

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

Report to  
the Mississippi Legislature



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## **Contracting with State Agencies: Mississippi's Provisions for Vendor Access, Selection, and Transparency**

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PEER reviewed state laws and regulations regarding state agencies' contracting processes for goods, services, and construction to determine whether Mississippi has the provisions in place to encourage and protect vendors while providing for the needs of state agencies in a timely and cost-effective manner.

The Committee identified best practices in public contracting, then analyzed Mississippi's statutory and regulatory framework in light of such best practices and found the following:

- Vendors have no single point of access to information regarding opportunities to sell goods or services to state agencies. Because three separate state agencies--the Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board--have responsibilities related to regulation of contracting, vendors must deal with potentially three different environments in learning about opportunities.
- Vendor access is limited to some extent by exemptions and thresholds in statutes or regulations. Exemptions (i. e., items exempted from statutory or regulatory procurement requirements) and thresholds (i. e., dollar value limits that determine the level of vendor access and competition required) can result in both efficiency benefits to the state and in a competing outcome of limiting contracting opportunities for vendors.
- All three agencies' regulations require maintaining some information on their websites regarding awarded contracts, but none of the three have all current contracts posted on their websites with easy access.

PEER recommends development of a procurement portal that will enable potential vendors of goods and services to have a single point of access to relevant and necessary information regarding state agencies' procurement of commodities, contract personnel, and computer equipment and services. The Department of Finance and Administration should maintain the portal as part of the Transparency Mississippi website.

## **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.

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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

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PERCY W. WATSON

**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](http://www.peer.state.ms.us)

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

November 12, 2013

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

On November 12, 2013, the PEER Committee authorized release of the report entitled **Contracting with State Agencies: Mississippi's Provisions for Vendor Access, Selection, and Transparency.**

A handwritten signature in cursive script that reads "Ray Rogers".

Representative Ray Rogers, Chair

**This report does not recommend increased funding or additional staff.**



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# Contracting with State Agencies: Mississippi's Provisions for Vendor Access, Selection, and Transparency

## Executive Summary

### Introduction

#### Scope and Purpose

PEER received a legislative request to review how state agencies contract for goods, services, and construction and the transparency of the process. The requesting legislator was particularly concerned with vendors' perspective of the contracting process.

PEER sought to determine best practices in public contracting and whether Mississippi has the provisions in place to encourage and protect vendors while providing for the needs of state agencies in a timely and cost effective manner. After identifying best practices in public procurement, PEER reviewed state laws and regulations regarding state agencies' contracting for goods, services, and construction.

#### Scope Limitations

PEER's review was an analysis of the framework for state agencies' contracting processes (i. e., applicable laws and agency regulations), particularly whether the framework has shortcomings that might generate complaints from vendors. PEER did not test for state agencies' implementation of contracting laws and regulations in this review. If the shortcomings in the contracting framework PEER identifies are corrected and vendors' complaints persist, a compliance review may be in order.

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\*For purposes of this report, the term *contracting* means the procurement of commodities (including equipment, vehicles, and construction), computer equipment and services, and personal and professional services as defined by MISS. CODE ANN. Sections 31-7-1, 25-53-3, and 25-9-120.

### Best Practices for Public Contracting

The best practices for public contracting may be summarized as follows: vendors should have access to the contracting process; the selection of vendors for contracts should be clearly defined; and, the contracting process should be transparent.

In developing best practices for public contracting, PEER consulted the American Bar Association's *2000 Model Procurement Code for State and Local Governments* (also referred to within this report as the *Model Procurement Code*), as well as other applicable sources. Best practices for public contracting promote fair and open competition among vendors.

From a review of the literature, PEER identified three key principles of an effective public contracting process:

- *vendor access*--Vendors should have easy access to information about the contracting process and an opportunity to compete for contracts. An accessible contracting process includes vendor outreach, public issuance of requests for competitive proposals, and provision of adequate public notice for competition.
- *vendor selection*--The process of selecting a successful vendor for a contract should be clearly defined. The evaluation criteria that serve as the basis for awarding the contract should be laid out in the request for proposals, invitation for bids, request for qualifications, or solicitation of quotes, depending on the item(s) to be purchased and the estimated value of the contract.
- *a transparent process*--The process should be transparent in disclosing to the public that it was conducted in a fair and open manner and that the goods or services procured fulfilled the needs, were secured at the best prices, and were of acceptable quality. A transparent public contracting process includes publicizing of bid awards, debriefing of vendors, and disclosure of current contract information on a website.

While the vendors' perspective of contracting is important, the ultimate goal of agencies' contracting for goods, services, and construction is to provide for the needs of the state in a timely and cost effective manner.

## Primary Agencies Responsible for Regulating Public Contracting

The Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board interface frequently with other state agencies and with vendors in the contracting process.

The MISSISSIPPI CODE governs state agencies' processes for contracting for goods, services, and construction. The CODE delegates responsibility to the following state agencies to create rules and regulations regarding contracting within their jurisdiction.

- *The Department of Finance and Administration (DFA)*-- Within this department, the Public Procurement Review Board; the Office of Purchasing, Travel, and Fleet Management; and the Bureau of Building, Grounds and Real Property Management have responsibilities regarding contracting. The department is also responsible for developing and operating the Transparency Mississippi website, upon which are posted copies of contracts entered into by agencies since January 22, 2010.
- *The Department of Information Technology Services (ITS)*—This department oversees the contracting process for computer hardware, software, and technology services.
- *The Personal Service Contract Review Board (PSCRB)*— This board sets forth rules and regulations that agencies should follow in contracting for personal services.

MISS. CODE ANN. Sections 27-104-7 (2) (a), 25-53-5 (d), and 25-9-120 (3) (a) authorize these agencies to promulgate rules and regulations regarding contracting for goods and services. State agencies must operate within the bounds of these rules and regulations and are responsible for maintaining appropriate records to document their compliance with such.

## Assessment of the State's Contracting Framework Regarding Vendor Access, Vendor Selection, and Transparency

### Framework Assessment: Vendor Access

Vendors have no single point of access to information regarding opportunities to sell goods or services to state agencies. Because three separate state regulatory agencies have responsibilities related to contracting, vendors must deal with potentially three different environments in learning about opportunities. State law and the regulatory agencies' rules and regulations specify how vendors must

enter the contracting process (e. g., submitting bids or proposals).

Vendor access is limited to some extent by thresholds and exemptions in statutes or regulations. Exemptions (i. e., items exempted from statutory or regulatory procurement requirements) and thresholds (i. e., dollar value limits that determine the level of vendor access and competition required) can result in both efficiency benefits to the state and in a competing outcome of limiting contracting opportunities for vendors.

### **Framework Assessment: Vendor Selection**

ITS regulations require that vendors be selected based on quantitative and qualitative scoring criteria. PSCRB regulations require agencies to select vendors based on requirements set out in the document soliciting bids or proposals. DFA, ITS, and the PSCRB have mechanisms in place to help ensure that vendor selection is based on well-defined criteria.

### **Framework Assessment: Disclosure and Transparency**

DFA, ITS, and PSCRB regulations require that written notification of a bid award be sent to the successful bidder but do not specifically require proactive presentation of this information to the public. Only ITS requires a form of debriefing--the Post Procurement Review--at the vendor's request. All three agencies' regulations require maintaining some information on their websites regarding awarded contracts, but none of the three have all current contracts posted on their websites with easy access.

## Recommendation

The Legislature should amend MISS. CODE ANN. Section 25-53-151 (1972) to require the Electronic Government Oversight Committee<sup>c</sup> to develop a procurement portal that will enable potential vendors of goods and services to have access to relevant and necessary information regarding the sale of the following to state agencies:

- commodities, as defined by CODE Section 31-7-1;
- contract personnel, as defined by CODE Section 25-9-107 and 25-9-120; and,
- computer equipment and services, as defined by CODE Section 25-53-3.

Specifically, the portal should provide potential vendors with:

- a searchable database of business opportunities with the state, including a breakdown by product/service and by organization seeking the product/service;

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<sup>c</sup>Created in 2001, the Electronic Government Oversight Committee was established to:

- a. prioritize and make recommendations for all electronic government services, in order to cut across state and local governmental organizational structures;
- b. address policy issues such as privacy, security, transaction fees and accessibility;
- c. review ongoing fiscal and operational management and support of portal;
- d. provide a mechanism for gathering input from citizens, businesses and government entities;
- e. encourage self-service models for citizens through state websites and other electronic services; and,
- f. promote economic development and efficient delivery of government services by encouraging governmental and private sector entities to conduct their business and transactions using electronic media.

Thus, this committee has a mandate to help government develop electronic government systems that meet the broad needs of state and local government and the broad range of citizen interests reflected in Mississippi's diverse population. The committee consists of:

- a. the Executive Director of the Department of Information Technology Services, or his designee;
- b. the State Auditor, or his designee;
- c. the State Treasurer, or his designee;
- d. the Secretary of State, or his designee;
- e. the Executive Director of the Department of Finance and Administration, or his designee;
- f. the Commissioner of Public Safety, or his designee; and,
- g. the Commissioner of Revenue, or his designee.

See MISS. CODE ANN. Section 25-53-151 (1972).

- listings of the effective dates of each contract;
- Frequently Asked Questions regarding doing business with the respective agencies and a breakdown of these questions regarding the selection process for the respective agencies;
- a searchable database of contract types, contract number, commodity, supplier, organization, or keywords;
- a forum for questions and answers relating to the procurement process in general and/or specific to a single contract; and,
- links to individual agency websites and contacts to enable potential vendors to obtain more specific information if necessary.

The portal should be maintained as part of the Transparency Mississippi website managed by the Department of Finance and Administration as provided for by CODE Section 27-104-151 through 27-104-165. It should be mandatory that the Department of Information Technology Services maintain a link from the state website to the portal.

Further, the Legislature should create a new CODE section to be codified with the other provisions or Transparency Mississippi that will require the Department of Finance and Administration to maintain and update this portal with guidance and assistance from the Department of Information Technology Services and the State Personnel Board.

**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>

Representative Ray Rogers, Chair  
Pearl, MS

Senator Nancy Collins, Vice Chair  
Tupelo, MS

Senator Kelvin Butler, Secretary  
McComb, MS

# Contracting with State Agencies: Mississippi's Provisions for Vendor Access, Selection, and Transparency

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## Introduction

### Authority

The PEER Committee reviewed Mississippi's statutory and regulatory requirements for state agencies' procurement of contracts.

PEER conducted the review pursuant to the authority granted in MISS. CODE ANN. Section 5-3-57 (1972) and acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

### Problem Statement

PEER received a legislative request to review how state agencies contract for goods, services, and construction and the transparency of the process. The requesting legislator was particularly concerned with vendors' perspective of the contracting process.

### Scope and Purpose

PEER sought to determine best practices in public contracting and whether Mississippi has the provisions in place to encourage and protect vendors while providing for the needs of state agencies in a timely and cost-effective manner.

After identifying best practices in public procurement (see page 4), PEER focused this review on Mississippi's laws and regulations regarding:

- vendor access;
- vendor selection; and,
- disclosure/transparency of the contracting process.

PEER then reviewed state laws and regulations regarding state agencies' contracting for goods, services, and construction.

