

**Joint Legislative Committee on Performance
Evaluation and Expenditure Review (PEER)**

Report to
the Mississippi Legislature



Cooperative Purchasing: Its Forms and Potential for Public Procurement in Mississippi

According to the American Bar Association's *Model Procurement Code*, "cooperative purchasing" is the sharing of procurement contracts between governments or, more precisely, procurement conducted by or on behalf of one or more units. Cooperative purchasing generally occurs when two or more governmental units have a common need for the same type of commodity. Common items for cooperative purchasing include furniture, copiers, laboratory supplies, and fleet vehicles.

Cooperative purchasing differs from group purchasing or state contracts in that all members of the cooperative play a role in devising specifications and may choose not to participate if they are not able to obtain the specifications they believe are necessary. Cooperative purchasing contracts are simply developed for the use of agencies if they choose to use the contract.

Through a combination of recent legislative enactments and interpretations of existing law regarding purchasing, the public purchasing environment in Mississippi is now receptive to cooperative purchasing arrangements. Since the benefits of cooperative purchasing do not inure to the state automatically, the Department of Finance and Administration should have a systematic process for evaluating the benefits of cooperative purchasing agreements and should perform certain analytic functions to determine what is in the state's best economic interest before entering into a cooperative purchasing agreement:

- developing a systematic process for evaluating the benefits of a cooperative purchase agreement;
- using technology to improve the department's ability to analyze opportunities; and,
- considering external factors such as local preference laws and small business impact before entering into agreements.

November 13, 2007

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November 13, 2007

Honorable Haley Barbour, Governor
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On November 13, 2007, the PEER Committee authorized release of the report entitled **Cooperative Purchasing: Its Forms and Potential for Public Procurement in Mississippi.**

A handwritten signature in cursive script that reads "Harvey Moss". The signature is written in black ink and is positioned above a horizontal line.

Representative Harvey Moss, Chair

This report does not recommend increased funding or additional staff.

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Cooperative Purchasing: Its Forms and Potential for Public Procurement in Mississippi

Executive Summary

This review examines the types of cooperative purchasing, the legal authority for such in Mississippi, and the processes that control agencies such as the Department of Finance and Administration should implement to ensure that decisions to use cooperative purchasing are beneficial to the state and its citizens.

According to the American Bar Association's *Model Procurement Code*, "cooperative purchasing" is the sharing of procurement contracts between governments or, more precisely, the procurement conducted by or on behalf of one or more units. Cooperative purchasing generally occurs when two or more governmental units have a common need for the same type of commodity. Common items for cooperative purchasing include office supplies, furniture, copiers, laboratory supplies, and fleet vehicles.

NASPO recognizes three types of cooperative purchasing: true cooperatives, piggyback contracts, and third-party aggregators. In a *true cooperative*, two or more governmental units pool their resources and work together to develop specifications for commodity items that meet their needs. Under *piggybacking* arrangements, a governmental unit may make use of a commodities contract negotiated by another governmental unit. In using *third-party aggregators*, several governmental units join together to procure commodities using their buying power to obtain the best prices. Often the process is managed by an independent for-profit or not-for profit manager that enters into contracts for the benefit of the members.

Through a combination of recent legislative enactments and interpretations of existing law regarding purchasing, the public purchasing environment in Mississippi has become ripe for true cooperative purchasing and piggybacking. In 2003, the Legislature enacted a provision that opened the door for individual agencies to seek out cooperative purchasing arrangements for their own use. In 2006, the Attorney General opined that the purpose and public policy behind the state's purchasing laws is to ensure that state agencies receive the lowest and best

prices on their purchases and in instances wherein the Department of Finance and Administration finds that this end is served by the use of cooperative purchasing agreements, it may adopt these agreements and make available their benefits to state agencies and local governments.

Benefits of cooperative purchasing do not inure to the state automatically. The state should have a systematic process for evaluating the benefits of cooperative purchase agreements and should perform certain analytic functions to determine what is in the state's best economic interest before entering into a cooperative purchasing agreement:

- developing a systematic process for evaluating the benefits of a cooperative purchase agreement;
- using technology to improve the department's ability to analyze opportunities; and,
- considering external factors such as local preference laws and small business impact before entering into agreements.

Recommendations

The Department of Finance and Administration should proceed with its e-purchasing program to obtain more detailed information regarding purchases made by state agencies. Such information should be used to analyze the benefits of any cooperative contract prior to entering into such a contract.

The department should implement a formal evaluation system that would include:

- ensuring conformance with state or local procurement laws and best practices;
- analyzing the product or service specifications, price, and terms and conditions to ensure that the contract produces the best value;
- comparing contracts if there are multiple contracts available; and,
- implementing its electronic or e-procurement system to assist in the analytic processes described above by July 1, 2008.

Additionally, because of the considerable expenditure of state dollars on local vendors, the department should make all reasonable efforts to ensure that local vendors will be able to participate in cooperative purchasing contracts. As an example, when purchasing office supplies such as paper, it would be beneficial if efforts could be made to insure that the cooperative provider includes local firms so that they could continue to receive some benefit from state business.

The department should also consider adopting any necessary restriction on agencies' use of cooperative purchase agreements authorized under the authority of MISS. CODE ANN. Section 31-7-13 (m) (xxix) (1972) if they impair the economy and efficiency of the department's procurement efforts. In the event that the department believes that legislation should be adopted to address this matter, it should recommend such. The department should also consider the possibility of establishing incentives to encourage local governments to participate in the state's group purchasing agreements.

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Cooperative Purchasing: Its Forms and Potential for Public Procurement in Mississippi

Introduction

Authority

At its meeting of April 11, 2007, the PEER Committee approved a review of the potential for expanded use of cooperative purchasing by Mississippi state agencies. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

Scope and Purpose

In recent years, sources such as the National Association of State Procurement Officials (NASPO) and the Government Accountability Office (GAO) have suggested that states could make use of cooperative purchasing as a means of making procurement of commodities more efficient. The Appendix to this report, page 25, includes a summary of NASPO's 2007 survey of states' cooperative purchasing practices.

This review examines the types of cooperative purchasing, the legal authority for such in Mississippi, and the processes that control agencies such as the Department of Finance and Administration should implement to ensure that decisions to use cooperative purchasing are beneficial to the state and its citizens.

Method

In conducting this review PEER:

- interviewed personnel of the Department of Finance and Administration, other state agencies, and procurement personnel in other states;
- reviewed publications of the Government Accountability Office, the National Association of State Procurement Officials, and other sources; and,
- analyzed Mississippi state agency commodity procurements for FY 2007.

Background

Annually, state agencies expend large amounts of appropriated funds to purchase commodities. In FY 2007, Mississippi's state agencies expended \$594,981,989 on commodities.

