

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

Report to
the Mississippi Legislature



A Review of Mississippi Delta Community College's Processes for Procuring Leases and Personal Services

In early 2012, after anonymous sources had circulated a document alleging possible mismanagement of Mississippi Delta Community College (MDCC), several legislators requested that PEER investigate the allegations. PEER focused this review on whether the processes by which MDCC procures personal services and leases could be easily exploited to achieve ends not necessarily in the best interest of the college, its students, or the general public.

PEER found that in recent years, MDCC has not consistently used open and competitive processes when seeking to lease property for its branch facilities. In instances in which the college did use a competitive process, there were weaknesses in the process related to the development of specifications and the analysis of proposals.

Also, MDCC's procurement process for personal services from FY 2007 through FY 2012 did not comport with best practices and as a result, the college cannot ensure open competition for its personal services contracts and cannot justify some of its large contract decisions. Additionally, contracting is highly decentralized at MDCC, leaving different staff members or offices with discretion to follow such practices as they consider appropriate.

PEER recommends that MDCC adopt formal policies that address competitive selection of leases and personal services contracts, staff analysis of competitive proposals, a requirement for written contracts, and maintaining electronic records of contracts in a central location.

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and one Representative appointed from each of the U. S. Congressional Districts and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

PEER Committee
Post Office Box 1204
Jackson, MS 39215-1204

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) <http://www.peer.state.ms.us>

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
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JESSICA SIBLEY UPSHAW

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

Post Office Box 1204
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph. D.
Executive Director

www.peer.state.ms.us

OFFICES:
Woolfolk Building, Suite 301-A
501 North West Street
Jackson, Mississippi 39201

September 11, 2012

Honorable Phil Bryant, Governor
Honorable Tate Reeves, Lieutenant Governor
Honorable Philip Gunn, Speaker of the House
Members of the Mississippi State Legislature

On September 11, 2012, the PEER Committee authorized release of the report entitled **A Review of Mississippi Delta Community College's Processes for Procuring Leases and Personal Services.**

A handwritten signature in black ink, appearing to read "Gary Jackson", with a long horizontal flourish extending to the right.

Senator Gary Jackson, Chair

This report does not recommend increased funding or additional staff.

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A Review of Mississippi Delta Community College’s Processes for Procuring Leases and Personal Services

Executive Summary

Introduction

On May 2, 2012, PEER received a complaint from two legislators (later joined by eight more) regarding allegations that had been made to them of possible mismanagement of Mississippi Delta Community College (MDCC) in Moorhead. Attached to the complaint was a “Document of Concern,” which contained excerpts of alleged conversations involving the board members and selected staff of MDCC. Much of what was contained in the document was of a derogatory nature, containing racial slurs and innuendo.

At the heart of the concerns were allegations that the board of the community college or certain individuals might have used resources for purposes that might not be in the best interests of the college, its students, or the public at large.

PEER notes the difficulty of determining whether many of the comments in the Document of Concern, derogatory and otherwise, were actually made and if so, whether writing about them would be the proper subject for legislative oversight. Consequently, this review did not focus on racial epithets, personal management styles, or allegations of individual wrongdoing that might better be addressed through courts of law or before administrative bodies, but focused on whether the process by which MDCC procures personal services and leases could be easily exploited to achieve ends not necessarily in the best interest of the college, its students, or the general public.

Background

Legal Status of Community Colleges

Community colleges in Mississippi are not state agencies and are not bound by the regulatory restrictions imposed on state agencies. MISS. CODE ANN. Section 37-4-1 (k) (1972), which makes a declaration of policy regarding the state’s community colleges and the Mississippi Community

College Board, makes clear the community colleges' relationship to state laws that regulate state agencies. Specifically, this provision states:

The Legislature finds and determines that the social, cultural and economic well-being of the people of Mississippi, and hence the state, are enhanced by various educational experiences beyond the elementary and secondary school years. The Legislature hereby provides a means for the continuation of a system of community and junior colleges and declares the following to be the policy of the State of Mississippi:

...

(k) Community and junior colleges shall be considered agencies of local government rather than agencies of the state.

Consequently, regulations imposed on state agencies to ensure the openness and competitiveness of their contracting processes do not apply to community colleges.

Additionally, while the Mississippi Community College Board, created by MISS. CODE ANN. Section 37-4-3 (1972), exists to oversee the movement of state and federal funds to the community colleges and to approve the creation of branches and vocational programs, general governance is not a responsibility of that board. Therefore, the community colleges, their boards, and their staffs are accountable to the local appointing authorities (i. e., county boards of supervisors) rather than to the state. Any additional accountability for a community college would have to be the subject of general law adopted through the legislative processes.

Sources of Best Practices for Procurement by Community Colleges

In the absence of mandated standards, PEER reviewed MDCC's contracting and leasing processes in light of what it considered to be the best practices for contracting and leasing processes for a public body. PEER derived these "best practices" from those competitive processes required of state agencies and contracting practices recommended by the American Bar Association in its *Model Procurement Code for State and Local Governments*.

By using these best practices as criteria, PEER is not proposing that community colleges should be made subject to state regulation. However, these best practices, if followed, would help to ensure a degree of openness and competitiveness that all public bodies should have when using taxpayer funds.

Conclusions Regarding Mississippi Delta Community College's Leasing Practices

In recent years, MDCC has not consistently used open and competitive processes when seeking to lease property for its branch facilities. In instances in which the college did use a competitive process, there were weaknesses in the process related to the development of specifications and the analysis of proposals.

Currently, Mississippi Delta Community College is a party to three leases--two by which the college leases property to use for branch campus facilities in Drew and Greenwood (i.e., MDCC as lessee of facilities) and one by which the college leases excess land to an agricultural concern in Greenville (i. e., MDCC as lessor of land).

PEER reviewed the methods by which these leases were entered into to determine how open and competitive MDCC was in its practices. For best practices in leasing, PEER looked to standards in state law and regulations that would have controlled the processes of leasing if MDCC were a state agency under the oversight of the Department of Finance and Administration (DFA).

Generally, DFA's policies require that agencies publish notice to potential lessors, seek out potential lessors, obtain proposals, evaluate the proposals after their receipt, and apprise the Division of Real Property Management of the top two proposals so that the division can review the proposals and select the one that it believes will best serve the interests of the agency.

MDCC's Leasing of Facilities in Drew and Greenwood (i. e., MDCC as Lessee of the Facilities)

Regarding MDCC's lease of the branch facility in Drew, PEER found no evidence of a competitive process being used to select the facility. The MDCC Board's minutes mention discussions or consideration of other sites, but no mention is made of actual proposals other than the successful proposal from Drew Enterprises.

Regarding the Greenwood lease, the college did utilize a competitive process for the selection of the leased facility. This included publication and the receipt of proposals. However, MDCC staff did not conduct a documented analysis of proposals, including a ranking of the proposals, and neither the minutes nor any other MDCC records express a clear basis for the board's action.

Board and Staff Members Related to an Offeror

The Document of Concern raises the possibility of a conflict of interest regarding the members of the Abraham family and its involvement in the leasing of the Greenwood facility.

PEER notes that Sam Abraham, a member of the board of trustees, and Magdalene Abraham, an MDCC staff person, are siblings of Lee Abraham, who is President of Mercantile, Inc., the current lessor of the Greenwood branch facility.

The attorney for the MDCC Board sought and received on November 4, 2011, an Ethics Commission opinion regarding the participation of persons related to a lease offeror in the lease selection process of a community college. The commission opined that a foundation member is not subject to the Ethics in Government Law and that no violation of MISS. CODE ANN. Section 25-4-105 (1) (1972) should occur if the college trustee and the employee fully recuse themselves from any matter that would result in a pecuniary benefit for their financially independent siblings.

