



May 16, 2018

Report to the Mississippi Legislature

State Government Purchasing—A Review of Recent Statutory Changes and a Case Study: Follow-Up to Report #611

State Government Purchasing—A Review of Recent Statutory Changes and a Case Study: Follow-Up to Report #611

Synopsis

Statutory Changes

The Legislature made considerable changes in procurement laws in 2015 and 2017.

In 2015 the Legislature passed two bills to address risk to the integrity, transparency, and accountability of the state's procurement process:

- Senate Bill 2400 changed commodity purchasing standards relative to emergency and sole-source procurements.
- House Bill 825 revised the composition, jurisdiction, and duties of the Personal Service Contract Review Board (PSCRB). The bill also changed the regulation of sole-source procurements and lowered the oversight threshold for personal services from \$100,000 to \$75,000.

The three state agencies with purchasing oversight authority—Department of Finance and Administration (DFA), Department of Information Technology Services, and Personal Service Contract Review Board—reported that S.B. 2400 had minimal impact on reducing the number of emergency procurements. In contrast, they reported a reduction in sole-source procurements—viewed as a risk to the integrity, transparency, and accountability of the procurement process—after passage of H.B. 825. The oversight authorities noted other effects, including an increase in the use of brand preference¹ in bid specifications and the statutory approval of 325 contracts in FY 2016 without the benefit of PSCRB review.

During the 2017 legislative session, in an effort to further strengthen oversight, the Legislature passed House Bill 1109, which revised state policy on procurement as follows:

- established procurement best practices;
- abolished the PSCRB and transferred its authority and responsibilities for personal services to the Public Procurement Review Board (PPRB);
- made reverse auctions² the preferred method of procurement (excluding individual state institutions of higher learning) for

¹Brand preference refers to preference for a brand name product. A procurement official with a brand preference may be inclined to use the specifications of preferred products to develop bid specifications.

²Process in which buyers announce their need for a product or service and suppliers bid to fulfill that need, i.e., the role of the buyer and supplier is reversed, with the primary objective to compete purchase prices downward.

commodities and certain other items or services designated in Section 31-7-13 when such procurements exceed \$50,000;

- restricted agency emergency procurement regarding the purchase of commodities or repair contracts to a contract period not to exceed one year; and
- required third-party vendors seeking a protective order for contract information to provide the reasons for the order to any entity or individual requesting these records in accordance with the Mississippi Rules of Civil Procedure. In addition, a third party seeking a protective order from the chancery court must also post notice and the reasons for seeking the remedy on the state procurement portal at least seven days before filing a petition in chancery court.

Case Study: Mississippi Department of Education

The Mississippi Department of Education (MDE) entered into multiple contracts with Research in Action in fiscal years 2014–2016 having apparent similarities in scope of work and for amounts that collectively exceeded bid thresholds, rather than competitively bidding contracts for such services. Doing so represents possible waste of taxpayer dollars as the lowest price may not have been realized.

In addition, MDE made multiple payments to The Kyles Company through purchase orders despite there being no contract in place. These contracts, when combined, well surpassed the purchasing thresholds for both IT and personal services, in which case a request for proposal or other bid process should have been employed.

PEER found that operational deficiencies in MAGIC,³ the statewide accounting and procurement system—along with inconsistent coding of similar products/services by the MDE—allowed such procurements to be made without proper accountability, i.e., oversight. As such, there is no assurance that goods and services were procured at a competitive rate.

NOTE: The information contained in the responses that follow was self-reported. It has not been independently reviewed or authenticated in whole or in part. The responses describe actions taken by the agencies to address the conclusions and recommendations included in PEER Report #611.

³Mississippi's Accountability System for Government Information and Collaboration.



STATE OF MISSISSIPPI
GOVERNOR PHIL BRYANT

DEPARTMENT OF FINANCE AND ADMINISTRATION
LAURA D. JACKSON
EXECUTIVE DIRECTOR

April 26, 2018

James A. Barber, Executive Director
PEER Committee
501 North West Street
Woolfolk Building, Suite 301-A
Jackson, Mississippi 39201

Dear Mr. Barber:

We have received your correspondence of April 12, 2018 requesting a statement from the Mississippi Department of Finance and Administration (DFA) regarding what actions we have taken to address the issues raised in PEER Report No. 611 *State Government Purchasing: A Review of Recent Statutory Changes and a Case Study* (September 19, 2017). As noted in the Report's first recommendation, considerable changes have occurred in procurement laws in 2015 and 2017. House Bills 1106 and 1109 (Regular Session 2017), which were effective January 1, 2018, required extensive work by DFA.

Since the issuance of the Report in September, DFA has been actively implementing the legislative requirements including, but not limited to, relocating the former Personal Service Contract Review Board staff and property to DFA after an extensive build out of office space to accommodate them, implementing the Reverse Auction module in MAGIC for use by state agencies, training state agency personnel on these changes, hiring and training new personnel at DFA to absorb the increased workload, and producing new rules and regulations, templates, and training materials. We have also worked with the Mississippi Department of Information Technology Services (ITS) to establish state contracts for governing authorities to utilize for Reverse Auction and Electronic Bidding services.

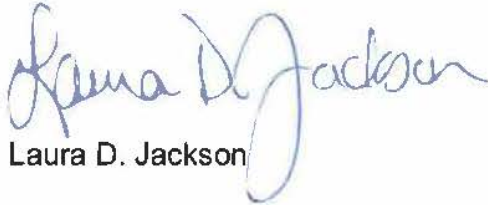
Next, the Report raised concerns regarding several procurements undertaken by the Mississippi Department of Education (MDE) and stated "operational deficiencies in MAGIC allowed procurements to be made without proper accountability." As we communicated during and after the Report, we strongly disagree with this characterization, as it removes all individual responsibility from the agency. However, we have discussed the Report's recommendations regarding edits to the system to increase the procurements that route to the DFA Procurement Business Owners for

review. We are evaluating whether or not changes to NIGP coding should be made; however, we do not intend to make any edits that will trigger oversight of purchase orders.