A comprehensive purchasing law codified as MISS. CODE ANN. Section 31-7-1 et seq. (1972) governs state agencies' and governing authorities' (e. g., counties, school boards) purchases of commodities. This statute both defines commodities and sets out procedures for purchasing commodities. By statute, commodities include not only consumable items such as paper, pens, and cleaning materials, but also durable goods such as vehicles, furniture, and heavy equipment which, in terms of the state's budget process, are generally thought of as "equipment." While the statute sets out a general policy requiring procurement through competitive methods, several exceptions exist that are critical to the way state agencies and governing authorities procure their commodities.

For state agencies, the Department of Finance and Administration is responsible for overseeing the process by which state agencies make purchases of commodities. The department is responsible for setting purchasing policies and procedures under the authority of the provisions of law cited above. The department carries out these activities through the Office of Purchasing, Travel and Fleet Management. The term "agency" includes boards and commissions of state government as well as the institutions of higher learning. (See MISS. CODE ANN.

Section 31-7-1 [1972]; see also *Board of Trustees, Institutions of Higher Learning v. Peoples Bank of Mississippi*, 538 So 2d 361 [Miss, 1989].)

In recent years, questions have arisen as to whether state agencies could make use of cooperative purchasing arrangements and whether cooperative purchasing conforms to the requirements of the state's purchasing laws. The following section discusses not only legal issues regarding cooperative purchasing, but also the prudence of using cooperative purchasing as a means of acquiring commodities. To begin this analysis, it is necessary to define cooperative purchasing and how it differs from other forms of purchasing that governmental entities have used for many years.

Cooperative Purchasing: Its Types and Examples

PEER acknowledges as a principal source for this section the report *Strength in Numbers: An Introduction to Cooperative Purchasing*, National Association of State Procurement Officials, February 2006.

Cooperative purchasing is the sharing of procurement contracts between governments or, more precisely, procurement conducted by or on behalf of one or more units.

According to the American Bar Association's *Model Procurement Code*, "cooperative purchasing" is the sharing of procurement contracts between governments or, more precisely, the procurement conducted by or on behalf of one or more units. Cooperative purchasing generally occurs when two or more governmental units have a common need for the same type of commodity. Common items for cooperative purchasing include office supplies, furniture, copiers, laboratory supplies, and fleet vehicles.

Types of Cooperative Purchasing

NASPO recognizes three types of cooperative purchasing:

- true cooperatives;
- piggyback contracts; and,
- third-party aggregators.

Each is explained below.

True Cooperatives

A true cooperative consists of two or more governmental units that pool their resources to procure items.

A true cooperative consists of two or more governmental units that pool their resources to procure items. An example of a true cooperative is the Western States Contracting Alliance (WSCA), a purchasing alliance of states established by NASPO that brings together certain states to purchase goods from vendors. (For a more detailed explanation of this type of cooperative purchasing, see page 5 of this report.)

In true cooperatives, the participating jurisdictions work together to develop specifications for commodity items that meet their needs. Each participant, regardless of its size or location, may assist in the development of specifications. Through true cooperatives, participants can work together to meet a common need, which is

economical delivery of commodities. NASPO endorses this method of cooperative purchasing. The following describes a process used by WSCA to elicit guidance and participation from member states. WSCA is a particularly active true cooperative and this process is illustrative of how a true cooperative works.

In 1993, fifteen states from NASPO's western region established the Western States Contracting Alliance in order to achieve cost-effective and efficient acquisition of quality products and services through cooperative multi-state contracting.

These contracting initiatives resulted from an idea generated by WSCA for a particular solicitation. (See Exhibit 1, page 6, for a flow chart of the process for establishing a WSCA cooperative purchasing contract.) An informal survey is distributed to all member states to gather information about the potential solicitation. During the development of an initiative, a lead state has the responsibility of creating, completing, evaluating, awarding, and managing that initiative. The lead state develops a plan, including a budget, for approval by the alliance directors.

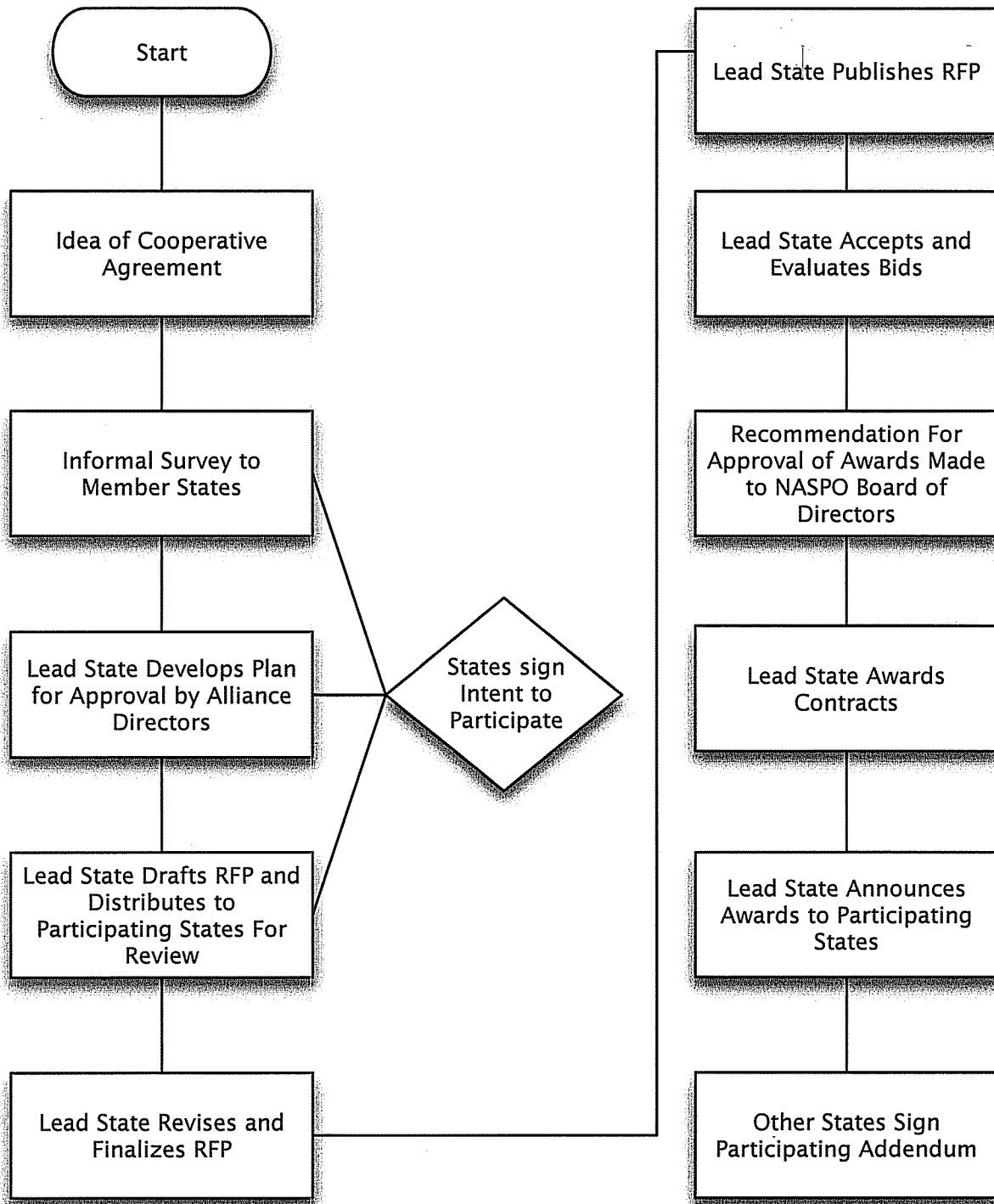
In 1993, fifteen states from NASPO's western region established the Western States Contracting Alliance in order to achieve cost-effective and efficient acquisition of quality products and services through cooperative multi-state contracting.