Based on a review of MDCC's minutes, the Ethics Commission opinion, and other documents, PEER cannot conclude that members of the Abraham family involved in MDCC administration have engaged in wrongdoing.

MDCC's Leasing of Land in Greenville (i. e., MDCC as Lessor of the Land)

PEER believes that MDCC has leased excess land at its Greenville campus in a competitive manner. The college periodically publishes an invitation for interested parties to file proposals on the property. The college plans to develop the land for educational purposes in the future.

Conclusions Regarding Mississippi Delta Community College's Personal Services Contracting Practices

MDCC's procurement process for personal services from FY 2007 through FY 2012 did not comport with best practices and as a result, the college cannot ensure open competition for its personal services contracts and cannot justify some of its large contract decisions. Additionally, contracting is highly decentralized at MDCC, leaving different staff members or offices with discretion to follow such practices as they consider appropriate.

In evaluating the process MDCC has used to procure contractors, PEER utilized the standards that Mississippi's state agencies would follow for procuring contractors and treated such as "best practices." PEER also considers the American Bar Association's *Model Procurement Code for State and Local Governments* as best practices for public bodies procuring personal services contracts.

The state's Personal Service Contract Review Board (PSCRB) requires state agencies to employ competitive practices to obtain personal services contracts. For such

procurements, the higher the dollar value of the proposed contract, the stricter the PSCRB's requirements are regarding solicitation of potential contractors, evaluation of proposals, and documentation of the agency's efforts. The *Model Procurement Code* establishes principles for government procurement that emphasize fair and open competition, which reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.

PEER found that from FY 2007 through FY 2012, MDCC did not use competitive processes in awarding several personal services contracts of \$50,000 or more. For these contracts, the college either solicited a single bid, retained a previous vendor, or negotiated for bids. For contracts for the amounts these contracts represented, the PSCRB would have required a state agency to obtain competitive quotes from three vendors.

MDCC's practices result from the lack of a formal, written board policy mandating that the college use competitive procurement processes and operate in accordance with specifically set dollar thresholds for procurements. When entities such as community colleges do not exercise open and competitive procurement practices, they leave themselves open to criticism that favoritism is the basis for awarding personal services contracts.

PEER also found that from FY 2011 through FY 2012,¹ MDCC paid \$282,200 for personal services without establishing written contracts with defined deliverables and specified payment amounts.

Also, MDCC does not keep copies of all personal services contracts in a central location; thus, neither MDCC Business Office staff nor an independent third party such as PEER can efficiently locate and review contracts for analysis.

Recommendation

MDCC should adopt formal personal services and leasing policies that:

- require competitive selection of all leases;
- require competitive selection of all personal services contracts, at least in instances wherein the value of the contract exceeds \$50,000;
- require that staff analysis of all competitive proposals be conducted in accordance with specifications based on a clear, unambiguous standard(s) of need that

¹ Records were available only for October 1, 2010, through June 30, 2011, for FY 2011 and July 1, 2011, through May 31, 2012, for FY 2012.

contain measurable contract specifications that inform competitors of the weight to be given to each element of the specifications;

- require written contracts from professional or educational personnel, consultants, and other persons whose service is a report or a professional service; and,
- maintain electronic records of all contracts in a central location under the direction of the business manager. Under such a system, copies of all contracts, bid specifications and responses, and other records of negotiation would be scanned and kept in the central electronic database, thereby allowing individual managers to refer to original contracts and documents.

For More Information or Clarification, Contact:

PEER Committee
P.O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
<http://www.peer.state.ms.us>

Senator Gary Jackson, Chair
Weir, MS

Representative Ray Rogers, Vice Chair
Pearl, MS

Representative Margaret Rogers, Secretary
New Albany, MS

A Review of Mississippi Delta Community College's Processes for Procuring Leases and Personal Services

Introduction

Authority

PEER conducted this review of Mississippi Delta Community College's processes for procuring leases and personal services pursuant to the authority granted by MISS. CODE ANN. Section 5-3-51 et seq. (1972).

While Mississippi Delta Community College is not a "state agency" (see page 3), the PEER Committee has authority to review agencies of local government in accordance with the broad authority granted by MISS. CODE ANN. Section 5-3-51 et seq. (1972). PEER has authority to review "agencies," which by the definition found in CODE Section 5-3-53 (b) embraces agencies of local government.

Problem Statement

On May 2, 2012, PEER received a complaint from two legislators (later joined by eight more) regarding allegations that had been made to them of possible mismanagement of Mississippi Delta Community College (MDCC). Attached to the complaint was a "Document of Concern," which contained excerpts of alleged conversations involving the board members and selected staff of MDCC. Much of what was contained in the document was of a derogatory nature, containing racial slurs and innuendo.

At the heart of the concerns were allegations that the board of the community college or certain individuals might have used resources for purposes that might not be in the best interests of the college, its students, or the public at large. Additionally, the Document of Concern suggested that a recent real estate lease involving the brother of a board member constituted a conflict of interest.

PEER notes the difficulty of determining whether many of the comments in the Document of Concern, derogatory and otherwise, were actually made and if so, whether

writing about them would be the proper subject for legislative oversight. Consequently, this review did not focus on racial epithets, personal management styles, or allegations of individual wrongdoing that might better be addressed through courts of law or before administrative bodies, but focused on whether the process by which MDCC procures personal services and leases could be easily exploited to achieve ends not necessarily in the best interest of the college, its students, or the general public.

Regarding the potential conflict of interest mentioned in the Document of Concern, the PEER Committee complied with Committee Rule 1.55, which requires that such complaints be directed to the Mississippi Ethics Commission.

Scope and Purpose

In view of the fact that state law is generally silent on the subjects of local service contracts and leases, PEER sought to determine whether Mississippi Delta Community College has utilized processes for leasing and personal services contracting that are at least as open and competitive as those utilized by state agencies, as such could provide safeguards against a public institution being exploited for personal gain or to serve individual interests of members of its board.

Method

In conducting this review, PEER:

- reviewed applicable state statutes dealing with the management of community and junior colleges;
- reviewed state statutes and regulations affecting the process by which state agencies may enter into personal services contracts or leases;
- reviewed applicable sections of the American Bar Association's *Model Procurement Code for State and Local Governments*;
- reviewed and analyzed MDCC's files, including expenditure records, for leases (Calendar Year 2006 to date, based on the availability of records; see page 5) and for personal services contracts (FY 2007 through FY 2012); and,
- interviewed personnel of MDCC and the current chair of the MDCC Board of Trustees.

PEER also attempted, without success, to interview the former president of MDCC, who retired in May 2012.

Background

Mississippi Delta Community College is a two-year educational institution located in Moorhead, Mississippi. The college serves a district consisting of Bolivar, Humphreys, Issaquena, Sharkey, Washington, Sunflower, and Leflore counties and has a current enrollment of approximately 3,300. It is one of fifteen institutions in Mississippi's system of community and junior colleges.

MDCC is governed by a board of trustees consisting of seventeen members (as provided by MISS. CODE ANN. Section 37-29-65 [1972]).

Legal Status of Community Colleges

Community colleges in Mississippi are not state agencies and are not bound by the regulatory restrictions imposed on state agencies. MISS. CODE ANN. Section 37-4-1 (k) (1972), which makes a declaration of policy regarding the state's community colleges and the Mississippi Community College Board, makes clear the community colleges' relationship to state laws that regulate state agencies. Specifically, this provision states:

The Legislature finds and determines that the social, cultural and economic well-being of the people of Mississippi, and hence the state, are enhanced by various educational experiences beyond the elementary and secondary school years. The Legislature hereby provides a means for the continuation of a system of community and junior colleges and declares the following to be the policy of the State of Mississippi:

...

(k) Community and junior colleges shall be considered agencies of local government rather than agencies of the state.

Consequently, regulations imposed on state agencies to ensure the openness and competitiveness of their contracting processes do not apply to community colleges.