For purposes of this report, the term *contracting* means the procurement of commodities (including equipment, vehicles, and construction), computer equipment and services, and personal and professional services as defined by MISS. CODE ANN. Sections 31-7-1, 25-53-3, and 25-9-120 (1972).

## Scope Limitations

PEER's review was an analysis of the framework for state agencies' contracting processes (i. e., applicable laws and agency regulations), particularly whether the framework has shortcomings that might generate complaints from vendors. PEER did not test for state agencies' implementation of contracting laws and regulations in this review. If the shortcomings in the contracting framework PEER identifies are corrected and vendors' complaints persist, a compliance review may be in order.

## Method

In conducting fieldwork, PEER:

- reviewed:
  - the Department of Finance and Administration's documents entitled *Mississippi Procurement Manual*; Office of Purchasing, Travel and Fleet Management's *Rules and Regulations Fleet Manual*; and *Bureau of Building Procedure Manual* as of November 2013;
  - the Department of Information Technology Services' *Procurement Handbook* as of November 2013;<sup>1</sup>
  - the Personal Service Contract Review Board's *Personal Services Contract Review Board Rules and Regulations* as of November 2013;
  - applicable state laws; and,
  - the American Bar Association's *2000 Model Procurement Code for State and Local Governments*;

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<sup>1</sup>During the period of fieldwork for this project, the Department of Information Technology Services (ITS) was in the process of altering and/or amending several aspects of its procurement manual. PEER did not include these alterations in the report because these changes have not yet been adopted and made official by the department. Instead, all information presented herein reflects ITS's procurement processes as of November 2013.



- interviewed staff of appropriate state agencies;
- researched literature on other states' contracting policies and procedures; and,
- reviewed applicable information disseminated by national state purchasing officers' organizations.

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## Background

As noted in the Scope and Purpose section on page 1, PEER sought to determine best practices in public contracting. Also, PEER identified the state regulatory agencies that interface most frequently with other state agencies in the contracting process and with vendors of goods, services, and construction and determined what their responsibilities are in respect to contracting.

PEER notes that while the vendors' perspective of contracting is important, the ultimate goal of agencies' contracting for goods, services, and construction is to provide for the needs of the state in a timely and cost-effective manner.

### Best Practices for Public Contracting

**The best practices for public contracting may be summarized as follows: vendors should have access to the contracting process; the selection of vendors for contracts should be clearly defined; and, the contracting process should be transparent.**

In developing best practices for public contracting, PEER consulted the American Bar Association's *2000 Model Procurement Code for State and Local Governments* (also referred to within this report as the *Model Procurement Code*), as well as other applicable sources. Best practices for public contracting promote fair and open competition among vendors, as noted in the *Model Procurement Code*:

*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.*

From the review of the literature, PEER identified three key principles of an effective public contracting process:

- vendors should have access to the process;
- the process of selecting vendors for contracts should be clearly defined; and,
- the process should be transparent in disclosing to the public that it was conducted in a fair and open manner and that the goods or services procured fulfilled the needs, were secured at the best prices, and were of acceptable quality.

The following sections include discussions of these principles.

## **Vendor Access**

***Vendors should have easy access to information about the contracting process and an opportunity to compete for contracts. An accessible contracting process includes vendor outreach, public issuance of requests for competitive proposals, and provision of adequate public notice for competition.***

According to best practices, vendors should have ease of access to information about the contracting process and an opportunity to compete for contracts. An accessible contracting process includes vendor outreach, public issuance of requests for competitive proposals, and providing adequate public notice for competition.

Following are the questions a public body should ask regarding whether its contracting process is accessible to vendors:

- *Vendor Outreach*--Do agencies offer some form of vendor outreach? Do agencies adequately provide information to vendors on how to do business with the procuring agency or regulatory authority? For example, is there an easy to find and easy to use “how to do business with the state” guide for procuring commodities? Is there a link on the agency website and/or state website that describes what the agency does, what its role is in the procurement process, and whom to contact for further procurement inquiries?
- *Public Issuance of Requests for Competitive Proposals*--For competitive purchases (depending on the type of item[s] purchased and the estimated value), does the agency solicit vendors through public means?
- *Providing Adequate Public Notice*--For competitive purchases, do the state procurement laws and regulations provide adequate public notice to permit potential vendors to have a reasonable amount of time to prepare their submissions?

## **Clearly Defined Selection Process**

***The process of selecting a successful vendor for a contract should be clearly defined. The evaluation criteria that serve as the basis for awarding the contract should be laid out in the request for proposals, invitation for bids, request for qualifications, or solicitation of quotes, depending on the item(s) to be purchased and the estimated value of the contract.***

According to best practices, the agency that will be selecting the vendor for the contract should have clear evaluation criteria to be used as the basis for how the contract will be awarded. The type of item(s) to be

purchased and the estimated value of the contract determine whether the evaluation criteria will be presented in a request for proposals, invitation for bids, request for qualifications, or solicitation of quotes.

In addition to having clear evaluation criteria, the *Model Procurement Code* standards state that the criteria should specify the relative importance of price and any other evaluation factors. No criteria should be used in bid evaluation that are not set forth in the request for proposals or similar document.

Also *Model Procurement Code* standards require that contracts be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids/request for proposals. For competitive sealed proposals, the contract file should contain the basis on which the procuring agency made the award.

## **Transparency and Disclosure**

***A transparent public contracting process includes publicizing of bid awards, debriefing of vendors, and disclosure of current contract information on a website.***

To ensure fair and open competition among vendors and to offer the public access to information that shows that contracts for goods, services, and construction were procured at the most economical price, the process should be transparent.

A transparent public contracting process includes the following characteristics:

- *Publicizing of Bid Awards*--According to *Model Procurement Code* standards, bids and bid awards should be made public, with the choice of when to do so being subject to the method of contracting. For agencies using competitive sealed bidding, bids should be opened in public but the publicizing of the bid award should not be made until the official award is made. For agencies using competitive sealed proposals, proposals are opened in private and results are not revealed until the official award is made by the awarding agency.
- *Debriefings*--According to *Model Procurement Code* standards, the person in charge of entering into and administering contracts on behalf of the agency should provide debriefings that furnish the basis for how the selection decision or contract award was made. Formal or informal debriefings may be necessary to inform a vendor on how to improve its bid if there were errors or faults in the bid package that did not comply with

the bid process or if the vendor's products did not comply with or best meet the procuring agency's needs.

- *Disclosure of Procurement Authorization Decisions and Contracts on Agency Website*—The agency should disclose its current contracts on a website for easy access by the public and potential vendors.

## **Primary Agencies Responsible for Regulating Public Contracting**

**The Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board interface frequently with other state agencies and with vendors in the contracting process.**

The MISSISSIPPI CODE governs state agencies' processes for contracting for goods, services, and construction. The CODE delegates responsibility to the following state agencies to create rules and regulations regarding contracting within their jurisdiction:

- the Department of Finance and Administration;
- the Department of Information Technology Services; and,
- the Personal Service Contract Review Board.

State law--i. e., MISS. CODE ANN. Sections 27-104-7 (2) (a), 25-53-5 (d), and 25-9-120 (3) (a) (1972)--provide authority to these agencies to promulgate rules and regulations regarding contracting for goods and services. State agencies must operate within the bounds of these rules and regulations and are responsible for maintaining appropriate paperwork and/or computer records to document their compliance with such.

The Technical Appendix to this report, page 43, provides more detailed information on the roles of each of these three entities in Mississippi state agencies' contracting processes.

### **The Department of Finance and Administration**

***Within the Department of Finance and Administration, the Public Procurement Review Board; the Office of Purchasing, Travel, and Fleet Management; and the Bureau of Building, Grounds and Real Property Management have responsibilities regarding contracting. The department is also responsible for developing and operating the Transparency Mississippi website, upon which are posted copies of contracts entered into by agencies since January 22, 2010.***

Within the Department of Finance and Administration, the following entities have contracting responsibilities:

- *Public Procurement Review Board*--The Executive Director of the Department of Finance and

Administration, the head of the Office of Budget and Policy Development, and an employee of the Department of Finance and Administration who is familiar with the state purchasing laws comprise the Public Procurement Review Board. This board must approve the following contract awards:

- contracts for construction over \$5,000,000;
- contracts for furniture and equipment pertaining to construction and renovation over \$2,000,000; or,
- any one-time purchase that exceeds \$500,000 for commodities, goods, merchandise, furniture, equipment, automotive equipment, or other personal property.

See MISS. CODE ANN. § 27-104-3 (c) and 27-104-7 (2) (a) (1972) regarding responsibilities of the Public Procurement Review Board for contracting.

- *Office of Purchasing, Travel, and Fleet Management*--This office develops and maintains the *Mississippi Procurement Manual* and its regulations, which govern the procurement of commodities.<sup>2</sup> Within this office, the Bureau of Fleet Management develops and maintains the *Rules and Regulations Fleet Manual*, which governs the procurement, maintenance, and disposal of vehicles by state agencies. See MISS. CODE ANN. § 25-1-77 and 31-7-9 (1972) regarding responsibilities of the Office of Purchasing, Travel, and Fleet Management for contracting.
- *Bureau of Building, Grounds, and Real Property Management*--This bureau develops and maintains the *Bureau of Building Procedure Manual* to govern the procurement of construction-related projects.<sup>3</sup> The *Mississippi Procurement Manual* also applies to contracts for construction, unless it conflicts with regulations and procedures established by the bureau. When such conflict arises, the provisions set forth by

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<sup>2</sup>MISS. CODE ANN. § 31-7-1 (e) (1972) defines *commodities* to include goods, merchandise, furniture, equipment, automotive equipment, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale. The term *commodities* does not include computer-related equipment. § 31-7-1 (e) (i) defines *equipment* to include automobiles, trucks, tractors, office appliances and other equipment. § 31-7-1 (e) (ii) defines *furniture* to include desks, chairs, tables, seats, filing cabinets, bookcases and other items of similar nature, as well as dormitory furniture, appliances, carpets and other personal property generally referred to as home, office, or school furniture. Furniture and equipment purchased as part of construction- or renovation-related projects might be covered under construction contracting guidelines and not commodities contracting guidelines.

<sup>3</sup>Contracts for Department of Transportation road construction projects and State Aid road construction projects are not subject to review and approval of the Bureau of Building, Grounds, and Real Property Management.

the bureau take precedence. See MISS. CODE ANN. § 31-11-3 (1972) regarding responsibilities of the Bureau of Building, Grounds, and Real Property Management for contracting.

DFA is also responsible for developing and operating Transparency Mississippi, which was established by the Mississippi Accountability and Transparency Act of 2008 (i. e., MISS. CODE ANN. Section 27-104-151 et seq. [1972]). Transparency Mississippi is a searchable website that provides access to information on state government expenditures. It includes copies of contracts that state agencies have entered into since January 22, 2010. See Exhibit 1, page 10, for requirements of the Mississippi Accountability and Transparency Act of 2008.