At some time between the informal survey and the final request for proposals (RFP), the lead state develops and sends an "Intent to Participate" form to all member states and other states interested in the contract. States that sign an "Intent to Participate" are not bound to the contract; however, that state's information is included in the solicitation.

The lead state develops a draft RFP and distributes it to all participating states for review. WSCA's approach to writing terms and conditions in the RFP for cooperative contracts includes: basic terms and conditions from the lead state, a set of "cooperative" terms and conditions that set cooperative use in place and define how it can be used, and as many unique terms and conditions from named potential participants as possible.

The lead state then publishes the RFP, accepts bids from potential vendors, and evaluates the bids. The final recommendation for approval of the actual award of contracts is made by the lead state to the National Association of State Procurement Officials' Board of Directors. The "master price agreements" are then executed by the lead state and then awarded to contractors. The lead state announces the contract award to all participating states.

Exhibit 1: Process for Establishing a WSCA Cooperative Purchasing Contract



SOURCE: PEER analysis of interviews regarding WSCA's process for establishing a contract.

Participating states must then complete a Participating Addendum, which applies only to the state or entity entering into the addendum. The Participating Addendum allows states to amend the terms and conditions of the master price agreement based on the needs of that state. The WSCA Cooperative Development Coordinator stated that typically the states that sign an “Intent to Participate” complete a Participating Addendum. (See Exhibit 1, page 6, for a pictorial representation of the process.)

Piggybacking

Under piggybacking arrangements, a governmental unit may make use of a commodities contract negotiated by another governmental unit.

Under piggybacking arrangements, a governmental unit may make use of a commodities contract negotiated by another governmental unit. Perhaps the best example of piggybacking is the United States General Services Administration’s multiple award purchasing contracts. Under these agreements, contractors selling commodities to the federal government agree to allow the states and local governments to procure them at the same price. Mississippi has piggybacked on a few contracts, as noted at page 10 of this report.

Third-Party Aggregators

Under the third-party aggregation form of purchasing, several governmental units join together to procure commodities using their buying power to obtain the best prices.

Under this form of purchasing, several governmental units join together to procure commodities using their buying power to obtain the best prices. Often the process is managed by an independent for-profit or not-for profit manager that enters into contracts for the benefit of the members.

In Mississippi, third-party aggregation has occurred for some time. Group purchasing has been an option for governmental entities such as hospitals as a means for procuring commodities. MISS. CODE ANN. Section 31-7-38 (1972) provides the following:

The board of trustees or governing board of any hospital or regional mental health center owned or owned and operated separately or jointly by the State of Mississippi or any of its branches, agencies, departments or subdivisions, or by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may authorize by resolution the organization and operation of, or the participation in, a group purchasing program with other hospitals or regional

mental health centers, for the purchase of supplies, commodities and equipment when it appears to the board of trustees or governing board that such a group purchasing program could or would affect economy or efficiency in their operations. Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies, commodities and equipment through such programs shall be exempt from the provisions of Sections 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13. The Mississippi Department of Mental Health shall develop and submit to the Chairmen of the Senate and House Appropriations Committees a report analyzing the savings and economic benefits of the group purchasing program authorized under this section for state hospitals or regional mental health centers compared to the purchasing procedures authorized prior to passage of Laws, 2001, Chapter 473. This section shall stand repealed on July 1, 2010.

Thus certain public health care institutions in the state may aggregate their buying power to obtain advantageous prices for their members. At first, this appears to be very similar if not identical to a true cooperative as defined above. One commentator has noted, however, that in the group purchase setting, decisions are made to make purchases that treat all members large or small, specialized or generalized, in their service strategies alike. Under cooperatives, members all play a role in devising specifications and may choose not to participate if they are not able to obtain the specifications they believe are necessary. Thus a distinction, albeit subtle, exists between the two types of purchasing. Additionally, group purchasing arrangements often require members to pay fees to participate in the group and may limit a member's authority to make purchases through sources other than the group.

State contracting is distinguishable from group purchasing because there is no independent party that is an aggregator of members. The contracts are simply developed for the use of all agencies if they choose to use the contract.

Similar to third-party aggregation is the process of state contracting. Under MISS. CODE ANN. Section 31-7-12 (1972), the Department of Finance and Administration can enter into contracts with commodities vendors for a wide variety of items. The department has some leverage in negotiating these contracts because of the likelihood of state agencies using the contracts. An agency that does not use a state contract for commodities would have to show that it could procure the same item for less from another vendor. State contracting is distinguishable from group purchasing because there is no independent party

that is an aggregator of members. The contracts are simply developed for the use of all agencies if they choose to use the contract.

In addition to the examples of third-party aggregation, the legal environment in Mississippi now permits the use of true cooperatives and piggybacking. The following discusses the changes in the legal environment and the uses of these forms of cooperative purchasing to date.

Cooperative Purchasing in Mississippi

The Legal Environment

Chapter 539, *Laws of 2003*, opened the door for individual Mississippi state agencies to seek out cooperative purchasing arrangements for their own use.

Through a combination of recent legislative enactments and interpretations of existing law regarding purchasing, the public purchasing environment in Mississippi has become ripe for true cooperative purchasing and piggybacking.

In 2003, the Mississippi Legislature enacted Chapter 539, *Laws of 2003*, to include the following in a list of exceptions to the bid requirement in CODE Section 31-7-13 (m) (xxix):

Purchases made pursuant to qualified cooperative purchasing agreements. Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

This provision opened the door for individual agencies to seek out cooperative purchasing arrangements for their own use.

