.	\$800,000	January 31, 2018	Active	200 direct jobs and 0 other jobs	\$4,000	200	139
Fritz Industries, Inc. \$800,000 January 1, 2013 Note: The jobs requirement in the award agreement became effective on December 31, 2013.	\$0	January 31, 2020	Active	250 direct jobs and 0 other jobs	\$3,200	Not yet required	Not yet required

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Kohl's Department Stores, Inc. (San Antonio) \$750,000 April 9, 2010	\$750,000	January 31, 2020	Active	150 direct jobs and 0 other jobs	\$5,000	150	204
Vendor Resource Management, Inc. \$750,000 September 24, 2009	\$750,000	January 31, 2018	Active	275 direct jobs and 0 other jobs	\$2,727	275	121
Note: As of the reporting period ending December 31, 2012, Vendor Resource Management, Inc. had paid two clawback penalties totaling \$151,188.							
Tapco International, Inc. \$675,000 July 5, 2010	\$325,000	January 31, 2022	Active	100 direct jobs and 0 other jobs	\$6,750	10	10
Flexsteel Pipeline Technologies, Inc. \$650,000 August 1, 2011	\$650,000	January 31, 2019	Active	130 direct jobs and 0 other jobs	\$5,000	83	133
Note: As of the reporting period ending on December 31, 2012, Flexsteel Pipeline Technologies, Inc. had paid one clawback penalty of \$2,420.							
Cardiovascular Systems, Inc. \$600,000 June 3, 2010	\$400,000	January 31, 2021	Active	100 direct jobs and 0 other jobs	\$6,000	55	28
Note: As of the reporting period ending December 31, 2012, Cardiovascular System, Inc. had paid two clawback penalties totaling \$60,648.							
Associated Hygienic Products, LLC \$520,000 December 10, 2008	\$520,000	January 31, 2019	Active	115 direct jobs and 0 other jobs	\$4,522	115	232
The Advisory Board Company \$500,000 August 5, 2011	\$500,000	January 31, 2017	Active	239 direct jobs and 0 other jobs	\$2,092	109	109
Newly Weds Foods, Inc. \$450,000 March 10, 2006	\$450,000	January 31, 2018	Active	115 direct jobs and 0 other jobs	\$3,913	115	123

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CK Technologies, LLC \$425,000 October 18, 2010	\$150,000	January 31, 2022	Active	121 direct jobs and 0 other jobs	\$3,512	92	39
Note: As of the reporting period ending December 31, 2012, CK Technologies, LLC had paid one clawback penalty of \$28,752.							
Ferris Mfg. Corp. (amended) \$420,000 October 18, 2011	\$250,000	January 31, 2022	Active	80 direct jobs and 0 other jobs	\$5,250	62	50
Note: An amendment to the award agreement, effective on November 15, 2013, reduced the original award amount from \$450,000 to \$420,000 and reduced the total jobs required in the agreement from 100 to 80. As of the reporting period ending December 31, 2012, Ferris Mfg. Corp. had paid one clawback penalty of \$12,480.							
Koyo Steering Systems of North America, Inc. \$333,000 February 14, 2005	\$333,000	January 31, 2016	Active	200 direct jobs and 0 other jobs	\$1,665	200	220
Note: The job-creation information presented above is for the period ending October 31, 2012, as established in the job requirements in the award agreement.							
Lee Container Corporation (amended) \$300,000 April 4, 2005	\$300,000	January 31, 2025	Active	105 direct jobs and 0 other jobs	\$2,857	75	45
Note: An amendment to the award agreement, effective on December 30, 2009, changed the job-creation schedule to allow Lee Container Corporation additional time to create the required jobs. As of the reporting period ending December 31, 2012, Lee Container Corporation had paid five clawback penalties totaling \$55,048.							
Office Depot, Inc. \$300,000 July 27, 2011	\$150,000	January 31, 2016	Active	203 direct jobs and 0 other jobs	\$1,478	161	148
Note: Office Depot, Inc. used surplus job credits to fulfill its job-creation requirements for 2012 and, as a result, it did not owe a clawback penalty.							
Superior Essex Communication L.P. \$250,000 June 28, 2005	\$250,000	January 31, 2020	Active	50 direct jobs and 0 other jobs	\$5,000	50	25
Note: As of the reporting period ending December 31, 2012, Superior Essex Communication L.P. had paid three clawback penalties totaling \$14,231; however, the Office refunded that \$14,231 to Superior Essex Communication L.P. in August 2013.							