## **The Department of Information Technology Services**

*The Department of Information Technology Services oversees the contracting process for computer hardware, software, and technology services.*

The Department of Information Technology Services (ITS) has developed and maintains the *Mississippi Department of Information Technology Services Procurement Handbook* to govern the procurement and acquisition of information technology systems, including computer or telecommunications equipment, electronic word processing and office systems, or services utilized in connection with phases of computer software and consulting services and insurance on all state-owned computer equipment. See MISS. CODE ANN. Section 25-53-5 (d) (1972) regarding ITS's responsibilities for contracting.

## **The Personal Service Contract Review Board**

*The Personal Service Contract Review Board, housed at the State Personnel Board, sets forth rules and regulations that agencies should follow in contracting for personal services.*

The Personal Service Contract Review Board (PSCRB) has developed and maintains the *Personal Services Contract Review Board Rules and Regulations* governing the procurement of personal and professional services contracts, which agencies under the authority of the PSCRB must follow. The *Personal Services Contract Review Board Rules and Regulations* serve as guidance when contracting for personal and professional services, regardless of whether an entity is under the purview of the Personal Service Contract Review Board. See MISS. CODE ANN. Section 25-9-120 (3) (a) (1972) regarding PSCRB's responsibilities for contracting. See Appendix A, page 37, for a complete list of agencies under the purview of PSCRB.

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## Exhibit 1: Requirements of the Mississippi Accountability and Transparency Act of 2008

Codified as MISS. CODE ANN. § 27-104-152 et seq. (1972), the Mississippi Accountability and Transparency Act of 2008 (MATA) required the Department of Finance and Administration to develop and operate a searchable website that includes information on expenditures of state funds from all funding sources since January 22, 2010.

In accordance with § 27-104-155 (1), the website has a “unique and simplified” website address, <http://www.transparency.ms.gov>, and is known as “Transparency Mississippi.” MISS. CODE ANN. § 27-104-155 (1972) requires each agency to maintain a generally accessible website with a link on the front page to Transparency Mississippi.

### Current Minimum Requirements for Transparency Mississippi

The minimum data requirements for the Transparency Mississippi website are detailed in MISS. CODE ANN. § 27-104-155 (1972). Agencies currently must submit expenditures of state funds from all funding sources, as well as selected descriptive information.

With regard to the disbursement and expenditure of state funds from all funding sources, Transparency Mississippi must include:

- the name and principal location of the entity or recipients of the funds;
- the amount of state funds expended;
- a descriptive purpose of the funding action or expenditure;
- the funding source for the expenditure;
- the specific source of authority for the expenditure (e.g., grant, contract);
- the name of expending agency;
- the type of transaction;
- any other information deemed relevant by the Department of Finance and Administration.

The website must include access to an electronic summary of each grant, subgrant, or contract, including amendments of each, and a payment voucher that



includes, wherever possible, a hyperlink to the actual document.

The information available from the website must be updated no later than fourteen days after the receipt of data from an agency and the Department of Finance and Administration shall require each agency to provide to the department access to all data that is required to be accessible from the website within fourteen days of each expenditure.

The website must include data for all fiscal years since Fiscal Year 2010 and all data on the website must remain accessible to the public for a minimum of ten years.

The Office of the State Auditor is to examine agencies' compliance with requirements of the Mississippi Accountability and Transparency Act. The statute does not include enforcement criteria or penalties for noncompliance.

### **Additional Requirements that Must be Implemented by June 30, 2014**

CODE Section 27-104-155 requires that the following additional information be published on the website by June 30, 2014:

- the budget program or activity of the expenditure;
- the specific source of authority and descriptive purpose of the expenditure, including a link to the funding authorization document(s) in searchable PDF form;
- the expected performance outcomes achieved; and,
- links to any state audit or report relating to the entity or recipient of funds or the budget program or activity or agency.

SOURCE: PEER analysis of MISS. CODE ANN. Section 27-104-155 (1972).

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# Assessment of the State’s Contracting Framework Regarding Vendor Access, Vendor Selection, and Transparency

After identifying best practices in public contracting, PEER reviewed Mississippi’s laws and regulations to determine whether the state’s contracting framework adheres to best practices regarding vendor access, vendor selection, and disclosure/transparency of the contracting process.

The Technical Appendix to this report (see page 43) provides additional detail to support the conclusions in this chapter.

## Framework Assessment: Vendor Access

**Vendors have no single point of access to information regarding opportunities to sell goods or services to state agencies. Because three separate state regulatory agencies have responsibilities related to contracting, vendors must deal with potentially three different environments in learning about opportunities. State law and the regulatory agencies’ rules and regulations specify how vendors must enter the contracting process (e.g., submitting bids or proposals). Vendor access is limited to some extent by exemptions and thresholds in statutes or regulations.**

As noted previously, *vendor access* addresses how vendors learn about opportunities to sell goods or services to state agencies and how vendors enter the process of contracting with the state.

### How Vendors Learn about Opportunities to Sell Goods or Services to State Agencies

***Because three separate regulatory agencies have responsibilities related to contracting, vendors must deal with potentially three different environments in learning about opportunities to sell goods or services to the state.***

In order to learn about opportunities to sell a good or service to the state, vendors may:

- search electronic resources (e. g., MS.GOV website or websites of regulatory agencies such as ITS or DFA);<sup>4</sup>
- submit information to the appropriate agency to be added to a vendor list (e. g., DFA’s Qualified Bidders List or Prequalification of Suppliers List for construction and related projects administered by the

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<sup>4</sup>Appendix B, page 35, provides website addresses and contact information regarding state contracting opportunities for vendors.

Bureau of Building within DFA, ITS's Express Products List [Express Products Lists are results of RFP awards]);

- watch for agencies' print advertisements;
- attend vendor conferences, conventions, or vendor fairs hosted by ITS, DFA, the Mississippi Development Authority, or the Mississippi Association of Governmental Purchasing and Property Agents; or,
- contact regulatory agencies (e. g., ITS, DFA) and individual agencies directly regarding possible upcoming opportunities.

PEER notes that not all of these avenues may be available for every type of contract.

### ***Electronic Resources***

Although it is possible for vendors to find information on business opportunities available in state government through electronic resources, PEER determined that this often requires searching through several pages on websites. This would not necessarily be an intuitive process and a vendor unfamiliar with state government might not be able to locate this document unless the person searched and happened to select the right combination of terms.

Individual agencies' websites are somewhat easier for vendors to navigate, but may still require a basic knowledge of state government in order to know where to go to find the necessary information. For example, vendors seeking to sell computers or computer-related products could go to ITS's website, select "Vendor Information," and easily find user-friendly links to information on how to sell such products to state agencies. However, this still requires that the vendor know which agency to choose in order to find the information.

### ***Vendor Lists***

Another way for vendors to learn about opportunities to sell a good or service to the state is to take steps to be included in vendor lists. These lists serve as directories for state agencies to use when seeking goods or services and may position the vendor to be in the first line of contact for potential purchases. Such lists include:

- *Qualified Bidders' List*--The Department of Finance and Administration directs vendors to register for WebProcure, a system maintained by DFA wherein vendors register and supply business data to DFA so that the vendor may be contacted when a bid or proposal request is issued by the state. Being included

on this list does not mean that the vendor will receive invitations to bid from all state agencies, but provides potential access to invitations to bid on statewide contracts and on items put out for bid by the Office of Purchasing, Travel, and Fleet Management.

- *Preapproved Vendor List*--PSCRB maintains a list of vendors that have requested to be notified of solicitation opportunities when such needs arise.
- *Express Products Lists (EPLs)*--This is a database maintained by ITS that lists goods or services such as computers, software, or Geographic Information Systems products that are frequently needed by agencies. The database is a compilation of proposals competitively solicited, evaluated, and awarded, usually to multiple vendors. A state agency, institution of higher learning, or other Mississippi government entity (i. e., local governments) may make use of the EPL up to the dollar amount specified without prior approval from ITS. Vendors wishing to learn how to have their products listed in the EPL can call the ITS Procurement Help Desk or visit the EPL RFP Reference Information page on the ITS website.
- *Individual agency vendor lists*—Some other agencies maintain their own lists of potential vendors. Vendors would need to contact these agencies individually to determine the requirements for being included.

These vendor lists may be an effective means of gaining participation in the state agency market, but require that a vendor research how to participate, submit appropriate materials, and follow up with the agency that maintains the list or database.

### ***Conventions and Vendor Fairs***

DFA, PSCRB, and ITS participate in conventions and fairs hosted by the Mississippi Development Authority (MDA) and the Mississippi Association of Governmental Purchasing and Property Agents (MAGPPA). MDA and MAGPPA periodically hold conventions and other public forum meetings to advertise upcoming projects for which the state will be requesting bids. Also, MDA has hosted similar events at which minority- and women-owned businesses were invited to obtain information on future contracting opportunities with state agencies.

Such conventions and vendor fairs offer a chance for vendors to meet face to face with the agency personnel who might be making contracting decisions in the future. However, the events may occur just a few times each year and might not correspond with a vendor's schedule or may be in a location too distant to travel. They also require

that the vendor be made aware of such events in time to participate.

### ***Advertisement***

State law requires many state agencies to advertise in traditional print media for contracts such as construction, furniture, and equipment over a specified dollar threshold (see Exhibit 2, page 16, for threshold requirements). The effect of threshold requirements on vendor access is that advertising for potential contracts may be limited to those estimated to be very high-dollar contracts. For example, the PSCRB's policies require advertisement for personal service contracts in newspapers only if the potential contract is expected to cost more than \$100,000.

Also, this access method requires that the vendor seeking contracting opportunities have access to the newspaper that is published in the county or municipality in which the agency seeking vendors is located.

### ***Direct Agency Contact***

Vendors have the option of contacting one of the regulatory agencies (e. g., ITS, DFA) directly via telephone or correspondence regarding potential contracting opportunities. This requires that the vendor be able to speak to or write the person that is responsible for the potential contract, that the timing of the agency's needs corresponds to the vendor's contact, and that the agency is responsive to such contacts.

## **How Vendors Enter the Process of Contracting with the State**

***State law and the regulatory agencies' rules and regulations specify how vendors must enter the contracting process (e. g., submitting bids or proposals).***

Vendors typically enter the competitive process for procuring commodities, vehicles, selected services, and construction contracts by responding to an advertised invitation for bids, request for proposals, or request for qualifications. The type of process used depends on the type of purchase. The regulatory agency that deals with that type of purchase promulgates the applicable regulations (e. g., ITS promulgates regulations that determine how to enter the process of contracting for computer systems).