In 2004, the Attorney General opined that the purpose of the above-cited language was to make it possible for state

agencies and governing authorities to enter into cooperative purchasing contracts with the consent of the Department of Finance and Administration without prior bidding and selection. (To qualify, the purchasing staff of the state agency or governing authority must be composed of at least fifty percent certified purchasing agents. A certified purchasing agent has a certificate from a nationally recognized purchasing organization such as the Universal Public Purchasing Certification Council.) (See *Attorney General's Opinion to Stringer*, January 30, 2004.)

The State of Mississippi and its local governing authorities may make use of cooperative purchasing whenever the Department of Finance and Administration determines that the procurement of commodities by cooperative contract enables the state to procure items at the price that is lowest and best.

In 2006, the Department of Finance and Administration sought additional guidance on the use of cooperative purchasing from the Attorney General, posing additional questions about whether the purchasing law authorizes the Department of Finance and Administration to enter into cooperative purchasing agreements. The Attorney General opined in *Opinion to Stringer*, May 5, 2006, that the purpose and public policy behind the state's purchasing laws is to ensure that state agencies are receiving the lowest and best prices on their purchases. In instances wherein the Department of Finance and Administration finds that this end is served by the use of cooperative purchasing agreements, it may adopt these agreements and make available their benefits to state agencies and local governments. The latter opinion makes clear that the Department of Finance and Administration may make use of contracts developed in other jurisdictions for providers of commodities, including large aggregators that pool sellers' resources to provide governmental purchasers with commodities.

Thus the State of Mississippi and its local governing authorities may make use of cooperative purchasing whenever the department determines that the procurement of commodities by cooperative contract enables the state to procure items at the price that is lowest and best.

Mississippi's Uses of Cooperative Purchasing

Mississippi's experience with cooperative purchasing to date has been largely limited to piggybacking contracts. In these cases, Mississippi has joined in contracts that were established by alliances located elsewhere. The following describes two of these contracts.

- *Minnesota Pharmaceutical-DFA* has a cooperative purchasing contract (effective May 1, 2007, through April 30, 2008) with Minnesota Multistate Contracting Alliance (MMCAP). This alliance includes a group of state agencies and political subdivisions, founded in 1988 as a group

purchasing organization, which contracts for pharmaceuticals for state agencies and other political subdivisions. The state of Minnesota serves as the lead state for the alliance and in this role establishes and maintains all MMCAP contracts. MMCAP is funded through the collection of an administration fee from the pharmaceutical manufacturers contracting with the alliance.

- *Grainger Contract with Western State Contract Alliance*--DFA has a cooperative purchasing contract (effective September 1, 2007, through August 31, 2008) with the Western States Contracting Alliance for industrial equipment and supplies.

In addition to these examples of piggybacking, the University of Mississippi Medical Center has relationships with two group purchasing organizations. The Department of Mental Health also uses group purchasing for food services. Effective September 1, 2007, the state contracted with U. S. Communities (Home Depot) as a provider of commodities to governments. This is a form of third-party aggregation, as it enlists the services of several providers who work with the aggregator in providing commodities to purchasers. At present, this contract for office supplies is supplemental to other contracts in force and effect and does not replace state contracts. This is different from a group purchasing contract, as the suppliers, not the customers, are aggregated to provide commodities to the state's customers.

Mississippi's experience with cooperative purchasing to date has been largely limited to piggybacking contracts.

The 2006 Attorney General's *Opinion to Stringer*, supra, opens the way for more extensive use of cooperative purchasing if the Department of Finance and Administration deems such to advance the purposes of the state's purchasing laws.

Because the state's purchasing laws advance a policy favoring the procurement of commodities at the lowest and best prices for the agencies and governing authorities of Mississippi, it is important for the Department of Finance and Administration to be aware of the potential benefits and harm that cooperative purchasing can bring to the state, to plan procurements to take advantage of benefits when they are available, and to avoid harm to local vendors when possible.

Achieving the Benefits of Cooperative Purchasing

As noted on page 2, governmental commentators have written about the potential benefits of cooperative purchasing. These commentators stress the method's capability to bring together many potential buyers, much like group purchasing, although in true cooperative purchasing the members play a proactive role in devising specifications for products.

Benefits of cooperative purchasing do not inure to the state automatically. Purchasing offices must carefully analyze the potential of cooperative contracts in comparison to contracts they negotiate themselves before considering the use of cooperative purchasing. This chapter contains a discussion of ways that the Department of Finance and Administration could improve its evaluative capability prior to considering cooperative purchasing.

The Department of Finance and Administration should have a systematic process for evaluating the benefits of cooperative purchase agreements.

In order for the state to reap the benefits of cooperative purchasing, the state must perform certain analytic functions to determine what is in the state's best economic interest before entering into such an agreement. These functions are:

- developing a systematic process for evaluating the benefits of a cooperative purchase agreement;
- using technology to improve the department's ability to analyze opportunities; and,
- considering external factors such as local preference laws and small business impact before entering into agreements.

In reviewing literature on cooperative purchasing and the current processes at the Department of Finance and Administration for contract evaluation, PEER concluded that the department should upgrade its capabilities in several areas before making extensive use of cooperative purchasing methods such as true cooperative and piggybacking.

The following sections contain discussions of the areas wherein improvement should be considered.

Developing a Systematic Process for Evaluating Cooperative Purchase Agreements

Presently, DFA evaluates all purchasing contracts; however, its evaluations vary based on the specific terms and conditions of each individual contract.

The Department of Finance and Administration varies in its methods for evaluating statewide competitive bids and negotiated contracts. Typically, the department awards contracts to the lowest bidder that meets the specifications of the request for proposals. For statewide competitive bids, vendors typically bid what is specified in the RFP. Sometimes, the Department of Finance and Administration issues multiple awards (e. g., categories of commodities) based on the lowest and best bids. For negotiated bids, DFA compares those proposals submitted by vendors that comply with the terms and conditions of the RFP with other proposals and contracts (e. g., the federal General Services Administration, whose terms [including price] are available to the states). DFA evaluates all contracts; however, its evaluations vary based on the specific terms and conditions of each individual contract. DFA includes general terms and conditions for all bids and adds other terms depending on the contract (e. g., delivery times).

At present, the Department of Finance and Administration's Office of Purchasing, Travel, and Fleet Management does not have an evaluation process that can enable the staff to decide whether a cooperative contract from another jurisdiction is more advantageous for the state than statewide competitive bid contracts or negotiated contracts or whether one cooperative contract is more advantageous than another; however, the office is in the beginning stages of establishing such a process.