In a decentralized State such as ours, procurement at the purchase order threshold is delegated to the agencies and governed by their internal control processes. MDE alone issued over 1,800 purchase orders in FY17. Evaluation of each agency's purchase orders once they exceeded \$50,000 would have hundreds, if not thousands of additional purchase orders requiring our review. We simply do not have the resources to undertake such a monumental task; however, we will continue to train and advise agencies in the procurement process by including information about purchase orders and coding in the revised procurement certification program that will resume later this year.

Thank you for this opportunity to update the Committee. Please feel free to contact us if you wish to discuss this further.

Sincerely,

A handwritten signature in blue ink that reads "Laura D. Jackson". The signature is fluid and cursive, with the first name "Laura" and last name "Jackson" clearly legible.

Laura D. Jackson



MISSISSIPPI DEPARTMENT OF EDUCATION

Carey M. Wright, Ed.D.
State Superintendent of Education

May 4, 2018

Mr. James A. Barber Executive Director
Performance Evaluation and Expenditure Review Committee
Woolfolk Building, Suite 301-A
501 North West Street
Jackson, MS 39201

Dear Mr. Barber:

The Mississippi Department of Education (MDE) is in receipt of the April 12, 2018, letter regarding the follow-up review of the case study related to procurement of personal and information technology services conducted by the Joint Committee on Performance Evaluation and Expenditure Review. We are committed to strengthening internal controls and ensuring that all personal and information technology services are executed in accordance with MS Board of Education policies and State Procurement Rules and Regulations.

An update of our actions and ongoing activities are listed below.

MDE ACTIONS TAKEN

- **Eliminated the Pool of Service as a method of procurement for contracts, effective July 1, 2017**
- **Adopted new personal and professional services procurement guidelines** - The MDE Employee Policies and Procedures Manual (MEPPM) was updated to reflect changes to independent contractor services in accordance with the Personal Service Contract Review Board (PSCR) procurement rules and regulations effective through December 31, 2017. Currently, MDE personal and professional services are being procured in accordance with Public Procurement Review Board (PPRB) rules and regulations which went into effect on January 1, 2018.
- **Conducted MDE staff procurement training** – MDE staff received extensive training on state policies and procedures governing the procurement of personal and professional services on August 22, 2017. The training provided a comprehensive review of each procurement method and discussed contract administration.


- **Strengthened the technology-related procurement process** - The MDE Office of Technology and Strategic Services (OTSS) processes all information technology services in accordance with the Mississippi Department of Information Technology Services (ITS) regulations. OTSS has designated a project management team who is responsible for overseeing all MDE requests for information technology services and products. This team will work closely with program offices and ITS to ensure proper procedures/protocols are followed when procuring IT-related services.
- **Restructured the Offices of Accounting/Procurement** - The MDE Purchasing division was moved from the Office of Accounting to the Office of Procurement to strengthen internal controls and segregation of duties.
 - The Procurement Director now verifies the accuracy of all product (NIGP) codes entered into MAGIC by the Purchasing Agent prior to final approval of purchasing requests.
 - All supporting documentation related to the purchase of goods or services is uploaded into MAGIC by the Purchasing Agent. In the event clarification is needed regarding coding, the Purchasing Agent performs a follow-up with the initial requestor or the vendor.
- **Hired an MDE Compliance Officer** – The Compliance Officer reviews all requests for procurement services to identify any similarities in scopes of work and provides additional procurement oversight across the agency. Furthermore, the Compliance Officer identifies and monitors risks that could impact agency internal controls and ensures compliance with state and federal laws and regulations.

MDE ONGOING ACTIVITIES

- **Aligning fiscal policies and procedures with MAGIC** – The MDE is contracting with Cornerstone Consulting to update fiscal policies and procedures within the agency to align with MAGIC. The draft document is under review. The final document will be delivered by June 30, 2018. Staff training will be conducted to ensure proper implementation of procedures.
- **Providing additional procurement training to MDE staff** – MDE staff will attend additional training on all regulations governing the procurement of goods and services. Procurement trainings are scheduled for May 10th and May 23-24th. The Office of Procurement in consultation with OTSS, ITS and the DFA Office of Purchasing, Travel, and Fleet Management will provide compliance and procedural information relative to contracts and purchasing.

We appreciate the opportunity to inform the PEER Committee of the work being done within the agency to strengthen internal controls related to the procurement of goods and services. Should you have questions, please contact Dr. Felicia Gavin at 601-359-5254.

Sincerely,


 Carey M. Wright, Ed.D.
 State Superintendent of Education

PEER Committee Staff

James A. Barber, Executive Director

Legal and Reapportionment

Ted Booth, General Counsel
Ben Collins
Barton Norfleet

Administration

Alicia Russell-Gilbert
Deborah Hardy
Gale Taylor

Quality Assurance and Reporting

Tracy Bobo
Kelly Saxton

Performance Evaluation

Lonnie Edgar, Principal Analyst
David Pray, Principal Analyst
Jennifer Sebren, Principal Analyst
Kim Cummins
Matthew Dry
Samuel Hearn
Matthew Holmes
Sarah Williamson
Julie Winkeljohn
Ray Wright

Performance Accountability

Linda Triplett, Director
Kirby Arinder
Debra Monroe-Lax
Meri Clare Steelman