For smaller purchases below the bid thresholds, vendors may not have an opportunity to enter the process unless they are contacted by the procuring agency. Commodities not covered by any state procurement contract may be

**Exhibit 2: Dollar Thresholds for Statutory Procurement Procedures, as of September 2013**

Item	Threshold Amounts	Required Procurement Procedures	Authority
Open-market commodity purchases (commodities not covered by state contract; see page 51)	< or = \$5,000	<ul style="list-style-type: none"> <li>may be made without advertising or requesting formal bids</li> </ul>	MISS. CODE ANN. Section 31-7-13 (a)
	>\$5,000 and < or = \$50,000	<ul style="list-style-type: none"> <li>no requirement for advertisement, so long as agency obtains at least two competitive written quotes</li> </ul>	MISS. CODE ANN. Section 31-7-13 (b); DFA's <i>State of Mississippi Procurement Manual</i>
	>\$50,000	<ul style="list-style-type: none"> <li>advertise for two consecutive weeks in local newspaper;</li> <li>solicit written bids; and,</li> <li>send copy of notification to MS Procurement Technical Assistance Center</li> </ul>	MISS. CODE ANN. Section 31-7-13 (c)
Construction or construction-related projects	< or = \$5,000	<ul style="list-style-type: none"> <li>no advertisement required; and,</li> <li>no requirement for competitive bids</li> </ul>	MISS. CODE ANN. Section 31-7-13 (a)
	>\$5,000 and < or = \$50,000	<ul style="list-style-type: none"> <li>may be made from lowest and best bidder;</li> <li>no advertisement required, provided at least two competitive written bids obtained</li> </ul>	MISS. CODE ANN. Section 31-7-13 (b)
	>\$50,000	<ul style="list-style-type: none"> <li>may be made from lowest and best bidder; and,</li> <li>must advertise for competitive bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located</li> </ul>	MISS. CODE ANN. Section 31-7-13 (c)

## Exhibit 2: Dollar Thresholds for Statutory Procurement Procedures, as of September 2013

Item	Threshold Amounts	Required Procurement Procedures	Authority
Information technology goods or services	<p>&lt; or = \$5,000</p>	<ul style="list-style-type: none"> <li>• no advertisement requirement;</li> <li>• no requirement for competitive bids; and,</li> <li>• delegated to agency</li> </ul>	<p>MISS. CODE ANN. Section 25-53-5 (o) and Mississippi Department of Information Technology Services <i>Procurement Handbook</i></p>
	<p>&gt;\$5,000 and &lt; or = \$50,000</p>	<ul style="list-style-type: none"> <li>• no advertisement requirement;</li> <li>• provided at least two competitive written bids obtained; and,</li> <li>• delegated to agency</li> </ul>	<p>MISS. CODE ANN. Section 25-53-5 (o) and Mississippi Department of Information Technology Services <i>Procurement Handbook</i></p>
	<p>&gt;\$50,000, up to director's approval threshold</p>	<ul style="list-style-type: none"> <li>• must advertise for competitive bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located;</li> <li>• must receive competitive bids or proposals;</li> <li>• must submit procurement request to ITS two to five months prior to purchase; and,</li> <li>• requires ITS approval</li> </ul>	<p>MISS. CODE ANN. Section 25-53-5 (o) and Mississippi Department of Information Technology Services <i>Procurement Handbook</i></p>
	<p>above director's approval threshold</p>	<ul style="list-style-type: none"> <li>• must advertise for competitive bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located;</li> <li>• receipt of competitive bids required;</li> <li>• must submit procurement request to ITS three to eight months prior to purchase;</li> <li>• requires ITS approval; and,</li> <li>• requires ITS Board approval</li> </ul>	<p>MISS. CODE ANN. Section 25-53-5 (o) and Mississippi Department of Information Technology Services <i>Procurement Handbook</i></p>

**Exhibit 2: Dollar Thresholds for Statutory Procurement Procedures, as of September 2013**

Item	Threshold Amounts	Required Procurement Procedures	Authority
Information technology goods or services: sole source	<ul style="list-style-type: none"> <li>&lt; or = \$5,000</li> <li>&gt;\$5,000 and &lt; or = \$50,000</li> </ul>	<ul style="list-style-type: none"> <li>delegated to agency; and,</li> <li>may purchase without advertising or competitive bids</li> </ul>	ITS Procurement Handbook, Section 015-010
	<ul style="list-style-type: none"> <li>&gt;\$50,000 up to director's approval threshold</li> </ul>	<ul style="list-style-type: none"> <li>must submit sole source request with vendor and agency documentation to ITS three to five weeks prior to purchase; and,</li> <li>requires ITS approval</li> </ul>	ITS Procurement Handbook, Section 015-010
	<ul style="list-style-type: none"> <li>above director's approval threshold</li> </ul>	<ul style="list-style-type: none"> <li>must submit sole source request with vendor and agency documentation to ITS two to four months prior to purchase; and,</li> <li>requires ITS Board approval</li> </ul>	ITS Procurement Handbook, Section 015-010
Information technology goods or services: sole source for institutions of higher learning	<ul style="list-style-type: none"> <li>&lt; \$5,000</li> </ul>	<ul style="list-style-type: none"> <li>must be approved by IHL's Chief Information Officer;</li> <li>may purchase without advertising or requesting competitive bids</li> </ul>	ITS Procurement Handbook, Section 015-020
	<ul style="list-style-type: none"> <li>\$5,000 to \$50,000</li> </ul>	<ul style="list-style-type: none"> <li>delegated to IHL's Chief Information Officer</li> </ul>	ITS Procurement Handbook, Section 015-020
	<ul style="list-style-type: none"> <li>\$50,000.01 to \$250,000</li> </ul>	<ul style="list-style-type: none"> <li>delegated to IHL's Chief Information Officer</li> </ul>	ITS Procurement Handbook, Section 015-020
	<ul style="list-style-type: none"> <li>&gt; \$250,000 but below director's approval threshold</li> </ul>	<ul style="list-style-type: none"> <li>must submit sole source request with vendor and institution documentation to ITS three to five weeks before purchase; and,</li> <li>requires ITS approval</li> </ul>	ITS Procurement Handbook, Section 015-020
	<ul style="list-style-type: none"> <li>above director's approval threshold</li> </ul>	<ul style="list-style-type: none"> <li>must submit sole source request with vendor and institution documentation to ITS two to four months prior to purchase; and,</li> <li>requires ITS Board approval</li> </ul>	ITS Procurement Handbook, Section 015-020



**Exhibit 2: Dollar Thresholds for Statutory Procurement Procedures, as of September 2013**

Item	Threshold Amounts	Required Procurement Procedures	Authority
Information technology goods or services for institutions of higher learning	< or = \$5,000	<ul style="list-style-type: none"> <li>• no advertisement requirement;</li> <li>• no requirement for requesting competitive bids; and,</li> <li>• delegated to institution's Chief Information Officer</li> </ul>	MISS. CODE ANN. Section 25-53-5 (o) and ITS <i>Procurement Handbook</i> , Section 0115-020
	>\$5,000 and < or = \$50,000	<ul style="list-style-type: none"> <li>• no advertisement requirement;</li> <li>• provided at least two competitive written bids obtained; and,</li> <li>• delegated to institution's Chief Information Officer</li> </ul>	MISS. CODE ANN. Section 25-53-5 (o) and ITS <i>Procurement Handbook</i> , Section 0115-020
	\$50,000.01 to \$250,000	<ul style="list-style-type: none"> <li>• advertisement required;</li> <li>• competitive bids required; and,</li> <li>• delegated to institution's Chief Information Officer</li> </ul>	MISS. CODE ANN. Section 25-53-5 (o) and ITS <i>Procurement Handbook</i> , Section 0115-020
	>\$250,000 but below director's approval threshold	<ul style="list-style-type: none"> <li>• advertisement required;</li> <li>• competitive bids required;</li> <li>• must submit procurement request to ITS two to five months prior to purchase; and,</li> <li>• requires ITS approval</li> </ul>	MISS. CODE ANN. Section 25-53-5 (o) and ITS <i>Procurement Handbook</i> , Section 0115-020
	above director's approval threshold	<ul style="list-style-type: none"> <li>• advertisement required;</li> <li>• competitive bids required;</li> <li>• must submit procurement request to ITS three to eight months prior to purchase; and,</li> <li>• requires ITS Board approval</li> </ul>	MISS. CODE ANN. Section 25-53-5 (o) and ITS <i>Procurement Handbook</i> , Section 0115-020

**Exhibit 2: Dollar Thresholds for Statutory Procurement Procedures, as of September 2013**

Item	Threshold Amounts	Required Procurement Procedures	Authority
Personal Service Contract Review Board	< or = \$50,000	<ul style="list-style-type: none"> <li>• may be procured by an agency from any source following agency rules and regulations; and,</li> <li>• does not require PSCRB approval</li> </ul>	<i>Personal Services Contract Review Board Rules and Regulations</i>
	>\$50,000 but = or <\$100,000	<ul style="list-style-type: none"> <li>• lowest responsible bidder;</li> <li>• after obtaining three written quotes in conformity with small business purchases provisions; and,</li> <li>• does not require PSCRB approval</li> </ul>	<i>Personal Services Contract Review Board Rules and Regulations</i>
	>\$100,000	<ul style="list-style-type: none"> <li>• procured from lowest responsible bidder or best proposal;</li> <li>• after advertising and soliciting bids or proposals in accordance with <i>Personal Services Contract Review Board Rules and Regulations</i>; and,</li> <li>• requires PSCRB approval</li> </ul>	MISS. CODE ANN. § 25-9-120 and <i>Personal Services Contract Review Board Rules and Regulations</i>

SOURCE: PEER analysis of MISSISSIPPI CODE and regulations of DFA, ITS, and PSCRB.

procured from vendors on the open market by state agencies, provided that the agency adheres to the requirements outlined in state law.

Vendors enter the process for selling information technology goods or services to the state primarily by responding to requests for proposals, general RFPs and letters of configuration, or special RFPs. Additionally, vendors may participate in the Express Products Lists (discussed above) to have their good or service listed in a database that agencies may purchase from or become members of a cooperative purchasing agreement whereby a third party will market the businesses' products. The cost of the information technology good or service and the needs of the agency or institution wishing to purchase determine what procedure is utilized.

## Exemptions and Thresholds

***Exemptions (i. e., items exempted from statutory or regulatory procurement requirements) and thresholds (i. e., dollar value limits that determine the level of vendor access and competition required) can result in both efficiency benefits to the state and in a competing outcome of limiting contracting opportunities for vendors.***

The state's statutory and regulatory framework grants exemptions for numerous types of contracts. (See Exhibit 3, page 22, for goods or services exempted by state law from requirements for competitive selection.) The following are examples of commodities exempted from statutory or regulatory procurement requirements by virtue of specific exemptions:

- commodities and services produced or offered by state agencies;
- emergency procurements, including emergency fuel;
- vehicles for specific purposes of the Department of Public Safety and vehicles used by institutions of higher learning and governing authorities; and,
- fuel access card services.

Regarding information technology purchases, by statute, only those projects of institutions of higher learning that are fully funded through federal sources are exempted from ITS rules and regulations.