Other states have devised a method for analyzing the potential for cooperative contracts. Arizona, for example, created a decision matrix for assessing cooperative contracts for state use. Arizona's evaluation process includes the following steps:

- determine the principles involved;
- conduct a price analysis;
- assess user needs;
- research cooperative contract availability;
- assess each contract's suitability;
- select a contract for possible usage. If there is more than one contract that might meet agency

needs, compare contracts with one another to determine the most likely candidate;

- assess Procurement Code compliance; and,
- make a recommendation to use or not use the cooperative contract.

NASPO has also provided considerations for states when using cooperative contracts. These are:

- Review the cooperative contract for conformance with state or local procurement laws and best practices.
- Analyze the product or service specifications, price, terms and conditions and other factors to ensure that the cooperative contract produces the best value.
- Contact the lead government to verify contract application and eligibility.
- Compare contracts if there are multiple contracts available for the required product or service.
- When buying large quantities, verify whether the contract permits negotiation of additional price concessions.
- If a purchase agreement is required, confer with legal counsel to determine whether the agreement is acceptable.

From the Arizona decision matrix and NASPO's considerations, PEER identified three key factors that should be considered when assessing cooperative contracts for state use:

- ensure conformance with state or local procurement laws and best practices;
- conduct an analysis of the product or service specifications, price, and terms and conditions to ensure that the contract produces the best value; and,
- compare contracts if there are multiple contracts available.

The following sections contain discussions of these three key factors in more detail.

Conformance with Laws and Best Practices

In considering a cooperative contract, the bidding process (from solicitation to award) utilized by the lead state must meet the standards that would be required in Mississippi.

An essential step to evaluating any cooperative contract is to ensure that the contract conforms to state or local procurement laws. The bidding process (from solicitation to award) utilized by the lead state of the cooperative contract being considered must meet the standards that would be required in Mississippi. MISS. CODE ANN. Section 31-7-13 (1972) sets forth the requirements that a cooperative contract must meet. NASPO suggests that a decision to enter into a cooperative agreement requires legal assistance to ensure that all purchasing requirements will be met.

Analysis of Specifications, Price, and Terms and Conditions

Mississippi should not assume that a cooperative agreement provides a better value than other contracts. The Office of Purchasing, Travel, and Fleet Management should conduct a thorough analysis of the contract specifications, the price, and terms and conditions. As mentioned previously, for statewide competitively bid contracts and non-exclusive negotiated contracts, the Office of Purchasing, Travel and Fleet Management currently does analyze contract specifications, price, and terms and conditions, resulting in a contract awarded to the vendor(s) with the lowest/best bid or a competitive bid that meets the specifications identified in the RFP for state contracts bid and negotiated. However, the office does not do this for cooperative contracts. DFA should consider the following in its evaluation of cooperative contracts for state use.

Product or Service Specifications

According to NASPO, the most successful cooperative purchases have generic-type products or items that will satisfy users' needs and states should accurately quantify needs to result in better pricing.

NASPO states that the most successful cooperative purchases have generic-type products or items that will satisfy users' needs. If Mississippi's state agencies have unique needs in terms of commodities that are not commonly available or if the agencies are unlikely to be satisfied with a generic product that other states purchase, then a cooperative purchase might not be the best option.

NASPO also suggests that states should accurately quantify needs to result in better pricing. Bidders for multi-state solicitations do not have as accurate an idea of volume as local bidders on state contracts. The more accurate the lead state can be in providing estimates or guaranteed quantities, the better the pricing might be.

Mississippi's current system cannot provide information such as the number of units and dollar value of procurements for all state agencies and governing authorities combined.

Mississippi's current system cannot, with reasonable certainty, provide such essential information as the number of units and dollar value of procurements for commodities for all state agencies and governing authorities combined. Currently, Mississippi agencies utilize the Statewide Automated Accounting System (SAAS), but the individual institutions of higher learning and community and junior colleges are not required by law to enter information into SAAS. See page 19 for a discussion of how Mississippi's new WebProcure system is expected to provide for a better analysis of state agencies' needs.

Price

One reason cooperative contracts should be used is to obtain better pricing than competitively bid or negotiated contracts. NASPO asserts that in most instances, cooperative purchases should result in better pricing. Some states are able to obtain the best price on their own and therefore, a cooperative contract would not be needed.

The evaluation of a cooperative contract for state use should consider any fee for purchases made through the contract and identify what services the fee covers.

Another pricing consideration is the fee paid for purchases made through a cooperative contract. Because lead states of cooperative programs spend time and money soliciting, evaluating, and awarding bids, overhead for these programs must be compensated. In some cases, participating states pay fees to the lead state. In other cases, vendors pay the fees from their profits. Piggybacking typically does not involve fees. The evaluation of cooperative contracts for state use should consider these fees and identify what services the fee covers.

The Arizona model incorporates a pricing analysis to assess whether the pricing is best value. The model suggests usage reports or market-based analyses to determine whether pricing is advantageous to the state.

Terms and Conditions

The terms and conditions of a cooperative contract might determine its suitability for the state. Arizona's model considers the following questions regarding terms and conditions that affect the contract's utility:

- Do the terms and conditions meet Arizona state requirements for insurance?

- Is risk management adequately and legally addressed (e. g., bonds, bid, payment, performance)?
- Does the contract allow for subscribers to supplant the terms and conditions with their own?

In cooperative purchasing contracts such as those of WSCA, participating states are allowed to establish terms and conditions based on the states' individual needs. The Director of the Department of Finance and Administration's Office of Purchasing, Travel, and Fleet Management stated that the following are terms and conditions that would be preferable for Mississippi:

- The contract should not place caps or minimums on amounts to purchase.
- The state should have the option to discontinue the contract at any time if the contract is not benefiting the state.
- For contracts that include rebates, institutions of higher learning should receive rebates, while other state agencies should receive better discounts up front. The rationale for this condition is based on the fact that many state agencies cannot utilize rebates because that money would in turn be deposited into the general fund. To the extent that institutions of higher learning are receiving rebates for purchasing made from self-generated or other non-general funds, PEER staff would not disagree.

Comparison of Contracts

For those cooperative contracts that conform to state law, the state should compare each contract's specifications, pricing, and terms and conditions to determine the best fit for the state.

It is understandable that the department has not implemented these evaluation practices in view of the fact that it was only last year that the Attorney General opined that the department has the authority to use true cooperative purchasing approaches for the procurement of commodities.

Using Technology to Help Achieve the Benefits of Cooperative Purchasing

As mentioned previously, Mississippi's information systems cannot, with reasonable certainty, provide such essential information as the number of units and dollar value of procurements for commodities for all state agencies. Currently, Mississippi utilizes the Statewide Automated Accounting System and individual institutions of higher learning and community and junior colleges are not required by law to enter information into SAAS.