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Recipient Award Amount Award Start Date	Amount Disbursed as of December 31, 2013	Expected Award End Date or Actual Award Terminated Date	Award Status	Total Number of New Direct Jobs and Other Jobs Required	Average Cost per New Direct Job or Other Job	Job Creation Status (unless otherwise noted, this is as of the Office of the Governor's December 31, 2012, Compliance Verification)	
						Number of New Jobs Required	Number of New Jobs the Office Counted
Grifols, Inc. (amended) \$250,000 October 15, 2009 Note: An amendment to the award agreement, effective December 28, 2012, reduced the award amount from \$500,000 to \$250,000, and reduced the total jobs required from 190 to 90. As of the reporting period ending December 31, 2012, Grifols, Inc. had paid three clawback penalties totaling \$73,782.	\$250,000	January 31, 2017	Active	90 direct jobs and 0 other jobs	\$2,778	90	69
3M Company \$194,000 May 1, 2010 Note: As of the reporting period ending December 31, 2012, 3M Company had paid two clawback penalties totaling \$7,392.	\$94,000	January 31, 2018	Active	55 direct jobs and 0 other jobs	\$3,527	50	49

Source: Texas Enterprise Fund award agreements and Office documentation.

Incentive Fund Best Practices

Auditors identified best practices that may be applicable to the Texas Enterprise Fund based on information from 10 other states, 4 local governments in Texas¹⁵, the *State of Texas Contract Management Guide*, and other best practice publications. Selected best practices are summarized below.

Best Practices Related to Awarding Processes

- Require applicants to disclose potential conflicts of interest in signed statements when they submit applications.
- Use a formal, repeatable process, such as a scoring matrix, to evaluate whether awards should be offered to applicants.
- Implement guidelines for determining award amounts, such as a maximum amount per job created, and apply those guidelines to all awards.
- Enhance transparency in the evaluation process by making decisions to grant awards by a vote made in a public forum, and provide an opportunity for public comment prior to that vote.

Best Practices Related to Developing Award Agreements

- Specify allowable costs, unallowable costs, or both in award agreements.
- Structure award agreements so that funds are disbursed to recipients only after verifying that recipients have met award agreement requirements.
- Define “full-time jobs” and “part-time jobs” in award agreements.

Best Practices Related to Monitoring Recipients’ Compliance with Award Agreements

- Develop and implement a standard template on which recipients are required to report annual job-creation information.
- Conduct annual site visits or conduct site visits on a rotating schedule at award recipients. As part of the testing during those site visits, verify recipients’ job-creation information through examination of payroll stubs and employment files.

¹⁵ All four of those local governments had provided local incentives to recipients that had also received Texas Enterprise Fund awards.

Excerpts from Texas Government Code, Chapter 481

The 78th Legislature established the Texas Enterprise Fund in 2003 as a dedicated account of General Revenue to be used for economic development, infrastructure development, community development, job training programs, and business incentives.

The legislation for the Texas Enterprise Fund was codified in Texas Government Code, Chapter 481, which was subsequently amended in 2005, 2009, and 2011. Below are excerpts from Texas Government Code, Chapter 481, as of September 1, 2013, that are directly relevant to the Texas Enterprise Fund.

Sec. 481.078. TEXAS ENTERPRISE FUND. (a) The Texas Enterprise Fund is a dedicated account in the general revenue fund.

(b) The following amounts shall be deposited in the fund:

(1) any amounts appropriated by the legislature for the fund for purposes described by this section;

(2) interest earned on the investment of money in the fund;

and

(3) gifts, grants, and other donations received for the fund.