Personal and professional service contracts of \$100,000 or less, as well as all personal service contracts paid for "net-of-fee" (i. e., by a third party), do not require the Personal Service Contract Review Board's approval as set forth in law. Further, personal service contracts procured by the

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Commodities or services produced or offered by state agencies	<ul style="list-style-type: none"> <li>• must meet purchasing agency's needs; and,</li> <li>• price must be fair market value</li> </ul>	<i>State of Mississippi Procurement Manual</i> 3.102.05	The Chief Procurement Officer (i. e., the Director of the Office of Purchasing, Travel, and Fleet Management) or the purchasing agency's head	General office supplies purchased from the Mississippi Industries for the Blind
Emergency purchasing of commodities by state agencies (other than computer-related equipment)	<ul style="list-style-type: none"> <li>• agency head determines that an emergency exists in regard to the purchase of commodities or repair contracts; and,</li> <li>• delaying the purchase to allow competitive bidding would be detrimental to the state</li> </ul>	MISS. CODE ANN. § 31-7-13 (j)	Purchasing agency's head	
Emergency fuel	<ul style="list-style-type: none"> <li>• use during declared emergency situations; or,</li> <li>• in situations in which an emergency is anticipated</li> </ul>	MISS. CODE ANN. § 31-7-13 (j)	Purchasing agency's head	

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Purchase of vehicles for specific purposes of the Department of Public Safety and purchase of vehicles by institutions of higher learning and governing authorities	<ul style="list-style-type: none"> <li>Bureau of Fleet Management, upon request, may grant an exemption for any vehicle assigned to a sworn officer of the Department of Public Safety and used in undercover operations when the bureau determines that compliance with purchase regulations could jeopardize the life, health or safety of the sworn officer;</li> <li>purchasing provisions of MISS. CODE ANN. § 25-1-77 (1972) and the Bureau of Fleet Management's <i>Rules and Regulations Fleet Manual</i> do not apply to any state institution of higher learning or governing authority</li> </ul>	MISS. CODE ANN. § 25-1-77 (7) (8)	Bureau of Fleet Management	
Fuel access card services	<ul style="list-style-type: none"> <li>state agencies are not required to use the state's fuel access card services contract if they determine it is in their best interest not to do so</li> </ul>	MISS. CODE ANN. §31-7-13 (q)	Bureau of Fleet Management	Fuelman
Computer equipment and services	<ul style="list-style-type: none"> <li>for acquisitions made by institutions of higher learning made wholly with federal funds</li> </ul>	MISS. CODE ANN. § 25-53-25 (3)	N/A	

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Information technology goods or services purchased by Supreme Court	Judicial edict	<i>In re Mississippi Judicial Information System</i>	Supreme Court of Mississippi	
Goods or services provided by a sole source provider (for purchases through ITS)	<ul style="list-style-type: none"> <li>• the product or service being purchased must perform a function for which no other product or source of service exists;</li> <li>• the purchaser must be able to show specific business objectives that can only be met through the unique product or service; and,</li> <li>• the product or service must be available only from the manufacturer and through resellers that could submit competitive pricing for the product or service</li> </ul>	MISS. CODE ANN. Section 31-7-13 (m) (viii), and Mississippi Department of Information Technology Services <i>Procurement Handbook</i> Section 013-030	ITS Director or ITS Board (depending on value of good or service)	

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Personal service contracts with: <ul style="list-style-type: none"> <li>• attorneys;</li> <li>• accountants;</li> <li>• auditors;</li> <li>• physicians;</li> <li>• dentists;</li> <li>• architects;</li> <li>• engineers;</li> <li>• veterinarians;</li> <li>• utility rate experts;</li> <li>• information technology services;</li> <li>• actuaries; or,</li> <li>• services provided to Department of Transportation</li> </ul>		MISS. CODE ANN. § 25-9-120 (3) and <i>Personal Services Contract Review Board Rules and Regulations</i> 3-101.02	Statutory	
Personal service contracts for equipment repairs		MISS. CODE ANN. § 31-7-13 (m) (i-iii)	Statutory	
Raw gravel or dirt		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Purchases of state adopted textbooks		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Certain purchases under the Mississippi Major Economic Impact Act		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	Design and construction contracts

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Perishable supplies or food		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Waste disposal facility construction contracts		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Hospital group purchase contracts		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Energy efficiency services or equipment		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Municipal electrical utility system fuel		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Library books and other reference material		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Election ballots		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Multichannel interactive video systems		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	



**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Junior college books for rent		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Certain school district purchases		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in CODE Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities
Garbage, solid waste, and sewage contracts		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Municipal water tank maintenance contracts		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Hospital lease of equipment or services		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	

**Exhibit 3: Commodities or Services Exempted by State Law from Requirements for Competitive Selection, as of September 2013**

Goods or Services Exempt from Requirements for Competitive Selection	Conditions for Exemption	Authority for Exemption	Individual/Entity Authorized to Make Exemption Determination	Example
Purchases made pursuant to qualified cooperative purchasing agreements		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
School yearbooks		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Design-build method and dual-phase design-build method contracting		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	
Toll road and bridge construction projects		MISS. CODE ANN. § 31-7-13 (m) (i-xxxiv)	Statutory	

SOURCE: PEER analysis of MISSISSIPPI CODE and regulations of DFA, ITS, and PSCRB.

Department of Transportation are exempted and contracts for certain specified services are exempted under CODE Sections 25-9-120 (3) and 31-7-13 (m) (i) and (ii).

Also, as noted previously, dollar thresholds for procurement dictate whether a contracting opportunity must be advertised and/or procured competitively. (Exhibit 2, page 16, lists threshold amounts of various types of contracts.)

Given that the use of exemptions and thresholds can result in both efficiency benefits to the state and in a competing outcome of limiting contracting opportunities for vendors, the state should carefully monitor their use and benefit. The adoption of an exemption or threshold should be contingent on clearly establishing its projected efficiency benefits, followed by a periodic monitoring of the anticipated efficiency outcomes. Failure to do so often leads to an expansion of such exemptions and thresholds without establishing their true value, thus compromising the benefits of competitive procurement.

## Framework Assessment: Vendor Selection

**ITS regulations require that vendors be selected based on quantitative and qualitative scoring criteria. PSCRB regulations require agencies to select vendors based on requirements set out in the document soliciting bids or proposals. DFA, ITS, and the PSCRB have mechanisms in place to help ensure that vendor selection is based on well-defined criteria.**

As noted previously, *vendor selection* addresses how agencies develop and utilize criteria to select vendors of goods and services.

This section includes a discussion of how state agencies' policies, if implemented as written, would compare with best practices for contracting; how the state ensures that agencies' practices for selecting vendors comply with rules and regulations; and what types of contracts are exempt from state procurement requirements.

### How Agencies Select Vendors of Goods and Services

***ITS regulations require that vendors be selected based on quantitative and qualitative scoring criteria. PSCRB regulations require agencies to select vendors based on requirements set out in the document soliciting bids or proposals.***

For contracts procured through a competitive bid process, DFA rules and regulations require that agencies award the contract to the lowest and best responsible/responsive bidder whose bid meets the requirements and criteria set forth in the request for proposals (RFP) or invitation for

bids (IFB). DFA rules and regulations state that no bid shall be evaluated for any requirement or criterion that is not disclosed in the RFP. For contracts procured through a competitive proposal process, DFA rules and regulations require that agencies list in the RFP all evaluation factors, including price, and their relative importance. DFA's rules and regulations state that agencies may use a numerical rating system to evaluate proposals, but are not required to do so. For contracts that are not procured competitively, DFA rules and regulations require state agencies to obtain adequate and reasonable competition for such procurements.

To satisfy the statutory requirement that contracts be awarded to the vendor with the "lowest and best" bid (see MISS. CODE ANN. Section 25-53-5 [o] [1972]), ITS utilizes both quantitative and qualitative scoring criteria to determine which vendor is awarded a contract. ITS's vendor selection process, if implemented as designed, adheres to best practices for vendor selection.

For personal service contracts requiring competitive selection, the PSCRB requires agencies seeking contracts to evaluate potential vendors based on requirements set out in the document soliciting bids or proposals (depending on the procurement method required).

## **How Regulatory Agencies Ensure that Vendor Selection Practices Comply with Requirements**

*DFA, ITS, and the PSCRB have mechanisms in place to help ensure that vendor selection is based on well-defined criteria.*

DFA's Public Procurement Review Board's oversight of the procurement of commodities, construction, and vehicles includes a procedural avenue for the correction of mistakes during the bid process and procedures to protest and appeal solicitation and award decisions. The PPRB asks bidders to be proactive and informed to review the bid specifications and, if they have concerns, to raise challenges if they believe such bid specification may unfairly restrict competition.

Regarding information technology purchases, ITS requires that all contracts be approved by the ITS Executive Director and, under certain conditions, the ITS Board. Further, ITS makes use of post-procurement reviews to ensure compliance with state law and regulations and to inform vendors of requirements.

The Personal Service Contract Review Board ensures that actual practices in selecting vendors comply with the board's rules and regulations by: (a) pre-reviewing each invitation for bids or request for proposals prior to advertisement (should an agency request such an action); (b) approving professional and personal service contracts

that exceed \$100,000; (c) debarring or suspending vendors not in compliance with state procurement regulations; and, (d) reporting vendors for anti-competitive practices.

## Framework Assessment: Disclosure and Transparency

DFA, ITS, and PSCRB regulations require that written notification of a bid award be sent to the successful bidder but do not specifically require proactive presentation of this information to the public. Only ITS requires a form of debriefing--the Post Procurement Review--at the vendor's request. All three agencies' regulations require maintaining some information on their websites regarding awarded contracts, but none of the three have all current contracts posted on their websites with easy access.

As noted previously, a *transparent* public contracting process includes publicizing of bid awards, debriefing of vendors, and disclosure of current contract information on a website.

### Publicizing of Bid Awards

*DFA, ITS, and PSCRB regulations all require that each of their respective agencies send written notification of the award to the successful bidder. For the public, the information is "made available," presumably upon request.*

Regarding commodities, vehicles, and construction projects under DFA's purview, the regulations require that for both competitive sealed bids and competitive sealed proposals, written notice of a bid award be sent to the successful bidder and that notice of the award shall be "made available to the public."

Regarding information technology purchases, ITS regulations require that "the procurement process will be transparent, with appropriate information shared with stakeholders in a timely manner. . .all potential vendors will be treated fairly and equitably and will have equal access to information throughout the procurement process." They also note that official written notification is to be provided to proposers regarding the awarding of a contract. ITS also posts all notifications of awards on its website.

PSCRB regulations state that after a bid award is made, all information and documents applicable to the awarded contract (except specific proprietary information) shall be made available to any business or person. They also state that for competitive sealed bids, written notice of the award shall be sent to the successful bidder and notice of award shall be "made available to the public" and for competitive sealed proposals, notice of award shall be "made available to all participating offerors and the public."

## **Debriefing of Vendors**

***Neither DFA regulations nor PSCRB regulations address debriefing of vendors after a bid award. ITS regulations provide the option for a Post Procurement Review at the vendor's request.***

Neither DFA regulations nor PSCRB regulations address debriefing of vendors after a bid award.

ITS regulations provide the option for a Post Procurement Review, which is a meeting conducted with ITS staff at the vendor's request regarding the evaluation and scoring of the proposal submitted by the vendor. Vendors also have the option of filing a formal protest if still aggrieved after participating in the Post Procurement Review.

## **Disclosure of Information on Contracts Awarded**

***DFA, ITS, and PSCRB regulations all require that their respective agencies maintain some information on contracts under their purview that have been awarded, but none have all current contracts posted on their website with easy access. Also, not all of the contracts are currently included on Transparency Mississippi.***

### ***Disclosure on the Regulatory Agencies' Websites***

The public has access to copies of statewide contracts for commodities and vehicles through the website of DFA's Office of Purchasing, Travel, and Fleet Management, with the exception of small contracts bid out by individual agencies. The Bureau of Building, Grounds, and Real Property Management lists active construction-related projects under its purview on its website, but does not include prices or copies of actual contracts.