The Department of Finance and Administration needs accurate information regarding the number of units of a commodity procured on an annual basis, as well as the amounts expended for these items, to determine unit costs.

To assist in making procurement decisions most beneficial to the state, the Department of Finance and Administration needs accurate information regarding the number of units of a commodity procured on an annual basis, as well as the amounts expended for these items, to determine unit costs. This could be used in determining how much costs are under current state contracts versus how much they would be under a cooperative contract.

While the department requires vendors to provide information regarding the sales they make to agencies, this system is problematic because of the potential for misreporting. Vendors could benefit financially by underreporting quantities in order to raise prices. Also, DFA does not collect this information from institutions of higher learning and community and junior colleges.

Under law, it is clear that the department has the authority to upgrade its capacity in this important area. MISS. CODE ANN. Section 31-7-7 (1972) requires the Department of Finance and Administration to plan and coordinate purchases in volume for the agencies in order to take advantage of and secure the economies possible by volume purchasing.

Additionally, it is prudent to acquire this kind of information to assist in the purchasing process. A 2007 report produced by the U. S. Government Accountability Office on the District of Columbia's procurement system indicated that office's prior work on procurement shows that leading companies use procurement and financial management systems to collect and analyze information so that opportunities can be identified to save money, measure compliance and performance, and manage service providers.

While the weaknesses cited above would greatly impair the department's ability to analyze agency needs critical to making rational decisions for cooperative purchasing, recent changes at the Department of Finance and Administration herald the possibility that the department will soon correct these deficiencies.

In 2005, Mississippi awarded an e-procurement contract to Tier Technologies, a provider of transaction processing and packaged software for public sector clients. It was awarded as a phased-in implementation of a General Purchasing System with e-procurement capabilities, including integration with SAAS.

WebProcure is expected to automate the procurement process of DFA's Office of Purchasing, Travel, and Fleet Management.

WebProcure, Tier's e-procurement solution, is expected to automate the procurement process of DFA's Office of Purchasing, Travel, and Fleet Management, including the electronic creation, publication, tabulation, and maintenance of bids and contracts and the presentation of state term contracts in electronic catalogs.

According to the Mississippi Management and Reporting System, with WebProcure, state buyers will be able to access contracts of the Office of Purchasing, Travel, and Fleet Management. Buyers will be able to search for items using key words, sort results using multiple criteria, click on an item to see detailed item descriptions and images, and click to send an e-mail or fax message directly to a vendor. To request an item, a purchaser will simply enter a quantity needed and complete the request by clicking on "submit." WebProcure will then route the order for electronic review and approvals. After all approvals have been received, WebProcure will create individual purchase orders for each vendor and delivery location included on the request. Purchase orders will then be electronically dispatched to each vendor.

WebProcure should be able to generate reports that show how many units of any particular commodity were sold and total dollar amounts of purchases for each contract (vendor).

With WebProcure, the Office of Purchasing, Travel and Fleet Management will be able to generate reports that show how many units of any particular commodity were sold and total dollar amounts of purchases for each contract (vendor). This information could be instrumental in obtaining savings when purchasing commodities.

Potentially, DFA will be able to plan more effectively and coordinate purchases for agencies in order to take advantage of and secure the economies made possible by volume purchasing.

Considering External Factors Before Entering Agreements

The above-discussed areas are devoted to suggestions for adjustments within the Department of Finance and Administration that would assist in making beneficial cooperative purchasing decisions. In addition to internal improvements, external factors such as small/local business considerations, preference laws, and potential loss of group purchasing power could affect decisions regarding use of out-of-state cooperative contracts.

Small Business/Local Business Considerations

In FY 2007, state agencies paid \$360,186,352 for commodities.

Local businesses often sell to governments and are able to participate in governmental purchasing under the current environment. Exhibit 2, page 21, shows by county the amount of FY 2007 funds paid by state agencies (and their local offices or branches) in those counties for commodities to businesses with Mississippi mailing addresses. This exhibit shows that in FY 2007, state agencies paid \$360,186,352 for commodities from vendors with Mississippi addresses. This is evidence of the considerable impact that the purchase of state agency commodities can have on local economies. As states move to large regionally based contracts, the potential for local small businesses to participate could diminish.

Any ill effect cooperative agreements might have on small businesses could be ameliorated if contracts made some provision for local participation.

Recently, Congress's Government Accountability Office evaluated federal cooperative purchasing efforts, including consideration of these efforts' impact on small and local businesses. Traditionally, federal agencies have procured some products from local vendors. The GAO report makes clear that impact on local businesses could be an issue in cooperative purchasing, but GAO was not clear as to whether local vendors would be helped or injured by cooperative purchasing because local businesses lined up on both sides of the issue. (See *Cooperative Purchasing: Effects Are Likely to Vary Among Governments and Businesses*, Government Accountability Office, February 2007).

PEER notes that the ill effect on small businesses could be ameliorated if contracts entered into made some provision for local participation.