(c) Except as provided by Subsections (d) and (d-1), the fund may be used only for economic development, infrastructure development, community development, job training programs, and business incentives.

(d) The fund may be temporarily used by the comptroller for cash management purposes.

(d-1) The fund may be used for the Texas homeless housing and services program administered by the Texas Department of Housing and Community Affairs under Section 2306.2585. The governor may transfer appropriations from the fund to the Texas Department of Housing and Community Affairs to fund the Texas homeless housing and services program. Subsections (e-1), (f), (f-1), (f-2), (g), (h), (h-1), (i), and (j) and Section 481.080 do not apply to a grant awarded for a purpose specified by this subsection.

(e) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awarding, by grant, money appropriated from the fund. The governor may award money appropriated from the fund only with

the prior approval of the lieutenant governor and speaker of the house of representatives. For purposes of this subsection, an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award the grant before the 91st day after the date of receipt of the proposal from the governor. The lieutenant governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

(e-1) To be eligible to receive a grant under this section, the entity must:

(1) be in good standing under the laws of the state in which the entity was formed or organized, as evidenced by a certificate issued by the secretary of state or the state official having custody of the records pertaining to entities or other organizations formed under the laws of that state; and

(2) owe no delinquent taxes to a taxing unit of this state.

(f) Before awarding a grant under this section, the governor shall enter into a written agreement with the entity to be awarded the grant money specifying that:

(1) if the governor finds that the grant recipient has not met each of the performance targets specified in the agreement as of a date certain provided in the agreement:

(A) the recipient shall repay the grant and any related interest to the state at the agreed rate and on the agreed terms;

(B) the governor will not distribute to the recipient any grant money that remains to be awarded under the agreement; and

(C) the governor may assess specified penalties for noncompliance against the recipient;

(2) if all or any portion of the amount of the grant is used to build a capital improvement, the state may:

(A) retain a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) require the recipient of the grant, if the capital improvement is sold, to:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement; and

(ii) share with the state a proportionate amount of any profit realized from the sale; and

(3) if, as of a date certain provided in the agreement, the grant recipient has not used grant money awarded under this section for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms.

(f-1) A grant agreement must contain a provision:

(1) requiring the creation of a minimum number of jobs in this state; and

(2) specifying the date by which the recipient intends to create those jobs.

(f-2) A grant agreement must contain a provision providing that if the recipient does not meet job creation performance targets as of the dates specified in the agreement, the recipient shall repay the grant in accordance with Subsection (j).

(g) The grant agreement may include a provision providing that a reasonable percentage of the total amount of the grant will be withheld until specified performance targets are met by the entity as of the date described by Subsection (f)(1).

(h) The governor, after consultation with the speaker of the house of representatives and the lieutenant governor, shall determine:

(1) the performance targets and date required to be contained in the grant agreement as provided by Subsection (f)(1); and

(2) if the grant agreement includes the provision authorized by Subsection (g), the percentage of grant money required to be withheld.

(h-1) At least 14 days before the date the governor intends to amend a grant agreement, the governor shall notify and provide a copy of the proposed amendment to the speaker of the house of representatives and the lieutenant governor.

(i) An entity entering into a grant agreement under this section shall submit to the governor, lieutenant governor, and speaker of the house of representatives an annual progress report containing the information compiled

during the previous calendar year regarding the attainment of each of the performance targets specified in the agreement.

(j) Repayment of a grant under Subsection (f)(1)(A) shall be prorated to reflect a partial attainment of job creation performance targets, and may be prorated for a partial attainment of other performance targets.

(k) To encourage the development and location of small businesses in this state, the governor shall consider making grants from the fund:

(1) to recipients that are small businesses in this state that commit to using the grants to create additional jobs;

(2) to recipients that are small businesses from outside the state that commit to relocate to this state; or

(3) for individual projects that create 100 or fewer additional jobs.

(l) For purposes of Subsection (k), "small business" means a legal entity, including a corporation, partnership, or sole proprietorship, that:

(1) is formed for the purpose of making a profit;

(2) is independently owned and operated; and

(3) has fewer than 100 employees.