Regarding information technology, ITS maintains information on its website regarding the awarding of contracts for information technology goods and services, including competitive and sole source procurements, emergency purchases, exemptions, and modifications to previous approvals of approvals valid within the last fiscal year, actions taken by the ITS Board, and an Express Products Lists directory. Also, the website contains information on how to complete a public records request regarding any contract awarded, should the information provided elsewhere not be sufficient.

State law requires the Personal Service Contract Review Board to prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year and any necessary information required from state agencies in making such reports. Electronic copies of all preapproved vendors' lists for personal services are available on the Personal Service Contract Review Board's website but no other personal service contracts are available on the PSCRB website.

### ***Disclosure on Transparency Mississippi***

As noted previously, state law requires agencies to upload and maintain their contract awards and executed contracts in the award/contract web interface on Transparency Mississippi.

DFA does not post its commodities or vehicle contracts on Transparency Mississippi. However, copies of these contracts are available on the Office of Purchasing, Travel, and Fleet Management's website.

According to the Bureau of Building, Grounds, and Real Property Management, all contracts associated with the construction process may be found on Transparency Mississippi. While PEER did not verify whether all construction-related contracts are included on that website, a search yielded a total of 3,355 contracts.

Regarding personal service contracts, according to the Personal Service Contract Review Board, all personal or professional service contracts (minus proprietary or confidential information) under the board's purview should be subject to MATA and should be found on Transparency Mississippi. While PEER's search of the Transparency Mississippi website did yield personal and professional service contracts for several agencies, including some both above and below the \$100,000 threshold, PEER did not verify whether all personal or professional service contracts under the board's purview are included in Transparency Mississippi.

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## Recommendation

The Legislature should amend MISS. CODE ANN. Section 25-53-151 (1972) to require the Electronic Government Oversight Committee<sup>5</sup> to develop a procurement portal that will enable potential vendors of goods and services access to relevant and necessary information regarding the sale of the following to state agencies:

- commodities, as defined by CODE Section 31-7-1;
- contract personnel, as defined by CODE Section 25-9-107 and 25-9-120; and,
- computer equipment and services, as defined by CODE Section 25-53-3.

Specifically, the portal should provide potential vendors with:

- a searchable database of business opportunities with the state, including a breakdown by product/service and by organization seeking the product/service;

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<sup>5</sup>Created in 2001, the Electronic Government Oversight Committee was established to:

- a. prioritize and make recommendations for all electronic government services, in order to cut across state and local governmental organizational structures;
- b. address policy issues such as privacy, security, transaction fees, and accessibility;
- c. review ongoing fiscal and operational management and support of portal;
- d. provide a mechanism for gathering input from citizens, businesses and government entities;
- e. encourage self-service models for citizens through state websites and other electronic services; and,
- f. promote economic development and efficient delivery of government services by encouraging governmental and private sector entities to conduct their business and transactions using electronic media.

Thus, this committee has a mandate to help government develop electronic government systems that meet the broad needs of state and local government and the broad range of citizen interests reflected in Mississippi's diverse population. The committee consists of:

- a. the Executive Director of the Department of Information Technology Services, or his designee;
- b. the State Auditor, or his designee;
- c. the State Treasurer, or his designee;
- d. the Secretary of State, or his designee;
- e. the Executive Director of the Department of Finance and Administration, or his designee;
- f. the Commissioner of Public Safety, or his designee; and,
- g. the Commissioner of Revenue, or his designee.

See MISS. CODE ANN. Section 25-53-151 (1972).



- listings of the effective dates of each contract;
- Frequently Asked Questions regarding doing business with the respective agencies and a breakdown of these questions regarding the selection process for the respective agencies;
- a searchable database of contract types, contract number, commodity, supplier, organization, or keywords;
- a forum for questions and answers relating to the procurement process in general and/or specific to a single contract; and,
- links to individual agency websites and contacts to enable potential vendors to obtain more specific information if necessary.

The portal should be maintained as part of the Transparency Mississippi website managed by the Department of Finance and Administration as provided for by CODE Section 27-104-151 through 27-104-163. It should be mandatory that the Department of Information Technology Services maintain a link from the state website to the portal.

Further, the Legislature should create a new CODE section to be codified with the other provisions or Transparency Mississippi that will require the Department of Finance and Administration to maintain and update this portal with guidance and assistance from the Department of Information Technology Services and the State Personnel Board.



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# Appendix A: Agencies Under the PSCRB's Purview

**Agency Name:**

Attorney General  
Secretary of State  
Audit Department  
Personnel Board  
Division of Budget and Policy Development  
Office of Administrative Services  
Finance and Administration  
Division of Support Services  
Office of Tort Claims  
Treasury - State  
Treasury - MPACT  
Health Care Expendable Fund Board  
MS Affordable College Savings Plan  
Tax Commission  
Gaming Commission  
Ed. Dept. Consolidated Education Programs  
Ed. Dept. Minimum Program  
Ed. Dept. Vocational and Technical  
Blind School  
Deaf School  
Blind and Deaf School  
Library Commission  
ETV Authority  
Health Board  
Division of Spinal Cord and Health  
Special Disability Program  
Office of Vocational Rehab  
Office of Disability Determination Services  
Office of SP Services for Ind. With Disability  
DRS Support Services  
Div. of Voc. Rehab for the Blind  
Mental Health Department  
East MS State Hospital Mental Health  
Ellisville State School - Mental Health  
Mississippi State Hospital  
Ellisville School Farm  
Drug and Alcohol Section

Boswell Regional Center  
North MS Regional Center  
Central MS Regional Center  
South MS State Hospital  
Juvenile Rehab Facility Center  
Specialized Treatment Facility  
Hudspeth Regional Center  
So. MS Regional Center  
North MS State Hospital  
Agriculture and Commerce Department  
Plant Industry Div. - Agriculture and Commerce  
Farmers Central Market - Agriculture and Commerce  
Agriculture and Commerce - Grain Division  
Division of Community Development  
Mississippi Development Authority  
MDA - Division of Support Services  
Agriculture and Commerce - Animal Health Board  
Fair Commission  
Department of Marine Resources  
Forestry Commission  
MS Institute for Forest Inventory  
Wildlife and Fisheries  
Wildlife Cons - Museum Natural Science  
Wildlife and Fisheries  
Parks and Recreation  
Department of Environmental Quality  
Office of Geology and Energy  
Office of Land and Water  
Office of Pollution Control  
Grand Gulf Military Monument Comm.  
Archives and History  
Pat Harrison Waterway District  
Pearl River Basin Development District  
Pearl River Valley Water Supply District  
Tombigbee River Valley Water Management  
Oil & Gas Board  
Soil and Water Conservation Commission  
Insurance Department  
State Fire Academy  
Banking and Consumer Finance - CFF  
Banking and Consumer Finance Department  
Public Employees Retirement System  
Corrections Department - Institutions

Correction - Medical Services  
Corrections - Farming Operations  
Parole Board  
Department of Information Tech Services  
Office of Youth Services  
Jobs Program  
Child Support  
DHS - Division of Support Services  
Office of Economic Assistance/Community Service  
Division of Employment and Training  
Division of Aging and Adult Services  
Division of Community Services  
Office of Social Services  
Division of Social Services Block Grant  
Division of Children and Youth  
Welfare Restructuring Program  
Medicaid Division  
Employment Security Commission  
Workers' Compensation Commission  
Division of Public Safety Planning  
Public Safety Council on Aging  
Division of Public Safety  
DPS - Division of Support Services  
Division of Crime Laboratories  
Div of Law Enforcement Training Academy  
Division of Medical Examiner  
Office of Law Standards and Training  
DPS Emergency Telecommunications  
County Jail Standards and Training  
Narcotics Bureau  
Veterans Affairs Board  
Veterans' Home Purchase Board  
Public Service Commission  
Public Utilities Staff  
Dental Examiners Board  
Agricultural Aviation Board  
Board of Physical Therapy  
Medical Licensure Board  
Cosmetology Board  
Real Estate Appraiser License and Cert. Board  
Real Estate Commission  
Funeral Services Board  
Public Contractors Board

Nursing Home Administrators Board  
Nursing Board  
Motor Vehicle Commission  
Barber Examiners Board  
Public Accountancy Board  
Professional Engineers and Land Surveyors  
Athletic Commission  
Pharmacy Board  
Architecture and Landscape Board  
Veterans Memorial Stadium  
Arts Commission  
MS Auctioneers Commission  
Emergency Management Agency  
Board of Registered Professional Geologists  
Board of Social Workers and Marriage/Family Therapists

SOURCE: PSCRB Agency Registry, October 29, 2013.

## Appendix B: Website and Contact Information Regarding State Contracting Opportunities for Vendors

Agency	Website	Telephone
Mississippi Government Portal Website	<a href="http://www.ms.gov/content/Pages/Business.aspx">http://www.ms.gov/content/Pages/Business.aspx</a>	
Mississippi Government Portal Live Chat <sup>6</sup>	<a href="http://www.ms.gov/content/Pages/LiveChat.aspx">http://www.ms.gov/content/Pages/LiveChat.aspx</a>	1-877-290-9487
Department of Finance and Administration:	<a href="http://www.dfa.state.ms.us">http://www.dfa.state.ms.us</a>	(601) 359-3402
Office of Purchasing and Travel	<a href="http://www.dfa.state.ms.us/Purchasing/Home.html">http://www.dfa.state.ms.us/Purchasing/Home.html</a>	(601) 359-3409
Bureau of Fleet Management	<a href="http://www.dfa.state.ms.us/Purchasing/Home.html">http://www.dfa.state.ms.us/Purchasing/Home.html</a>	(601) 359-9335
Bureau of Building, Grounds, and Real Property	<a href="http://www.dfa.state.ms.us/Offices/BOB/BOB.htm">http://www.dfa.state.ms.us/Offices/BOB/BOB.htm</a>	(601) 359-3621
Department of Information Technology Services	<a href="http://www.its.ms.gov">http://www.its.ms.gov</a>	(601) 432-8166
Personal Service Contract Review Board	<a href="http://www.mspb.ms.gov">http://www.mspb.ms.gov</a>	(601) 359-1406
Mississippi Development Authority	<a href="http://www.mississippi.org">http://www.mississippi.org</a>	Marketing and Communications: (601) 359-3449; Minority and Small Business Development: (601) 359-3448
Mississippi Association of Governmental Purchasing and Property Agents	<a href="http://www.magppa.org">http://www.magppa.org</a>	(601) 359-7454
Transparency.ms.gov	<a href="http://www.transparency.mississippi.gov/">http://www.transparency.mississippi.gov/</a>	DFA's Mississippi Management and Reporting System Call Center Help Desk (601) 359-1343, Option 5

SOURCE: PEER analysis of state agency websites. PEER notes that website addresses may change over time.

<sup>6</sup> Ms.gov Live Chat is available Monday through Friday, 8 a.m. to 5 p.m. With Live Chat, a vendor may ask an ms.gov operator to help find information, online services or direct government contacts. The operator may then help point the vendor to the appropriate state website or may provide a phone number for the best direct contact to assist the vendor. However, the ms.gov Live Chat operator cannot answer specific questions in place of official state agency or entity staffs.