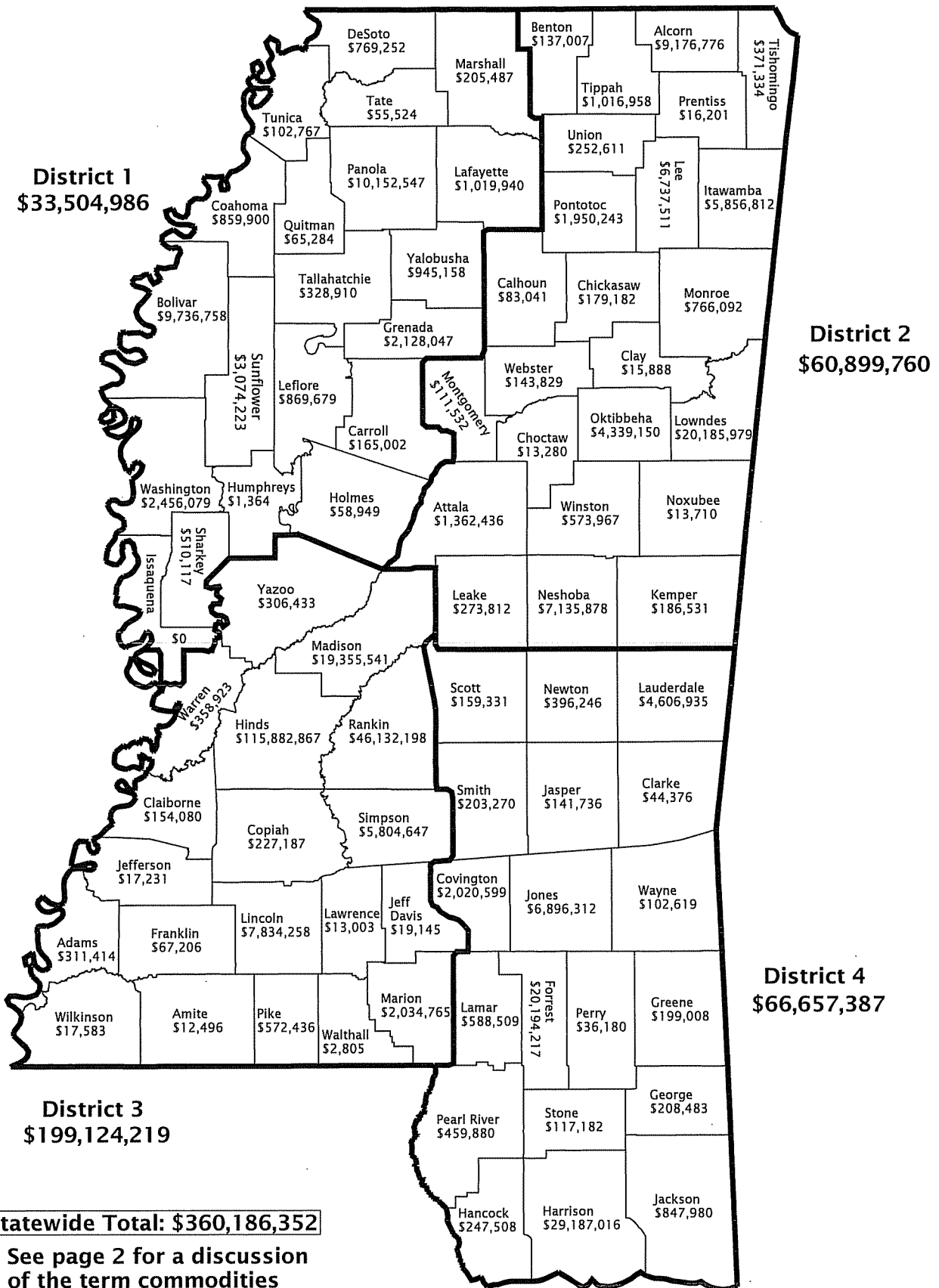
Preference Laws

Related to the above discussion of the small business/local business issue is the issue of local preference laws. MISS. CODE ANN. Section 31-7-15 (1972) provides:

(1) Whenever two (2) or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities grown, processed or manufactured within this state shall be given preference. A similar preference shall be given to commodities

Exhibit 2

Mississippi Department of Finance and Administration
 FY 2007 State Agency Commodity Expenditures by DFA Purchasing District *



* See page 2 for a discussion of the term commodities

SOURCE: DFA SAAS Records

grown, processed or manufactured within this state whenever purchases are made without competitive bids, and when practical the Department of Finance and Administration may by regulation establish reasonable preferential policies for other commodities, giving preference to resident suppliers of this state.

(2) Any foreign manufacturing company with a factory in the state and with over fifty (50) employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(3) On or before January 1, 1991, the Department of Finance and Administration shall adopt bid and product specifications to be utilized by all state agencies that encourage the procurement of commodities made from recovered materials. Preference in awarding contracts for commodities shall be given to commodities offered at a competitive price.

.....

(5) Whenever economically feasible, each state agency is required to purchase products manufactured or sold by the Mississippi Industries for the Blind.

CODE Section 31-7-15 directs the state to make purchases from local businesses when economical and also to make similar efforts to purchase from the Mississippi Industries for the Blind.

This CODE section directs the state to make purchases from local businesses when economical and also to make similar efforts to purchase from the Mississippi Industries for the Blind. While obviously not a bar to the use of out-of-state cooperative purchasing contracts, it would appear that the Department of Finance and Administration would need to consider this preference provision when making assessments of the economy of cooperative purchasing.

Potential Loss of Group Purchasing Power

As noted previously, state law gives state agencies with certified purchasing offices (see page 9) the authority to enter into cooperative contracts with the approval of the Department of Finance and Administration. Agencies seeking this authority must meet the legal criteria provided in MISS. CODE ANN. Section 31-7-13 (m) (xxix) (1972) to be a certified purchasing office. Additionally, a

2006 Attorney General's opinion makes clear that the Department of Finance and Administration has the authority to enter into true cooperative purchasing agreements (as well as piggybacking agreements). PEER notes that in any case in which an agency seeks a cooperative contract on its own for any item, it diminishes the benefits the Department of Finance and Administration could bring to the state from entering into a cooperative purchasing agreement.

Recommendations

The Department of Finance and Administration should proceed with its e-purchasing program to obtain more detailed information regarding purchases made by state agencies. Such information should be used to analyze the benefits of any cooperative contract prior to entering into such a contract.

The department should implement a formal evaluation system that would include:

- ensuring conformance with state or local procurement laws and best practices;
- analyzing the product or service specifications, price, and terms and conditions to ensure that the contract produces the best value;
- comparing contracts if there are multiple contracts available; and,
- implementing its electronic or e-procurement system to assist in the analytic processes described above by July 1, 2008.

Additionally, because of the considerable expenditure of state dollars on local vendors, the department should make all reasonable efforts to ensure that local vendors will be able to participate in cooperative purchasing contracts. As an example, when purchasing office supplies such as paper, it would be beneficial if efforts could be made to insure that the cooperative provider includes local firms so that they could continue to receive some benefit from state business.

The department should also consider adopting any necessary restriction on agencies' use of cooperative purchase agreements authorized under the authority of MISS. CODE ANN. Section 31-7-13 (m) (xxix) (1972) if they impair the economy and efficiency of the department's procurement efforts. In the event that the department believes that legislation should be adopted to address this matter, it should recommend such. The department should also consider the possibility of establishing incentives to encourage local governments to participate in the state's group purchasing agreements.

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State	No Yes	NR Yes	NR Yes	NR Yes	NR Yes	NR	NR No
Alabama							
Alaska						Industrial supplies & equipment, metered mail equipment, hospital supplies, laboratory supplies & equipment, pharmaceutical products, hazardous incident response equipment, and computers	
Arizona	Yes	Yes	Yes	Yes	Yes	Wireless mail equipment	No
Arkansas	Yes	Yes	Yes	Yes	NR	Computer monitors, wireless servers, routers, etc.; furniture, office and school supplies	Yes

SOURCE: PEER analysis of information obtained from the National Association of State Procurement Officials 2007 Survey

*Forty-two states responded to the NASPO survey.