Additionally, while the Mississippi Community College Board, created by MISS. CODE ANN. Section 37-4-3 (1972) exists to oversee the movement of state and federal funds to the community colleges and to approve the creation of branches and vocational programs, general governance is not a responsibility of that board. Therefore, the community colleges, their boards, and their staffs are

accountable to the local appointing authorities (i. e., county boards of supervisors) rather than to the state. Any additional accountability for a community college would have to be the subject of general law adopted through the legislative processes.

Sources of Best Practices for Procurement by Community Colleges

In the absence of mandated standards, PEER reviewed MDCC's contracting and leasing processes in light of what it considered to be the best practices for contracting and leasing processes for a public body. PEER derived these "best practices" from those competitive processes required of state agencies and contracting practices recommended by the American Bar Association in its *Model Procurement Code for State and Local Governments* (see page 17).

By using these best practices as criteria, PEER is not proposing that community colleges should be made subject to state regulation. However, these best practices, if followed, would help to ensure a degree of openness and competitiveness that all public bodies should have when using taxpayer funds.

Conclusions Regarding Mississippi Delta Community College's Leasing Practices

In recent years, MDCC has not consistently used open and competitive processes when seeking to lease property for its branch facilities. In instances in which the college did use a competitive process, there were weaknesses in the process related to the development of specifications and the analysis of proposals.

Currently, Mississippi Delta Community College is a party to three leases--two by which the college leases property to use for branch campus facilities (i. e., MDCC as lessee of facilities) and one by which the college leases excess land to an agricultural concern (i. e., MDCC as lessor of land).

PEER reviewed MDCC's leases for the following properties for the following periods:

- Drew branch facility: Calendar Year 2006 to date;
- Greenwood branch facility: Calendar Year 2008 to date; and,
- Greenville agricultural land: Calendar Year 2007 to date.

PEER reviewed the methods by which these leases were entered into for the same purposes for which it reviewed personal services contracts on pages 15 through 25--that is, to determine how open and competitive MDCC was in its practices.

Best Practices for Public Entities' Leasing of Facilities

State agencies' leasing standards require competitiveness in procurement.

As noted on page 3 of this report, no state statute regulates the process by which a community college leases or offers for lease any property. To make a judgment on what would constitute an open, competitive best practice, PEER looked to standards in state law and regulations that would have controlled the processes of leasing if Mississippi Delta Community College were a state agency under the oversight of the Department of Finance and Administration.

The Department of Finance and Administration's (DFA's) authority over state agency leases is derived from both statute and agency policy. Regarding leasing, MISS. CODE ANN. Section 29-5-2 (c) (1972) provides that DFA has the authority:

(c) To approve or disapprove with the concurrence of the Public Procurement Review

Board, any lease or rental agreements by any state agency or department, including any state agency financed entirely by federal and special funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration, including space necessary for parking to be used by state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building. In no event shall any employee, officer, department, federally funded agency or bureau of the state be authorized to enter a lease or rental agreement without prior approval of the Department of Finance and Administration and the Public Procurement Review Board.

The DFA policy manual makes clear to state agencies that there are several steps that must be followed in the leasing process. Generally, these policies require that agencies publish notice to potential lessors, seek out potential lessors, obtain proposals, evaluate the proposals after their receipt, and apprise the Bureau of Building, Grounds, and Real Property Management's Division of Real Property Management of the top two proposals. The Division of Real Property Management then reviews the proposals and selects the one that it believes will best serve the interests of the agency. Thus state agencies must follow a competitive, open process in selecting a lessor for facilities.

The following discusses the process used by Mississippi Delta Community College in selecting lessors for its branch campus facilities.

MDCC's Leasing of Facilities in Drew and Greenwood (i. e., MDCC as Lessee of the Facilities)

MDCC leases branch facilities in Drew and Greenwood. PEER found no evidence of a competitive process being used to select the Drew facility. Regarding the Greenwood facility lease, MDCC staff did not conduct a documented analysis of proposals, including a ranking of the proposals, and neither the minutes nor any other MDCC records express a clear basis for the board's action.

Summary of MDCC's Leasing Processes for Drew and Greenwood Facilities

MDCC's Lease of Facilities in Drew

MDCC has leased space for a branch facility in Drew since January 2006.

The MDCC administration began to seek property in 2005 to provide a convenient branch campus location for

students living in the northern end of the college's district (Bolivar and northern Sunflower counties). According to PEER's discussions with MDCC staff, many students of the community college are not able to provide their own transportation and must be taken to class by relatives or friends. Therefore, the college's management believed that a campus closer to students in the northern part of the district would be beneficial to the student body.

At the November 2005 board meeting, the MDCC President discussed locations for a possible branch facility in Merigold, Cleveland, Drew, and Ruleville with the board. One Merigold site was not suitable because of issues with title to the building. At the December 2005 meeting, the president informed the board that the administration had evaluated sites in northern Bolivar County and Sunflower County. The Drew Chamber of Commerce and the county economic development authority had worked with the administration in the process of locating a renovated site. The site was in downtown Drew and was owned by the Chamber of Commerce.

The president further informed the board that the site would cost approximately \$800 per month and that the lessor would work with the college on any necessary modifications. He recommended that the board adopt a lease with Drew Enterprises, which the board did.

At present, the college continues to use the Drew facility. Since its inception, the Drew Campus of MDCC has offered classes at the same location, although in 2009 the college expanded the facility. As of the date of this report, the facility was still in use.

MDCC's first lease of the Drew facility became effective in January 2006 for a term of one year and provided the college with space on the main street of Drew--specifically, lots 25 and 26, block 4--for a price of \$800 per month. The lease was renewed annually. In 2009, the college executed supplemental agreements and expanded its leasehold to also include lots 24, 27, and 28 of block 4. The total lease price was increased to \$1,900 per month. The current leasehold price in the contract approved in April 2012 is \$2,100 per month.

MDCC's Lease of Facilities in Greenwood

MDCC has leased space for a branch facility in Greenwood since 2003, moving to its current location on Park Avenue in 2008.

MDCC also leases space in the city of Greenwood for classes. The Greenwood facility first opened in 2003 in a 5,000-square-foot facility on Howard Street in the downtown area. In 2008, the facility moved to its current location on Park Avenue.

The minutes of the July 7, 2008, MDCC Board meeting, wherein the board initially approved the lease of the property currently used, show that the MDCC President recommended adopting the lease. He cited the offered price per square foot of \$6.50 (2008-09), \$7.00 (2009-10), \$7.50 (2010-11), and \$8.00 (2011-12) and stated that property in the Park and Grand Avenue area where the property in question was located generally rented for \$9.00 per square foot at that time. The lease was executed for a period of four years, beginning August 1, 2008, and ending July 30, 2012.

Initial Specifications for the Greenwood Lease

During 2011, in anticipation of the expiration of the lease ending July 30, 2012, the MDCC President discussed the need for a new lease for the branch facility in Greenwood. Discussions regarding a new lease first appear in the MDCC Board's minutes in April 2011. Concerns over parking and congestion led to the creation of a specifications for a lease that called for 15,000 to 25,000 square feet, 300 parking places, 12 to 20 classrooms, four administrative offices with a student activity area, library space, and conference space to be determined. The specification was distributed and required responses by October 3, 2011.

According to minutes of the college, Mr. Lee Abraham, who currently leases the Greenwood facility to MDCC, requested to appear before the board to discuss issues of congestion and specifications. Mr. Abraham discussed the matter before the board at its August 1, 2011, meeting. The discussions were held in executive session. The minutes reflect that board member Sam Abraham, brother of Lee Abraham, left the room during the discussions.

