

**Joint Committee on Performance Evaluation and  
Expenditure Review (PEER)**  
The Mississippi Legislature



**Action Brief:**

**State Government Purchasing: A Review of State Agencies' Implementation  
of Recent Statutory Changes and Other Selected Issues**  
December 15, 2015 (Report #603)

*Background:*

Since FY 2010, state agencies have spent over \$1 billion on purchases of goods and services. Proper stewardship of public funds requires that the agency making such purchases and the state as a whole ensure that public money is being wisely used.

During 2014, charges of procurement-related corruption within the Department of Corrections caused many to consider changes in law to ensure that such abuses are stopped. In 2015, the Legislature acted to address areas that it believed created risk to the integrity, transparency, and accountability of the procurement process. PEER sought to determine whether these statutory changes have resulted in the desired improvements.

PEER also reviewed whether statutory training and certification requirements for certified purchasing agents and offices are achieving the desired results. Additionally, in response to a recommendation of the Governor's Task Force on Contracting and Procurement in the Mississippi Department of Corrections that was specifically directed to PEER, the Committee reviewed statutes regarding "net-of-fee" contracts.

**Report Conclusions**

**While now implemented in the three control agencies, the 2015 purchasing reform legislation's true impact cannot yet be determined. However, it is expected that the new laws will impact the timeliness of procurements and will require better planning by state agencies.**

The three state control agencies for purchasing--the Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board--are the ones chiefly charged with administration and oversight of purchasing by state agencies.

During the 2015 Regular Session, the Legislature passed S. B. 2400 and H. B. 825 to address and alleviate concerns regarding accountability and transparency within the state's procurement system. Among other things, these bills addressed two areas that the Legislature believed to be troublesome--emergency and sole-source contracts. Additionally, changes were made to the membership and jurisdiction of the Personal Service Contract Review Board.

S. B. 2400 and H. B. 825 and their accompanying regulations establish more demanding standards for certain types of procurements. As to the cost and timeliness of procurement processing, it is too soon to draw conclusions about the impact these factors might have on the control agencies and on agencies procuring commodities and services. However, it is expected that the new laws will impact the timeliness of procurements and will require better planning by state agencies.

Because H.B. 825 requires PEER to engage in ongoing oversight of the state's procurement processes, this report will serve as a description of the purchasing environment upon which to base future studies.

**As required by state law, the Office of Purchasing, Travel, and Fleet Management (OPTFM) has created a procurement training and certification school to instruct purchasing officials regarding the state's laws and regulations. However, OPTFM cannot definitively determine the number of employees who are subject to receive purchasing training or what percentage of purchasing officials within the state are already certified.**

The Legislature has mandated the establishment of certification and training requirements to assist state agency employees in carrying out their purchasing duties. However, state law does not define "purchasing officials." Because of the varying job titles of state agency employees who have purchasing duties, the Office of Purchasing, Travel, and Fleet Management cannot definitively determine the number of employees in state agencies who are subject to receive purchasing training or what percentage of purchasing officials within the state are already certified.

Regarding certified purchasing offices, agencies that complete the statutory requirements for such are allowed to make purchasing decisions based on best value (rather than lowest and best price) and are allowed to participate in cooperative purchasing agreements. As of September 1, 2015, five state entities had been designated as certified purchasing offices.

**Despite the fact that public funds generally are not used to compensate contractors with net-of-fee contracts, state agencies have an interest in seeing that their staff, clients, and inmates receive quality services from their contractors.**

Net-of-fee contracts do not involve the expenditure of appropriated funds, but do involve commitments on the part of state government for the use of some government benefit--e. g., space or access to a market. Some state agencies use net-of-fee contracts as a means of offering food and vending services to staff, customers, and inmates. Such contracts are generally not subject to state procurement laws and, without regulation, could be let in a manner that is not transparent or competitive.

The competitive process may be used as a means of selecting the best equipped contractor to render services to persons who should reasonably expect the state to have a hand in ensuring that quality service is being provided through these contracts. Generally, a request for proposals process could set pricing and quality standards that could help ensure that the ultimate consumers are well served by the contractor. The process could also be used to generate some additional revenue to the state agency through competition, since such agencies should receive benefit from allowing contractors to use their facilities.

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