(m) Expired.

Sec. 481.079. REPORT ON USE OF MONEY IN TEXAS

ENTERPRISE FUND. (a) Before the beginning of each regular session of the legislature, the governor shall submit to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature a report on grants made under Section 481.078 that states:

(1) the number of direct jobs each recipient committed to create in this state;

(2) the number of direct jobs each recipient created in this state;

(3) the median wage of the jobs each recipient created in this state;

(4) the amount of capital investment each recipient committed to expend or allocate per project in this state;

(5) the amount of capital investment each recipient expended or allocated per project in this state;

- (6) the total amount of grants made to each recipient;
- (7) the average amount of money granted in this state for each job created in this state by grant recipients;
- (8) the number of jobs created in this state by grant recipients in each sector of the North American Industry Classification System (NAICS); and
- (9) of the number of direct jobs each recipient created in this state, the number of positions created that provide health benefits for employees.

(a-1) For grants awarded for a purpose specified by Section 481.078(d-1), the report must include only the amount and purpose of each grant.

(b) The report may not include information that is made confidential by law.

(c) The governor may require a recipient of a grant under Section 481.078 to submit, on a form the governor provides, information required to complete the report.

Sec. 481.080. ECONOMIC AND FISCAL IMPACT

STATEMENT FOR CERTAIN GRANT PROPOSALS. (a) Before the governor awards a grant under Section 481.078 to an entity for a proposed initiative, the office shall prepare a statement that, specifically and in detail, assesses the direct economic impact that approval of the grant will have on the residents of this state.

(b) The statement must include:

(1) for the period covered by the grant:

(A) the estimated number of jobs to be created in this state by the potential recipient each biennium; and

(B) the estimated median wage of the jobs to be created in this state by the potential recipient each biennium;

(2) the additional amount of ad valorem taxes, sales and use taxes, and fee revenues projected to be generated each year by governmental entities of this state;

(3) the total amount of tax credits, local incentives, and other money or credits estimated to be distributed to the proposed grant recipient by governmental entities of this state; and

(4) any other information the office considers necessary to include in the statement.

Requirement to Conduct This Audit

Senate Bill 1390 (83rd Legislature, Regular Session) required the State Auditor's Office to conduct this audit. That bill is presented below.

AN ACT

relating to an audit by the state auditor of the Texas Enterprise Fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) The state auditor shall conduct an audit of the Texas Enterprise Fund established under Section 481.078, Government Code. The state auditor may establish the scope of the audit and objectives for the audit that are consistent with generally accepted government auditing standards and with other audits conducted by the state auditor under Chapter 321, Government Code.

(b) The audit may determine whether money from the fund is:

(1) disbursed in compliance with the requirements of Section 481.078, Government Code, and other relevant laws or standards; and

(2) monitored to determine whether the persons or entities awarded money from the fund comply with the terms of any applicable agreements and with the requirements of Section 481.078, Government Code, and other relevant laws or standards.

(c) Consistent with generally accepted government auditing standards and with other audits conducted by the state auditor under Chapter 321,

Government Code, the state auditor may assess the efficiency and effectiveness of the Texas Enterprise Fund.

(d) The state auditor shall prepare a report of the audit conducted under this section. Not later than January 1, 2015, the state auditor shall file the report with the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee of the senate and house of representatives having primary jurisdiction over fiscal matters. The report may include:

(1) details on the grant approval process;

(2) details on the compliance of past and present grant recipients with the terms of applicable agreements and with the requirements of the Government Code and other relevant laws or standards;

(3) a synopsis of grant agreements that have been amended to reduce the job creation goals established in the original agreement or to extend the time allotted to achieve job creation goals; and

(4) an itemization of grant money returned to this state, including a summary of the reasons the money was returned.

SECTION 2. This Act expires September 1, 2015.

SECTION 3. This Act takes effect September 1, 2013.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair

The Honorable Joe Straus III, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Jim Pitts, House Appropriations Committee

The Honorable Harvey Hilderbran, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor



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