Revised Specifications for the Greenwood Lease

Following the meeting, on September 6, 2011, the board's Building Committee discussed the Greenwood project. The committee decided to revise the specifications. In the new specifications, references to parking were removed. The committee authorized the staff to re-advertise. The proposals received under the old specifications were to be returned to proposers, along with a new invitation to respond. The deadline for proposals for the new specifications was set for September 30, 2011. At this meeting, the board voted to revise the specifications. The minutes reflect that board member Sam Abraham was not present for the discussions.

The revised specifications called for:

- 10,000 to 25,000 square feet of space;

- 12 to 20 classrooms (32 feet X 24 feet each);
- 1 to 2 computer labs (32 feet X 32 feet each);
- 4 to 8 administrative offices (10 feet X 12 feet each); and,
- a library, student activity area, and conference room space to be determined.

At the October 13, 2011, Building Committee meeting, the members discussed proposals and further considered the possibility of leasing from more than one offeror.

Following reissuance of the invitation, the college received proposals from five offerors, as follows:

- *Montgomery Southern*: This proposal contained two responses--a full turnkey proposal and a partial turnkey proposal. The turnkey option offered 24,000 square feet for lease or purchase with approximately 250 parking places. This included twenty classrooms, eight offices, and two computer labs.

The partial turnkey proposal offered 10,000 to 15,000 square feet, with twelve classrooms, four offices, and a computer laboratory with conference and activity area. The proposal also included 125 parking spaces. The price was \$15 to \$20 per square foot.

- *Allied Development*: Allied offered 14,934 square feet of space for a ten-year lease period for the price of \$12 per square foot.
- *Greenwood-Leflore-Carroll Development Foundation*: Greenwood-Leflore-Carroll Economic Development Foundation offered approximately 10,000 square feet for a price of \$7.50 per square foot.
- *Bowie Realty*: Bowie offered 15,000 to 30,000 square feet for a ten- to fifteen-year lease period. Parking included 200 to 275 spaces. The price per square foot was \$12.
- *Mercantile, Inc. (Abraham)*: Mercantile, Inc., offered 10,000 to 25,000 square feet at a price of \$8 per square foot.

Mercantile also submitted another proposal that included far more space than the maximum requested in the specifications.

MDCC received the proposals in September 2011, but took no final action until April 2012. At the April 2012 full MDCC Board meeting, the board voted to approve the lease with Mercantile (Lee Abraham). Under the terms of the lease, the MDCC leased 11,835 square feet at a monthly price of \$7,890, or \$8.00 per square foot annually.

PEER notes that according to minutes of the MDCC Board, Mr. Abraham's relatives, Sam (a board member) and

Magdalene (a staff member) took no part in discussions regarding the lease and absented themselves from meetings at which the lease issue was discussed and voted upon.

Analysis of MDCC's Leasing Processes for the Drew and Greenwood Facilities

MDCC's leasing practices lack the degree of competitiveness found in best practices. Regarding the Drew lease, PEER found no evidence of a competitive process being used to select the facility. Regarding the Greenwood lease, MDCC staff did not conduct a documented analysis of proposals, including a ranking of the proposals. Also, neither the minutes nor any other MDCC records express a clear basis for the board's action.

Regarding MDCC's lease of property in Drew, PEER found no evidence of a competitive process being used to select the facility. The minutes mention discussions with or consideration of other sites, but no mention is made of actual proposals other than the successful proposal from Drew Enterprises.

Regarding the Greenwood lease, the college did utilize a competitive process for the selection of the leased facility. This included publication and the receipt of proposals.

Despite the presence of the rudiments of a competitive process, PEER notes the following weaknesses in the methods that MDCC used to select a successful offeror.

- *MDCC staff did not conduct a documented analysis of the proposals, including a ranking of the proposals. As noted above, if Mississippi Delta Community College were a state agency under the oversight of the Department of Finance and Administration, DFA would expect the college to review its proposals and rank them on the basis of costs, as well as other appropriate factors, before passing them on for approval. Such a process, if applied in this instance, would have given the MDCC Board of Trustees some idea of what each proposal offered and why, in the opinion of the staff, one proposal was better than the others.*

On the face of the proposals for the Greenwood facility, there was one that was offered at \$7.50 per square foot, or \$.50 per square foot less than the offer made by the successful offeror. This by itself is not evidence of a flawed process, because there could be reasons why the less expensive facility might not be the best (e. g., location or the need for considerable modification that could impact the lease price), but such reasons should be documented.

- *Neither the minutes nor any other MDCC records express a clear basis for the board's action. PEER notes*

that the minutes reflect that at the March 2012 meeting, the board's Building Committee made clear that it was reviewing two of the proposals, without identifying which firms' proposals were being reviewed. The minutes made no mention of the other proposals. At the April meeting, there was a motion to approve the proposal of Mercantile, Inc. However, neither the minutes nor other records provide information as to why the board considered this proposal to be the best one to meet the needs of the community college.

PEER attributes this condition to:

- the lack of an institutional policy on the subject of leasing; and,
- a set of specifications articulated without the degree of precision offerors needed to focus their proposals, as well as a lack of information on how proposals would be analyzed in light of these specifications (e. g., weighting of factors such as number of classrooms or offices).

PEER notes that the MDCC Board of Trustees has not adopted a policy on point with respect to the leasing process that sets out what will be reviewed and analyzed by either the staff or a board committee and how such should be presented to the board for its consideration and action.

Also, the specifications MDCC used gave broad latitude to owners who wished to offer property. Such breadth in specifications increases the possibility that people will make offers that differ materially, making comparison difficult. In choosing property to lease, criteria such as square footage, parking, and access for staff and students are of great concern and should be fundamental to the selection process.

The above-cited weaknesses could leave the board open to criticism for its actions since it cannot show a reasonable basis for what might have been a reasonable decision. Further, the current board and staff have no documentable method of determining that they have received the lowest and best price for a lease facility.

Board and Staff Members Related to an Offeror

A board member and a member of the MDCC staff are the siblings of Lee Abraham, whose firm (Mercantile, Inc.) leases the Greenwood branch facility to MDCC.

PEER notes that Sam Abraham, a member of the board of trustees, and Magdalene Abraham, an MDCC staff person, are siblings of Lee Abraham, who is President of Mercantile, Inc., the current lessor of the Greenwood

branch facility. The Document of Concern raises the possibility of a conflict of interest regarding the members of the Abraham family and its involvement in the leasing of the Greenwood facility.

The attorney for the MDCC Board sought and received on November 4, 2011, an Ethics Commission opinion regarding the participation of persons related to a lease offeror in the lease selection process of a community college.

On November 4, 2011, the attorney for the MDCC Board received an opinion from the Mississippi Ethics Commission regarding the ramifications of a board member related to an offeror on a lease agreement being involved in the process of selecting the lessor.

Specifically, the commission responded to the question, "May a community college lease real property from a member of the college foundation board or from a financially independent brother of a college trustee and college employee?"

The commission opined that a foundation member is not subject to the Ethics in Government Law and that no violation of MISS. CODE ANN. Section 25-4-105 (1) (1972) should occur if the college trustee and the employee fully recuse themselves from any matter that would result in a pecuniary benefit for their financially independent siblings.

Based on a review of MDCC's minutes, the Ethics Commission opinion, and other documents, PEER cannot conclude that members of the Abraham family involved in MDCC administration have engaged in wrongdoing.

Beginning in April 2011, when discussions of a new lease for the Greenwood facility began, the MDCC Board's minutes reflect that Sam Abraham left the boardroom when the board conducted discussions of such lease. When the MDCC Board of Trustees approved the lease of the Greenwood facility offered by Mercantile, Inc., in April 2012, the minutes reflect that Sam Abraham did not return to the board meeting until the board had already voted to accept the lease from Lee Abraham's firm, Mercantile, Inc. PEER also notes instances wherein Magdalene Abraham left the room when the board discussed the lease, even though as a staff member she did not have the responsibility for selecting a lessor (that is a board function).