**NR=no response provided to the survey.

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State	Yes	Yes	NR	Yes	Yes	For more information see www.pd.dgs.ca.gov/cmas/contracts.htm	No
California							
Colorado	Yes	Yes	Yes	Yes	Yes	Computers, wireless, data com, pharmaceutical, public safety equip., lab supplies	No
Connecticut	Yes	Yes	Yes	Yes	Yes	Traffic cones, art and instructional supplies, road paint	No
Delaware	Yes	NR	NR	Yes	NR	Bulk road salt	No
Florida	No	NR	NR	NR	NR	NR	No
Hawaii	Yes	Yes	Yes	Yes	Yes	Computers, data communication, cellular phones, industrial supplies, mailroom equipment, quick copy printing, infant formula, pharmaceuticals & supplies, small package delivery	No

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State	Yes	Yes	Yes	Yes	Yes	Personal computers, lab supplies, wireless phones, vehicle lifts, and radios	Yes
Idaho							
Illinois	Yes	Yes	Yes	Yes	Yes	N/A	No
Indiana***	Yes	NR	NR	NR	NR	NR	NR
Iowa	Yes	Yes	Yes	Yes	Yes	PCs, printing, office supplies, mail machines.	Yes
Kansas	Yes	Yes	Yes	Yes	Yes	Computers, AV equipment, industrial supplies	No

*** Indiana did not respond to all of the NASPO survey questions.

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State	Yes	Yes	NR	Yes	NR	Microcomputers, pharmaceuticals	NR
Louisiana	Yes	Yes	Yes	Yes	Yes	Emergency supplies and services, Information technology equipment, school supplies, software and traffic cones	No
Massachusetts	Yes	Yes	Yes	Yes	Yes	Pharmaceuticals	No
Michigan	Yes	Yes	Yes	Yes	Yes		No

Appendix A
Cooperative Purchasing In The States

State	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states, using most WSCA# contracts	Does the state purchase from any private purchasing consortium?
Minnesota	Yes	Yes	Yes	Yes	Yes	Pharmaceuticals; using most WSCA# contracts	NR
Mississippi	Yes	Yes	Yes	Yes	NR	Drugs, industrial equipment and supplies	No
Missouri	Yes	Yes	Yes	Yes	Yes	Pharmaceuticals, vehicle lifts	No
Montana	Yes	Yes	Yes	Yes	Yes	Computer equipment, police equipment, industrial supplies, package delivery services, radio equipment, mailing equipment, electronic monitoring services.	No
Nevada	Yes	Yes	Yes	Yes	Yes	Furniture, cell phones, industrial supplies, computers	No
New Hampshire	Yes	NR	NR	Yes	Yes	NR	No

#WSCA=Western States Contracting Alliance. See report for explanation.

Appendix A
Cooperative Purchasing In The States

State	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
New Mexico	Yes	Yes	Yes	Yes	Yes	Industrial supplies, computers	No
New York	Yes	Yes	Yes	Yes	Yes	software catalog	No
North Carolina	Yes	Yes	NR	Yes	Yes	Prescription drugs, child nutrition, electronic benefit transfer processing, and others	Yes
North Dakota	Yes	Yes	Yes	NR	NR	NR	No
Ohio	Yes	Yes	NR	NR	NR	NR	No
Oklahoma	Yes	Yes	Yes	Yes	Yes	NR	No
Oregon	Yes	Yes	Yes	Yes	Yes	NR	No
Pennsylvania##	Yes	NR	NR	NR	NR	NR	NR
South Carolina	Yes	Yes	Yes	Yes	NR	Pharmaceuticals, medical supplies, and computers	No

##Pennsylvania did not respond to all of the NASPO survey questions.

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State							
South Dakota	Yes	Yes	NR	Yes	Yes	Computers, peripherals and printers; defibrillators (automated external); hazardous incidence response equipment; industrial supplies; laboratory equipment and supplies; mailroom equipment; public safety communications; small package delivery services; and vehicle lifts	No
Tennessee	Yes	Yes	Yes	Yes	Yes	Office supplies	No
Texas	Yes	Yes	Yes	NR	Yes	Office Supplies	No
Utah	Yes	Yes	Yes	Yes	NR	NR	No

Appendix A
Cooperative Purchasing In The States

	Does your state have authority for any cooperative purchasing?	Local governments within the state	Other local governments outside the state	Other state governments	The federal government	Please list the commodities and/or services you have purchased in cooperative agreements with other states.	Does the state purchase from any private purchasing consortium?
State Vermont	Yes	Yes	NR	Yes	Yes	Pharmaceuticals, computers, data communications equipment, wireless communications equipment and supplies, mailroom equipment, infant formula, public safety radio equipment, small package delivery services, vehicle lifts, computer paper	NR
Virginia	Yes	Yes	Yes	Yes	Yes	NR	No
Washington	Yes	Yes	Yes	Yes	Yes	Emergency preparedness equipment	No
West Virginia	Yes	Yes	Yes	Yes	Yes	See WSCA contracts	No
Wyoming	Yes	Yes	NR	Yes	Yes	Computer hardware, pharmaceuticals	No

Agency Response

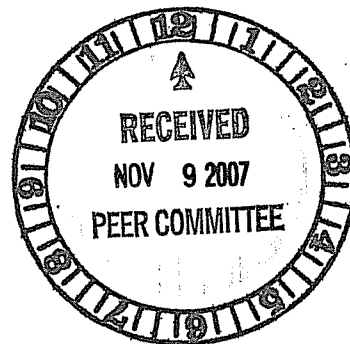


STATE OF MISSISSIPPI
HALEY BARBOUR, GOVERNOR

DEPARTMENT OF FINANCE AND ADMINISTRATION
J.K. STRINGER, JR.
EXECUTIVE DIRECTOR

November 9, 2007

Dr. Max Arinder, Executive Director
PEER Committee
501 North West Street
Woolfolk Building, 3rd Floor
Jackson, MS 39201



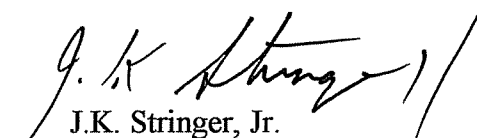
Dear Dr. Arinder:

This letter is in response to your Performance Review of the use of Cooperative Purchasing contracts for the State. We appreciate the opportunity to review the draft and believe the report, and the process of the review, to be an opportunity to promote efficiency and effectiveness in state procurement.

Be assured the DFA staff will review all recommendations and give consideration to each and will seek to implement them in the best interest of the State.

The Department of Finance and Administration appreciates the PEER Committee and its staff associated with this effort. We are ready to cooperate with any future endeavors between the DFA and the PEER Committee and staff. Again I thank you for your efforts in this matter.

Sincerely,


J.K. Stringer, Jr.
Executive Director

PEER Committee Staff

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James Barber, Deputy Director
Ted Booth, General Counsel

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