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# Technical Appendix: The Roles of the Department of Finance and Administration, Department of Information Technology Services, and Personal Service Contract Review Board in Mississippi State Agencies' Contracting Processes

## The Role of the Department of Finance and Administration

The Department of Finance and Administration (DFA) oversees procurement of most commodities, vehicles, and construction for Mississippi's state agencies.

The MISSISSIPPI CODE defines *commodities* to include goods, merchandise, furniture, equipment, automotive equipment, and other personal property purchased by the agencies of the state and governing authorities,<sup>7</sup> but not commodities purchased for resale or raw materials converted into products for resale. *Equipment* is defined to include automobiles, trucks, tractors, office appliances, and other equipment. *Furniture* is defined to include desks, chairs, tables, seats, filing cabinets, bookcases and other items of a similar nature, as well as dormitory furniture, appliances, carpets and other items of personal property generally referred to as home, office or school furniture.

DFA procures contracts necessary to manage the state's vehicle fleet, including contracts for vehicles, police vehicles, fire apparatus, vehicle lifts, fuel access card services, emergency fuel, compressed natural gas, propane conversion kits, automotive parts, batteries, and tires and tubes.

MISSISSIPPI CODE defines *construction* to include the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair, or regularly scheduled maintenance of existing public structures, public buildings, or other public real property. Furniture and equipment may also be

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<sup>7</sup>MISS. CODE ANN. § 31-7-1 (b) (1972) defines *governing authorities* as including "boards of supervisors, governing boards of all school districts, all boards of directors of public water supply district, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioner and boards of trustees of any public hospitals and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof."

purchased to furnish the building as part of a building or renovation project.

This section addresses the following questions regarding the Department of Finance and Administration's role in contracting:

- How do vendors know about the opportunity to sell a good or service to the state?
- How do vendors enter the process of contracting with the state for the purchase of commodities or vehicles?
- How do vendors enter the process of contracting with the state for construction projects?
- Do the processes used to procure commodities, vehicles, and construction-related projects comply with best practices?
- How does the Department of Finance and Administration ensure that actual practices for selecting commodities, vehicles, and construction-related projects comply with rules and regulations?
- Does the public (including vendors) have access to information showing all vendors who provide commodities, vehicles, and construction-related projects to the state and at what price?
- What types of contracts are exempt from DFA's purchasing requirements by virtue of dollar thresholds or specific exemptions?

## **How do vendors know about the opportunity to sell a good or service to the state?**

Vendors may learn about the opportunity to sell commodities, vehicles, or construction-related projects to the state from the MS.GOV website, DFA's website, signing up for the qualified bidders' list, responding to published advertisements for procurements over \$50,000, or contacting individual agencies for procurements of \$50,000 or less. Finally, vendors may contact DFA's Office of Purchasing, Travel, and Fleet Management or DFA's Bureau of Building, Grounds and Real Property Management by telephone.

### *The MS.GOV Website*

*Although DFA could improve the descriptive links on the MS.GOV website to make access easier for vendors, the MS.GOV business page does have a direct link to the "Vendor Information" page for procuring commodities through DFA's Office of Purchasing, Travel, and Fleet Management. However, no link through the website easily connects a vendor to information on contracting for construction with the state of Mississippi.*

The state of Mississippi website (<http://www.ms.gov>) provides electronic access for a vendor wishing to do business with the state. If a vendor clicks on the

“Business” tab at the top of the page, the vendor will be taken to the Business page. On the Business page, there is a link for “Doing Business With the State of Mississippi” with the following description: “Vendor information will provide guidance to vendors interested in conducting business with the State of Mississippi.”

However, the user does not know that the link is for vendor information on how to contract for commodities and vendors until the user clicks on the link to the Department of Finance and Administration’s Office of Purchasing, Travel, and Fleet Management “Vendor Information” webpage. The webpage contains the following:

- a link discussing the types of contracts and commodities handled by the Office of Purchasing, Travel, and Fleet Management;
- a link listing the competitive bid opportunities and proposals currently available;
- a link providing information about the evaluation process for cooperative contracts;
- a link to the vendor guide for *How to Do Business with the State of Mississippi*;
- a link for proposal format and guidelines for nonexclusive, negotiated contracts;
- a link for a list of local governments and links to county and city websites; and,
- a link for vendors’ frequently asked questions.

However, the “Doing Business With the State of Mississippi” link only provides vendor information for those who seek to do business with the Department of Finance and Administration’s Office of Purchasing, Travel, and Fleet Management for fleet management or purchasing commodities (other than computer-related equipment). It does not provide information on how to contract for construction or on other ways to do business with the state of Mississippi.

Other links on the “Business” page of MS.GOV provide information on how to do business with the state of Mississippi, but no link through MS.GOV easily connects a vendor to information about contracting for construction. Thus a construction contractor unfamiliar with the state’s process would not have easy access to such information.

### ***The Department of Finance and Administration's Website***

***On the DFA website, the "State Purchasing, Travel, and Fleet Management Information" link takes the user to that office's page, which has a "Vendor Information" page. That page includes access to: (a) a manual for vendors entitled "How to Do Business With the State of Mississippi;" (b) current bids and proposals and bidding opportunities; (c) answers to vendors' frequently asked questions; and, (d) electronic copies of all state contracts procured by that office.***

DFA's Office of Purchasing, Travel, and Fleet Management website (<http://www.dfa.state.ms.us/Purchasing/Home.html>) contains staff contact information and a link to the *Mississippi Procurement Manual* for procuring commodities (other than computer-related equipment). The "Purchasing Guidelines" link takes the user to *State of Mississippi State and Local Governments: Information on How to Purchase*. However, these purchasing guidelines are written from the perspective of state employees seeking to purchase and not from the vendors' perspective.

This website also provides a "Contracts" link to the different types of contracts procured by the Office of Purchasing, Travel, and Fleet Management. Once there, if the potential vendor clicks on the links for a particular type of contract (e. g., competitive, cooperative), the website provides a brief description of how the contracts are established, a list of the contracts by item (e. g., automotive batteries, envelopes), and links to copies of the active contracts.

This website also contains a link entitled "Vendor Information." Included is a guide geared toward potential vendors entitled *How to Do Business With the State of Mississippi*.

The Department of Finance and Administration posts all bid specifications, requests for proposals, and requests for qualifications notices, as well as any amendments or clarifications, on its website under the direct link "Bid and RFP Notices" at <http://www.dfa.state.ms.us/Content/BidandRFP.htm> for construction, maintenance, vehicles, and commodities (other than computer-related equipment). Vendors would need to check the website periodically for amendments or clarifications that might be issued.

For vehicles, the fleet management website (<http://www.dfa.state.ms.us/Purchasing/Home.html>) includes staff contact information and a link to the *Rules and Regulations Fleet Manual*, including fleet management procurement guidelines. It also includes links to four of the active fleet management contracts (i. e., vehicles, police vehicles, fuel contracts, and emergency fuel contracts) but does not include access to links to the other seven

additional fleet management contracts (i. e., for automotive batteries, tires, and tubes).

### ***Qualified Bidders' List***

***To increase their access to procurement opportunities for commodities, vendors may seek to join the Office of Purchasing, Travel, and Fleet Management's Qualified Bidders List for state contract bids. To receive invitations to bid from all of the agencies and governing authorities--particularly, those exempt from the Mississippi Procurement Manual or purchased for \$50,000 or less--vendors would need to contact each individual agency's procurement office to request to be on their bid list.***

To increase their access to procurement opportunities for commodities, vendors may seek to join the Office of Purchasing, Travel, and Fleet Management's Bidders' List for state contract bids. To do so, a vendor must first submit a letter requesting to be placed on the list. The office sends the appropriate forms to the vendor to complete and return. A vendor is not placed on the list until all forms have been completed correctly and returned.

Being on the office's bidders' list does not mean that the vendor will receive invitations to bid from all state agencies, particularly for solicitation of written bids that are under the bid thresholds (see page 20). The bidders' list only provides the vendor with access to invitations to bid on statewide contracts and on a few items put out for bid by the Office of Purchasing, Travel, and Fleet Management.

To receive invitations to bid from all of the agencies and governing authorities--particularly, those exempt from the *Mississippi Procurement Manual* or purchased for \$50,000 or less--vendors would need to contact each individual agency's procurement office to request to be on its bid list, if applicable.

### ***Advertisement***

***Vendors may learn about opportunities for construction, furniture, equipment, and vehicle contracts over \$50,000 through advertisements. State law requires the entity to advertise for these contracts once each week for two consecutive weeks in a public newspaper prior to receiving sealed bids.***

Traditional methods of advertisement are still required of the Bureau of Building, Grounds and Real Property Management; the Office of Purchasing, Travel, and Fleet Management; applicable state agencies; institutions; and governing authorities in the contracting process. MISS. CODE ANN. § 31-7-13 (c) (1972) requires the above-listed entities to advertise for construction contracts and furniture and equipment contracts, commodities

contracts, and vehicle contracts over \$50,000 “for competitive bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located,” with the date published for bid opening not less than seven working days after the last published notice (fifteen working days for construction). For construction contracts and furniture and equipment contracts, commodities contracts, and vehicle contracts of \$50,000 or less, no advertisement is required.

### ***Telephone***

***Should a vendor not know of the above avenues of information or want the direct assistance of a DFA representative, the vendor may contact the Office of Purchasing and Travel, the Bureau of Fleet Management, or the Bureau of Building, Grounds and Real Property Management by phone regarding contract procurement.***

If a vendor has questions concerning contracting for commodities or vehicles, the vendor may telephone the Office of Purchasing and Travel at 601-359-3409 or the Bureau of Fleet Management at 601-359-9335 and ask to speak to the staff person responsible for the item or area in which they are interested.

If a vendor is interested in construction, building maintenance, or furnishing state office buildings with furniture and equipment, the vendor should contact the Bureau of Building, Grounds, and Real Property Management at 601-359-3621. If the construction project is handled under the jurisdiction of another individual agency or department, the Bureau of Building, Grounds and Real Property Management can help direct the vendor to the appropriate source.

## **How do vendors enter the process of contracting with the state for the purchase of commodities or vehicles?**

**Vendors typically enter the competitive process for procuring commodities or vehicles by responding to an advertised invitation for bids, request for proposals, or request for qualifications. The type of process used depends on the type of purchase. For smaller purchases below the bid thresholds, vendors may not have an opportunity to enter the process unless they are contacted by the procuring agency.**

The way that a vendor enters the process of contracting depends on what the vendor seeks to sell (e. g., commodities, vehicles) and on the process that DFA or the individual agency utilizes to contract. Vendors typically enter the competitive process by responding to an advertised invitation for bids, request for proposals, or request for qualifications. However, for smaller purchases below the bid thresholds, vendors may not have an

opportunity to enter the bid process unless solicited by the procuring agency.

Following are the methods state agencies use for purchasing commodities, vehicles, and selected personal or professional services.

***Contracts for Commodities (Excluding Computer-Related Items), Vehicles, and Selected Services***

***DFA's Office of Purchasing, Travel, and Fleet Management develops and administers statewide contracts for the purchase of commodities (other than computer-related equipment) and vehicles using a variety of contracting methods.***

DFA's Office of Purchasing, Travel, and Fleet Management develops and administers statewide contracts for the purchase of commodities (other than computer-related equipment) and vehicles using several different types of contracts and then state agencies purchase from these state contracts for their commodity and vehicle needs, unless exempted or an exception is made. Some types of services may be procured through these services also.