Based solely on the minutes, the Ethics Commission opinion, and contract documents reviewed, PEER finds no evidence of wrongdoing in terms of a conflict of interest in association with this lease transaction. Although PEER notes that this review was not intended as an investigation

of a potential conflict of interest. PEER would suggest that if persons have knowledge of evidence that would show otherwise, they should present such to the Mississippi Ethics Commission.

MDCC's Leasing of Land in Greenville (i. e., MDCC as Lessor of the Land)

MDCC has leased excess land at its Greenville campus in a competitive manner.

Summary of MDCC's Leasing Process for the Greenville Land

MDCC's Greenville campus has approximately eighteen acres of undeveloped, cultivatable land not currently used for educational purposes and since 2008 the college has leased the property for agricultural uses. MDCC periodically publishes an invitation for interested parties to file proposals on the property.

In 2007, the Legislature enacted Chapter 470, *Laws of 2007*, which transferred authority for the Greenville Higher Education Center to Mississippi Delta Community College. Consequently, MDCC is responsible for the management of the center.

Located on State Highway 1 south of Greenville, the center has 18.71 cultivatable acres of property that have not been developed. Prior to the community college's becoming responsible for managing the facility, the practice was to lease the property out for agricultural uses and such practice has continued.

Since 2008, the community college has leased the property to Highland Plantation. Currently, the firm pays MDCC \$935 per year to lease the property. The community college publishes an invitation for interested parties to file proposals on the property. The last two invitations in 2008 and 2011 were advertised in the Greenville newspaper *Delta Democrat-Times* (for two weeks) and the Indianola newspaper *The Enterprise-Tocsin* (for two weeks), respectively.

Analysis of MDCC's Leasing Process for the Greenville Land

MDCC's leasing practices for the Greenville land have been competitive. The college plans to develop the land for educational purposes in the future.

At present, the community college has plans for future development of the property that will ultimately make leasing a moot point, as the expanded facility will use the property currently being leased out.

In view of the fact that the college makes reasonable efforts to obtain competitive proposals for the use of the

property, PEER takes no exception to the college's practice of leasing the excess land.

Conclusions Regarding Mississippi Delta Community College's Personal Services Contracting Practices

MDCC's procurement process for personal services from FY 2007 through FY 2012 did not comport with best practices and as a result, the college cannot ensure open competition for its personal services contracts and cannot justify some of its large contract decisions. Additionally, contracting is highly decentralized at MDCC, leaving different staff members or offices with discretion to follow such practices as they consider appropriate.

As noted earlier, no state law regulates the processes community colleges must follow when entering into personal services contracts. Therefore, in evaluating the process Mississippi Delta Community College has used to procure contractors, PEER utilized the standards that Mississippi's state agencies would follow for procuring contractors and treated such as "best practices." PEER also considers the American Bar Association's *Model Procurement Code for State and Local Governments* as best practices for public bodies procuring personal services contracts.

Best Practices for Public Entities' Procurement and Administration of Personal Services Contracts

To serve as criteria for its review of MDCC's procurement and administration of personal services contracts, PEER considered regulations of the state's Personal Service Contract Review Board (PSCR) and the American Bar Association's *Model Procurement Code for State and Local Governments* to be best practices.

Best Practices for Public Entities' Procurement of Personal Services Contracts

The Personal Service Contract Review Board (PSCRB) requires state agencies to employ competitive practices to obtain personal services contracts. For such procurements, the higher the dollar value of the proposed contract, the stricter the PSCRB's requirements are regarding solicitation of potential contractors, evaluation of proposals, and documentation of the agency's efforts. Although state law does not require community colleges to comply with the PSCRB's requirements, such requirements could reasonably be considered best practices for these bodies.

If Mississippi's community colleges were state agencies rather than entities of local government, they would be required to follow regulations of the Personal Service Contract Review Board for personal services contracting. As required by MISS. CODE ANN. Section 25-9-120 (1972), the PSCRB has established rules and regulations for state agencies' solicitation and selection of contractual service personnel when such agencies are not excluded statutorily from the scope of the board's authority. The board has set the following approval requirements based on the value of the contract:

- *Contracts of \$50,000 or less*--Agencies shall adopt operational procedures for entering into personal services contracts of \$50,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition and making records to account properly for funds and to facilitate auditing of the transaction. The board does not review these contracts.
- *Contracts greater than \$50,000 but not exceeding \$100,000*--Agencies shall, at a minimum, solicit three written responses, which shall be made a part of the procurement file. The written responses shall, at a minimum, include the following information: statement of price; terms of the agreement; description of services offered by the contractor; and name, address, and telephone number of the offeror (i. e., potential contractor or vendor). In the event that the agency does not obtain three responses, the agency must include a memorandum in the procurement file explaining why. The board does not review these contracts.
- *Contracts exceeding \$100,000*--Agencies shall procure personal services contracts with a value exceeding \$100,000 through the use of competitive sealed bidding or proposals. The board's rules and regulations include specific requirements regarding public notice, bid opening, and bid acceptance and evaluation. The board and its staff must review and approve personal services contracts exceeding \$100,000.

Regarding the requirements for contracts exceeding \$100,000, the Personal Service Contract Review Board has interpreted state law to mean contracts with a cumulative value in excess of \$100,000. For example, an agency could enter into a contract with an individual to provide a service for a total of \$50,000 in one fiscal year. Such a contract would not be subject to the approval of the review board. Should the agency choose to renew the contract for an additional fiscal year for \$51,000, resulting in a two-year contract for \$101,000, the contract would be subject to the approval of the review board.

The PSCRB's rules and regulations also provide for sole-source and emergency procurement without competition when a need for such exists. Agencies using such a method must document in writing the circumstances surrounding the selection of a personal services contractor through a non-competitive process.

The American Bar Association's Model Procurement Code establishes principles for government procurement that emphasize fair and open competition, which reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. PEER also considers these principles as appropriate best practices for community colleges' procurement of personal services contracts.

The American Bar Association, through its *Model Procurement Code for State and Local Governments*, suggests that governments provide: (1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes; (2) administrative and judicial remedies for the resolution of controversies relating to public contracts; and, (3) a set of ethical standards governing public and private participants in the procurement process. In developing standards, the American Bar Association states:

Fair and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.

However, the American Bar Association defers to the states and local governments in establishing price thresholds governing which method to use. Since MDCC is exempt from having to comply with the Personal Service Contract Review Board's rules and regulations, MDCC could either develop its own price thresholds for determining which method of procurement to use through policies and procedures or refer to the pricing thresholds recommended by the Personal Service Contract Review Board.

Also, since the marketplace is different for different types of personal services contracts, the *Model Procurement Code* authorizes a variety of source selection techniques designed to provide the best competition for all types of procurements. It also permits less formal competitive procedures whereby the amount of the contract does not warrant the expense and time otherwise involved. Unless authorized by law, the American Bar Association states all [state] contracts should be awarded by one of the following methods:

- *Competitive Sealed Bidding or Competitive Sealed Proposals:* In advertising for competitive bids, the *Model Procurement Code* recommends using competitive sealed bidding unless it is not practicable or advantageous. Competitive sealed bidding and competitive sealed proposals differ in that under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method permits discussions after proposals have been opened to allow clarification and changes in proposals, provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.
- *Small Purchases:* Any procurement not exceeding the amount established by regulation may be made in accordance with small purchase procedures, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase. This section recognizes that certain public purchases do not justify the administrative time and expense necessary for the conduct of competitive sealed bidding. Streamlined procedures, set forth in regulations, would make small purchases administratively simpler to complete and yet ensure competition.
- *Sole Source Procurement:* A contract may be awarded for a service without competition when the agency determines in writing that there is only one source for the required service.
- *Emergency Procurements:* Notwithstanding any other provision of the *Model Procurement Code*, the agency may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations, provided that such emergency procurements are made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor should be included in the contract file.

- *Special Procurements:* Notwithstanding any other provision of the *Model Procurement Code*, the agency may, with prior public notice, initiate a procurement above the small purchase amount when the agency determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement should be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor should be documented and a report should be made publicly available at least annually describing all such determinations made subsequent to the prior report.

Thus, both the state and a recognized professional association agree that there should be competitive and open processes to govern procurements. Both agree that thresholds may be set below which flexibility would be permissible. PEER believes that it is reasonable to expect public bodies such as Mississippi Delta Community College to comport with these best practices in the procurement of personal services contracts.

Best Practices for Public Entities' Administration of Personal Services Contracts

State regulations and the American Bar Association's Model Procurement Code for State and Local Governments offer best practices for the procurement of personal services contractors.

Best Practice: Written Contracts for Personal Services

The ABA Model Procurement Code recommends that personal services contracts be in writing.

To protect the interests of both parties in a contractual agreement, the American Bar Association's *Model Procurement Code for State and Local Governments* recommends that government entities enter into a written contract for personal services. A written contract should, at minimum, specify the responsibilities of both parties, including the services contracted, level of performance required, compensation, and the performance period.

Also, because a public entity using public funds is subject to third-party review, it is considered best practice for a public entity to enter into a contract with defined payment terms and defined service deliverables with personal services contractors to ensure that there is a paper trail for public review, either by a concerned citizen or by an oversight agency.

Best Practice: Centralization of Contract Administration

Efficient management would dictate that contracts and supporting documents be kept in a central location where they may be easily accessible to managers.

While not explicitly required by the authorities cited for competitive procurement and written contracts, a valuable component of best practice is a centralized contracts office. While it is entirely possible that a decentralized office could comport with best practices, a centralized office given the authority to oversee contracts could provide an institution with an assurance of compliance with best practices.

Analysis of MDCC's Procurement and Administration of Personal Services

PEER reviewed records of Mississippi Delta Community College from FY 2007 through FY 2012 and determined that during that period, MDCC's procurement process for personal services contracts did not comport with the best practices set out above.

MDCC, like most governmental entities, uses personal services contracting for a variety of services. During the period of PEER's review (FY 2007 through FY 2012), MDCC expended dollars for personal services such as consulting services, trainers, lawn care and janitorial services, legal services, waste services, telephone services, locksmith services, and medical services. Such contracts are an important part of the college's capacity to provide services to its students.

For the most recent fiscal year (FY 2012 through May 31, 2012), MDCC expended approximately \$1.6 million in college funds on contractual services. This included contracts for services and other items such as software, dues, equipment rental, and licensing.

No Competitive Process for Some Personal Services Contracts Over \$50,000

From FY 2007 through FY 2012, MDCC did not use competitive processes in awarding several personal services contracts of \$50,000 or more.

For the period of FY 2007 through FY 2012, for smaller personal services contracts under \$50,000 for which MDCC already had a vendor, MDCC typically chose to remain with the previous vendor, based on acceptable previous performance and acceptable price. Examples included Grasshopper Lawn Service to mow the Greenville Higher Education property at a cost of \$500 per mow (totaling \$21,150 in FY 2010) and hiring Boyles Telephone Service in 2010 and 2011 for telephone line work and installation services. If MDCC were a state agency, this would be a permissible practice, since the contracts were

below \$50,000, and no competitive process would have been required. For more recent smaller personal services contracts under \$50,000, MDCC typically either solicited a bid from a vendor or the President's Office negotiated for bids.

For larger contracts of more than \$50,000, PEER found that MDCC either solicited a single bid, retained the previous vendor, or negotiated for bids, as described below. For contracts for the amounts these contracts represented, a state agency would have been required to obtain competitive quotes from three vendors.

- *Total Control Training Institute (TCTI)*: MDCC operates a law enforcement officers' training academy. This academy offers a course of study that local law enforcement officers may attend in order to become minimum standards certified as required by MISS. CODE ANN. Section 45-6-1 et seq. (1972). The academy also offers refresher training that certified officers must take in order to retain their certification.

After deciding to no longer utilize contract law enforcement trainers for the MDCC Law Enforcement Training Academy, the President's Office solicited a bid from TCTI to provide basic and refresher training at the training academy in 2007 for three years. In 2010, MDCC entered a new three-year contract with TCTI to provide basic training (\$30,000 for ten weeks) and refresher training (\$5,400 for three weeks). Compensation also included meals at the cafeteria and on-campus housing. Given that MDCC typically hosts three basic training sessions a year and the contract is a three-year contract, the TCTI contract will be worth at least \$270,000 from June 2010 to June 2013.

Since 2010, the MDCC Law Enforcement Training Academy has also contracted with TCTI to provide additional training for law enforcement officers that is not covered in basic training. If MDCC were governed by state standards for personal services contracting, this service would have been placed out for bid, since the contract exceeds \$100,000.

- *Clean Source, Inc.*: MDCC pays Clean Source, Inc., \$71,940 per year for janitorial services at MDCC's Greenville Higher Education Center. MDCC has remained with Clean Source since before MDCC was administratively responsible for the management of the Greenville center. Delta State University, the entity previously responsible for administrative functions (before the 2007 transfer of responsibility), had attempted to advertise for bids for the contract. However, all the bids came back considerably higher than that of Clean Source. Since then, MDCC has believed that it would be prudent to remain with Clean

Source, citing the steady price, quality service, and budgetary restrictions. If Mississippi Delta Community College had followed best practices such as those required of state agencies by the Personal Service Contract Review Board, it would have solicited at least three written bids for the Clean Source agreement, since it has a value between \$50,000 and \$99,999.

- *Neel-Schaffer*: In 2011, MDCC, through its President's Office, sought and negotiated with Neel-Schaffer to develop a hazard mitigation plan for \$65,000. Neel-Schaffer submitted a request for proposals to develop the hazard mitigation plan. There is no record of MDCC contacting other potential architectural and engineering firms. If Mississippi Delta Community College had followed the best practices such as those required of state agencies by the Personal Service Contract Review Board, it would have solicited at least three written bids for the Neel-Schaffer hazard mitigation plan contract, since the value is between \$50,000 and \$99,999.

Effect of Lack of Assurance of Fair and Open Competition

MDCC's procurement practices give no assurance that they are open and competitive, thus leaving the college open to criticism that favoritism was the basis for selection.

MDCC's failure to use a competitive process in its procurement practices for some personal services contracts over \$50,000 can be directly linked to its lack of a formal, written board policy mandating that the college use competitive procurement processes and operate in accordance with specifically set thresholds for procurements. As noted above, the use of dollar amount thresholds such as those utilized by the state's Personal Service Contract Review Board would address this problem.

When entities such as the community college do not exercise open and competitive procurement practices, they risk criticism such as that recently leveled against them in the "Document of Concern." In cases wherein outsiders question an outcome such as a contractor's selection, the lack of a competitive selection system leaves the college open to criticism from any outsider who might believe that favoritism, not competitiveness, was the basis for the selection.

Additionally, MDCC cannot give students or local taxpayers the assurance that they are procuring services at the most competitive price, thereby assuring efficient use of local and state resources.

Some Arrangements for Personal Services Have No Written Contracts

From FY 2011 through FY 2012,¹ MDCC paid \$282,200 for personal services without establishing written contracts with defined deliverables and specified payment amounts.

To protect the interests of both parties in a contractual agreement, the American Bar Association's *Model Procurement Code for State and Local Governments* recommends that government entities enter into written contracts for personal services. A written contract should, at minimum, specify the responsibilities of both parties, including the services contracted, level of performance required, compensation, and the performance period.

Also, because a public entity using public funds is subject to third-party review, it is considered best practice for a public entity to enter into a contract with defined payment terms and defined service deliverables with personal services contractors to ensure that there is a paper trail for public review, either by a concerned citizen or by an oversight agency.

In reviewing MDCC's financial records from FY 2011 to FY 2012,² PEER found the following instances in which MDCC did not establish written contracts with individuals or firms that provided personal services for the college in exchange for payment:

- *Legal Services (Crosthwait, Terney, and Noble)*-- According to MDCC's financial records for FY 2011 and FY 2012, MDCC utilized the services of Crosthwait, Terney, and Noble during those fiscal years, but did not have a written contract with the firm. During FY 2011 and FY 2012, MDCC paid the firm a total of \$25,378. In June 2012, MDCC entered into a contract with Crosthwait, Terney, and Noble for legal services.
- *Consulting Services (John Adcock)*--For the period of FY 2011 through FY 2012, MDCC utilized Mr. Adcock's services for technical career education consulting. For this period he was paid \$40,000 per year; however, no contract was executed concerning the specific types of services to be performed, the cost of the services, or the deliverables.
- *Computer Programming (Phillip Brooks)*--According to MDCC's Director of Computer and Information Services, Mr. Brooks provides programming services, particularly in relation to MDCC's conversion to Banner Administrative software, on an as-needed basis. PEER reviewed records from FY 2007 through FY 2012 and found no executed contract with Mr. Brooks. During

¹ Records were available only for October 1, 2010, through June 30, 2011, for FY 2011 and July 1, 2011, through May 31, 2012, for FY 2012.

² Records were available only for October 1, 2010, through June 30, 2011, for FY 2011 and July 1, 2011, through May 31, 2012, for FY 2012

FY 2011 and FY 2012, MDCC paid Mr. Brooks a total of \$11,800.

- *Custodial Supervision (Howard Fleming)*--Fleming is the custodial supervisor for both MDCC's main campus and the Greenwood campus. While there is no contract governing Fleming's service, Fleming is paid via invoice a fixed monthly price for services performed at MDCC's main campus and a separate fixed monthly price for services performed at the Greenwood campus. During FY 2011 and FY 2012, MDCC paid Mr. Fleming a total of \$95,360.
- *Law Enforcement Training (Aubrey Futrell, David Redd, and William Staten)*--MDCC's Law Enforcement Training Academy (LETA) paid its instructors per a verbal agreement a fixed wage per hour plus mileage, but did not have a contract with the paid instructors. These instructors provide services that are supplemental to those offered by the training academy contractor mentioned on page 21 of this report. During the FY 2011 and FY 2012, these persons had no written contracts but MDCC paid them the following amounts:

--Aubrey Futrell: \$14,383.47

--David Redd: \$19,808.38

--William Staten: \$35,471.13

Entering into a written contract protects the interests of both parties and, in this case, would clearly outline the services that are to be performed by the contractors for Mississippi Delta Community College, as well as any applicable deliverables. Failure to enter into a contract for personal services with the contractor could lead to confusion as to the proper form and substance of the service to be delivered. Lack of a written contract also reduces the opportunity for the public or oversight agencies to review the procurement practices of MDCC, since no contracts exist with defined deliverables or specified payment amounts by which to determine whether the services contracted for were delivered as required.

Also, because other departments of MDCC's campus may arrange for personal services, without a written contract the college's Office of Business Services does not have a document on file with which to verify the accuracy of the invoice when paying bills. As a result, opportunity exists for billing errors and overpayment for services, since the Office of Business Services must rely on the contractor's invoices or locate the department head responsible for the arrangement in order to verify the billing cost.

No Centralized Contract Administration

Because MDCC's staff does not maintain personal services contracts in a central location, contracts cannot be efficiently located and reviewed.

In conducting this review, PEER determined that there was no centralized location where all documents necessary to analyze a contracting decision were kept. After PEER had given notice to the college of this review and prior to PEER's arrival for fieldwork, college officials had to request copies of contracts from multiple administrators for the period of inquiry. Under these conditions, PEER found it necessary to examine records of contractual expenditures as a means of ascertaining whether there were contractual obligations other than those for which the college had located a contract. Additionally, it was necessary to interview staff in an attempt to determine how a contract was sought and whether competitive processes were utilized.

Because MDCC had no central location for filing contracts, locating the necessary documents to review the contracting process was difficult and time-consuming. This would appear also to be the case for business staff of the MDCC that likewise might not be able to find a contract that establishes the college's duty to pay a vendor or determine how much a vendor is entitled to under his or her contract.

Causes of the MDCC's Non-Comportment with Best Practices for Personal Services Contracting

MDCC does not have formal, written policies directing that there be competitive processes for procurement of personal services contracts and setting dollar thresholds for such.

In both the case of competitive procurement and written contracts, MDCC practice is directly linked to the lack of formal, written policy directing that there be competitive processes and setting dollar thresholds for such. Likewise, the lack of a written contract is attributable to the lack of a policy on point. Historically, the college has left the decision to take such steps in the hands of executives at various levels of the management of the college.

Recommendation

MDCC should adopt formal personal services and leasing policies that:

- require competitive selection of all leases;
- require competitive selection of all personal services contracts, at least in instances wherein the value of the contract exceeds \$50,000;
- require that staff analysis of all competitive proposals be conducted in accordance with specifications based on a clear, unambiguous standard(s) of need that contain measurable contract specifications that inform competitors of the weight to be given to each element of the specifications;
- require written contracts from professional or educational personnel, consultants, and other persons whose service is a report or a professional service; and,
- maintain electronic records of all contracts in a central location under the direction of the business manager. Under such a system, copies of all contracts, bid specifications and responses, and other records of negotiation would be scanned and kept in the central electronic database, thereby allowing individual managers to refer to original contracts and documents.

Agency Responses



MISSISSIPPI DELTA
COMMUNITY COLLEGE

August 29, 2012

Mr. Ted Booth
The Peer Committee
501 North West Street, Suite 301-A
Jackson, MS 39201



RE: MDCC Final Response to PEER Report

Dear Mr. Booth:

Included with this letter is the MDCC Final Response to PEER Report. I am returning the faxed copy of the additional revised draft of the Review of MDCC's Processes for Procuring Leases and Personal Services with the original of the MDCC Final Response to PEER Report.

If you have any questions or need additional information, please feel free to contact me. I appreciate your consideration of the requests in the report.

Sincerely,

A handwritten signature in cursive script that reads "Lynda A. Steele".

Dr. Lynda A. Steele
Interim President

OFFICE OF THE PRESIDENT

P. O. Box 668 • Moorhead, Mississippi 38761 • 662-246-6301 • Fax 662-246-6321 • www.msdelta.edu



MISSISSIPPI DELTA
COMMUNITY COLLEGE

**Mississippi Delta Community College Final Response
To
PEER Report**

1. MDCC and the parties named in the "Document of Concern" deny all of the allegations of wrong-doing, mismanagement, and racial comments as stated in this alleged document. The alleged transcribed conversations, as set forth in the document, did not occur, but were maliciously manufactured by the unknown author(s) of the document. As soon as the College became aware of its existence, MDCC notified the proper authorities. The "Document of Concern" is presently under investigation by the authorities.

After an extensive and time consuming investigation, interviewing of witnesses, and reviewing a vast amount of documents, no evidence revealed that MDCC had violated any state law. The only state law violated was by the author(s) of the malicious, untrue, and scandalous "Document of Concern."

2. A majority of the PEER Report deals with factors, conditions, recommendations, and suggestions as if MDCC was a state agency. It is abundantly clear that PEER admits that MDCC is not a state agency. Page three (3) of the PEER Committee review states, "Community colleges in Mississippi are not state agencies and are not bound by the regulatory restrictions imposed on state agencies."
3. Throughout this report there are matters discussed that are not applicable to MDCC. Simply put, MDCC has not committed any violations of state law.
 - MDCC has not violated any state law regarding purchasing, leasing or competitive bidding. Attached are copies of the MDCC Policies and Procedures on purchasing, leasing, and competitive bidding.
 - MDCC is also accredited by the Commission on Colleges of the Southern Association of Colleges and Schools which is inclusive of accrediting all purchasing policies and procedures utilized by the College.
 - MDCC has never been cited for negative findings in regard to purchasing and bidding in annual audits.

OFFICE OF THE PRESIDENT

P. O. Box 668 • Moorhead, Mississippi 38761 • 662-246-6301 • Fax 662-246-6321 • www.msdelta.edu

Response to Recommendations

1. MDCC will continue to follow state contract pricing and single source item pricing and will also continue to follow state laws regarding all leases and purchasing.
2. MDCC will implement and utilize written personal service contracts where the contract exceeds \$25,000 per year.
3. MDCC will immediately establish a procurement review committee of staff personnel to review all proposals, to consider all factors pertinent to said proposal, and to report their recommendation to the President of the College. (attached is the institutional form to be utilized in this process)
4. See response in number two (2)
5. MDCC will maintain a paper and electronic record of all leases and contracts in a centralized location at the College and be supervised by the Director of Institutional Effectiveness at MDCC.

Conclusion

MDCC respectfully requests that this PEER Report and any additional reports be based on substantiated facts and not rumor or malicious innuendo. It is our position that no report from this state agency should be based upon the subject of an ongoing criminal investigation.

If the Mississippi Legislature, through the PEER Committee Report, proceeds with this report initiated by the undocumented, unsigned, and anonymous "Document of Concern," then the unknown author(s) will have been successful in influencing the Mississippi Legislature through the PEER Committee to cause irreparable and far-reaching damage to MDCC, its students, and the general public. In fact, MDCC requests that this agency not release any formal report to the public because of irreparable harm to an institution that has not violated any state law.

MDCC respectfully requests to appear before the full PEER Committee to address and respond to the PEER Report. MDCC submits that it should be given an opportunity to present, in person, its position in order to accurately respond to the misrepresentation of laws, rules and regulations regarding MDCC and its management.

Submitted on the 29th day of August, 2012

Mississippi Delta Community College

By: Lyndal R. Hull
Interim President

By: Paula S. Sykes
Chairperson of the MDCC Board of Trustees

Mississippi Delta Community College Contracts/Consortium Evaluation

The Contracts/Consortium Evaluation is a feedback mechanism that allows for continual improvement in securing contracts and other agreements. It also provides a mechanism for demonstrating whether agreements contribute to achieving the mission and goals of the institution.

Name of Agreement/Contract

Department/Division

1. Please evaluate this agreement/contract by responding to the items below.

- Is the contract/consortium agreement appropriate to the mission and goals of the institution? ___ Yes ___ No Comments:
- Does the contract/consortium agreement meet the needs of the institution? ___ Yes ___ No Comments:
- Are both parties in agreement with the contract/consortium agreement? ___ Yes ___ No Comments:
- Does the contract/consortium agreement impact the MDCC budget? ___ Yes ___ No Comments:
- Does the contract/consortium agreement require Board approval? ___ Yes ___ No Comments:

Justification for selecting this vendor:

Div. Chair/Director/Supervisor: _____ Date _____

Vice-President: _____ Date _____

2. After obtaining the above signatures, forward this evaluation to the Office of Institutional Research and Effectiveness for processing by the Procurement Committee.

Procurement Committee Recommendation

The above agreement has been evaluated and meets all the procurement guidelines for the institution and the state. The Procurement Committee recommends the following in order to execute the agreement.

- ____ Obtain President's Signature (less than \$5,000)
- ____ Obtain Board Ratification (\$5,001 to \$24,999.99)
- ____ Obtain Board Approval (\$25,000 and over)

Committee Representative: _____ Date _____



MISSISSIPPI

COMMUNITY COLLEGE BOARD

3825 Ridgewood Road • Jackson, MS 39211 • Phone: (601) 432-6518 • Fax: (601) 432-6363

September 4, 2012

Dr. Max Arinder, Executive Director
PEER Committee
P. O. Box 1204
Jackson, Mississippi 39215-1204



Dear Dr. Arinder:

Thank you for sending me the draft report entitled, "A Review of Mississippi Delta Community College's Processes for Procuring Leases and Personal Services." I have studied it carefully, as have a few other key persons at the Mississippi Community College Board office.

I agree strongly with PEER's basic conclusions. Having worked in state government for more than thirty years, I absolutely believe in the importance of transparency and accountability. I believe that anyone who is responsible for spending the taxpayers' money to provide services to the public, should have clear, predictable and fair processes. We all should certainly use competitive bidding and should maintain good records in central locations. I appreciate PEER for making the effort to look into these issues, and I think the conclusions and recommendations presented in the draft report can serve as "best practices" for state government agencies and for local government entities across Mississippi.

Thank you for inviting me to comment on the draft report.

Sincerely,

A handwritten signature in cursive script that reads "Eric Clark".

Eric Clark, Ph.D
MCCB Executive Director

**PEER Committee's Response to Mississippi Delta Community College's Response:
*A Review of the Mississippi Delta Community College's Processes
for Procuring Leases and Personal Services***

On pages 27 through 30, Mississippi Delta Community College offers its response to *A Review of the Mississippi Delta Community College's Processes for Procuring Leases and Personal Services*. It is the customary practice of the Committee to publish responses of agencies without comment. However, in some cases, the Committee chooses to make a few observations about a response and this is one such case.

The response is truculent in its tone and misses the critical point of the report, which is that the college could use better practices to ensure a competitive, transparent process for selecting contractors. Specifically, the response's argument is built around the following points:

- the college is not a state agency and therefore should not be held to the standards to which agencies are held; and,
- it was improper for the "Document of Concern" mentioned on page 1 of the report to have any influence on the Committee's decision to conduct the project and publish the report.

The report makes clear on pages 3 and 4 that the community college is not a state agency and is not bound by the standards that control agencies' actions. PEER used agency standards as a model of best practice to assist in determining the components of an open, competitive process for selecting contractors, a point that appears to elude MDCC.

Regarding the "Document of Concern," PEER made every effort to focus this review on matters that if true, could reveal a weakness in the managerial environment of the college. In deciding whether to conduct such a review, the Committee is free by statute to base a decision to conduct a review on any information it deems appropriate. In this case, the allegations of potential problems in the management of the college were sufficient to trigger a review.

In closing, it appears that the community college is somewhat less than appreciative of the role of legislative oversight in a setting wherein large amounts of state general fund dollars are utilized to support the "local" institution of the community college. The Legislature does have a legitimate interest in determining whether the processes employed by any community college are designed to ensure the necessary openness and competitiveness in contracting that would inspire confidence in the management of such institutions, which have become increasingly reliant on state taxpayer dollars for their support and sustenance.

The Committee would note its appreciation for the comments of Dr. Eric Clark, Executive Director of the Mississippi Community College Board, for his support of the PEER recommendations on contracting and leasing.

PEER Committee Staff

Max Arinder, Executive Director
James Barber, Deputy Director
Ted Booth, General Counsel

Evaluation

David Pray, Division Manager
Linda Triplett, Division Manager
Kim Cummins
Matthew Dry
Brian Dickerson
Lonnie Edgar
Barbara Hamilton
Matthew Holmes
Kevin Mayes
Angela Norwood
Jennifer Sebren
Julie Winkeljohn

Editing and Records

Ava Welborn, Chief Editor/Archivist and Executive Assistant
Tracy Bobo

Administration

Rosana Slawson
Gale Taylor

Information Technology

Larry Landrum, Systems Analyst

Corrections Audit

Louwill Davis, Corrections Auditor