Vendors may enter the competitive process by responding to an advertised invitation for bids, request for proposals, or request for qualifications for the following:

- *Competitive state contracts* are established on the basis of written specifications and sealed competitive bids, with a contract being awarded to the vendor that has submitted the lowest bid that meets the specifications. DFA has a list of competitive state contracts and a copy of each competitive state contract at [www.dfa.state.ms.us/Purchasing/StateContracts/Competitive.html](http://www.dfa.state.ms.us/Purchasing/StateContracts/Competitive.html).

All state agencies are required to purchase from the awarded vendor unless approval to do otherwise is obtained from the Office of Purchasing, Travel, and Fleet Management. Governing authorities may purchase from other than the awarded vendor provided they purchase an identical item at or below the contract price. Governing authorities may also ignore the contract and follow the procedures for an open market purchase set forth in MISS. CODE ANN. § 31-7-13 (1972). Vendors wishing to bid on competitive state contracts may do so through WebProcure, which they may access and register for on the DFA website.

(Examples: office supplies, paper towels and toilet tissue, and vehicles)

- *Nonexclusive, negotiated contracts* are established by the Office of Purchasing, Travel, and Fleet Management for a commodity used by multiple state agencies. Such contracts potentially give the agencies a good price

while also offering the benefit of multiple options to meet agency needs effectively. Proposals are evaluated and contracts are awarded to all vendors whose prices are competitive. Because negotiated contracts are established on the basis of proposals from multiple vendors, negotiated contracts are often referred to as a “multiple award schedule.”

Like competitive bid contracts, negotiated contracts may be used by any agency, thus serving as a “convenience” contract. Also, like competitive bid contracts, agencies may opt to purchase items covered by a negotiated contract from other than the negotiated contract vendor; however, agencies must follow the open market purchase guidelines (see page 51). Also, because the negotiated contract establishes a maximum price that can be paid for any item covered by the negotiated contract, agencies may not pay more than the amount provided in the negotiated contract if opting to contract on their own.

For a list of negotiated contracts and a copy of each negotiated contract, see <http://www.dfa.state.ms.us/Purchasing/StateContracts/Negotiated.html>.

(Examples: adult and children’s disposable briefs, automotive parts and equipment, and hotel/motel services)

- *Minority participation contracts* are negotiated contracts for commodities that are entered into with minority vendors. To qualify as a minority vendor, a business must (1) be at least 51% minority-owned by one or more individuals, or minority business enterprises that are both socially and economically disadvantaged, and (2) have its management and daily business controlled by one or more such individuals as ascribed under the Minority Business Enterprise Act 57-69 and the Small Business Act 15 USCS, Section 637(a). *Minority*, as used in the above provision, means a person who is a citizen or lawful permanent resident of the United States and who is a member of one of the following:
  - Black Americans (racial groups of Africa);
  - Hispanic Americans (of Mexican, Puerto Rican, Cuban, Central/South America, Spanish or Portuguese culture or origin);
  - Native Americans (origin in any of the original peoples of North America);
  - Asian Pacific Americans (origins of the Far East, Southeast Asia, the Indian subcontinent); or,
  - women.



DFA's Bureau of Building, Grounds, and Real Property management also uses this definition of "minority business."

For a list of minority participation contracts, as well as copies of the contracts, see <http://www.dfa.state.ms.us/Purchasing/StateContracts/Minority.html>.

- *Statewide agency contracts* are entered into by a specific agency. These may be either competitively bid contracts with one vendor winning the bid or with multiple vendors winning the bid. Vendors enter these contracts through the individual agency seeking bids/proposals instead of through DFA's Office of Purchasing, Travel, and Fleet Management.

Statewide agency contracts must be approved by DFA's Office of Purchasing, Travel, and Fleet Management and are available for use by all state agencies and governing authorities to purchase specific products from the vendor. For a list of statewide agency contracts and a copy of each statewide agency contract, see <http://www.dfa.state.ms.us/Purchasing/StatewideAgencyContracts.html>.

(Examples: equipment rental, buses, and safety lighting)

- *Cooperative contracts* are designed in order to have access to purchasing through a larger purchasing cooperative, whereby the price has been negotiated by a larger cooperative and which may include other states, or another agency, to purchase items. Vendors enter the competitive process by submitting proposals to the cooperative.

These contracts are established on the basis of reviewing and selecting contracts solicited by written specifications and sealed competitive bids or by a multiple award schedule of consortia that show a demonstrated cost savings. Cooperative contracts are usually awarded to the vendor that has submitted the lowest bid that meets the specifications.

All state agencies may purchase from the cooperative contracts approved by DFA's Office of Purchasing, Travel, and Fleet Management. Governing authorities may purchase from other than the awarded vendor provided they purchase an identical item at or below the contract price. For a list of cooperative contracts and a copy of each cooperative contract, see <http://www.dfa.state.ms.us/Purchasing/StateContracts/Cooperative.html>.

(Example: Mississippi currently purchases drug testing kits through a cooperative purchasing arrangement)

with the Arkansas Department of Finance and Administration.)

- *List of Preapproved Vendors of Services*--MISS. CODE ANN. § 25-9-120 (3) (d) (1972) states that the Personal Service Contract Review Board “may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board.” As the need arises, the PSCRB seeks to establish a List of Preapproved Vendors of Services for use by state agencies and entities under the board’s purview. State agencies may contract with these providers of selected personal and professional services without bidding or prior approval from the board. Use of the lists is optional.

This list currently includes contracts for armed security services, unarmed security guards, nursing services, janitorial services, temporary staffing services, and background screening services. Use of the preapproved lists is strictly optional and is not intended to replace agencies’ currently active contracts. For a List of Preapproved Vendors of Services, Invitation for Bids, or a copy of the contract template relative to each service under contract, see <http://www.mspb.ms.gov/personal-service-contract-review-board/preapproved-vendor-information.aspx>.

State agencies’ purchases of computer and telecommunications equipment, services, and software fall under the jurisdiction of the Department of Information Technology Services (see page 9).

***Open-Market Purchases (Purchases of Commodities Not Covered by a Contract)***

***Commodities not covered by any state procurement contract may be procured on the open market by state agencies, provided that the agency adheres to the bid laws outlined in MISS. CODE ANN. § 31-7-13 (1972).***

State agencies may purchase commodities that are not covered by any state contract on the open market, provided that the agency follows the requirements set forth in MISS. CODE ANN. § 31-7-13 (1972).

The purchase amount thresholds are follows:

- *Purchases of \$5,000 or less:* An agency may make purchases in this category without receiving any written quotes. However, DFA’s Office of Purchasing, Travel, and Fleet Management suggests that an agency contact at least two vendors to get verbal quotes. (See MISS. CODE ANN. § 31-7-13 [a] [1972].)
- *Purchases of more than \$5,000 but not more than \$50,000:* For purchases in this category, an agency is

required to solicit and obtain at least two competitive written quotes. (See MISS. CODE ANN. § 31-7-13 [b] [1972].)

- *Purchases over \$50,000:* For purchases over \$50,000, an agency is required to advertise for two weeks and to solicit written competitive sealed bids. The advertisement must be made in a local newspaper and a copy of the notification must be sent to the Mississippi Procurement Technical Assistance Center. (See MISS. CODE ANN. § 31-7-13 [c] [1972].)

For purchases of \$50,000 or more that are not covered by a state contract, the state agency must obtain approval from DFA's Office of Purchasing, Travel and Fleet Management prior to issuing a purchase order.

### ***Master Lease Purchase Program***

***The Master Lease Purchase Program allows a state agency or school district to acquire equipment such as computers or school buses at rates that are typically much lower than the individual agency or school district could obtain on its own.***

The Mississippi Master Lease Purchase Program enables state agencies to acquire equipment essential to their operations through a statewide program administered by DFA. DFA can combine the equipment needs of multiple state agencies or school districts and obtain financing at rates that are based on the agencies' or districts' combined needs.

The Master Lease Purchase Program requires that all state agencies participate in the program when acquiring equipment by lease purchase unless the equipment is not available under the program or can be acquired elsewhere at a lower cost. (The state's institutions of higher learning or any state agency that has its own specific statutory lease purchase authority are excluded from this requirement.) (See MISS. CODE ANN. Section 31-7-10 [1972].)

### ***Procurement Card Program***

***Government entities may make purchases of commodities, repairs, or services up to \$5,000 without a purchase order through DFA's Small Purchase Procurement Card Program.***

DFA's Office of Purchasing, Travel, and Fleet Management maintains a contract for a Small Purchase Procurement Card Program. The intent of the program is to allow government entities to make small purchases of commodities, repairs, or services more easily and more economically. Government entities may use the Small Purchase Procurement Card to make purchases that are

bona fide needs of the entity without a purchase order. The maximum amount of a single purchase transaction is \$5,000 (although entities may establish stricter guidelines). The procurement card is accepted by a variety of businesses offering goods and services.

## **How do vendors enter the process of contracting with the state for construction projects?**

**Vendor access to information about construction and construction-related projects is related to the bid thresholds for these projects that are established in state law.**

MISS. CODE ANN. Section 31-7-13 (a) through (c) (1972) requires that all agencies and governing authorities procure construction-related projects using the following methods:

- *Purchases of \$5,000 or less* may be made without advertising or otherwise requesting competitive bids. Thus access is limited to those vendors that the procuring agency contacts.
- *Purchases of more than \$5,000 but not more than \$50,000* may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two competitive written bids have been obtained. Therefore, for construction-related projects of over \$5,000 but not over \$50,000, agencies must contact at least two vendors, but access is still limited to only those that the procuring agency contacts.
- *Purchases of over \$50,000* may be made from the lowest and best bidder after advertising for competitive bids once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. Thus, all vendors have access to this information and may compete if qualified.

## **Do the processes used to procure commodities, vehicles, and construction-related projects comply with best practices?**

PEER believes that the Department of Finance and Administration's processes for procuring commodities, vehicles, and construction-related projects, if implemented as written, comply with what PEER has identified as best practices. However, PEER has also identified areas needing improvement, particular in terms of improving vendor access to competition and improving transparency.

### *Office of Purchasing, Travel, and Fleet Management*

*PEER believes that the Office of Purchasing, Travel, and Fleet Management's processes for procuring commodities and fleet management comply with best practices, if implemented as written, but also believes that improvements could be made in area of transparency.*

#### Vendor Access

Generally, the office's regulations for procurement of commodities and vehicles comply with best practices for procuring contracts by providing vendors access to the procurement process through competitive solicitation and, if required, public issuance of requests for competitive proposals and requirement of public notice of bids in a newspaper.

The office also provides vendors access through its "Vendor Information" page, including access to: (a) a manual geared toward vendors entitled "How to Do Business With the State of Mississippi;" (b) current bids and proposals and bidding opportunities; (c) answers to vendors' frequently asked questions; and, (d) electronic copies of state contracts under that office's management. Vendors also have access by joining the Qualified Bidders' List for state contract bids or by contacting each agency and requesting to join their bid lists for small purchases.

#### Selection Process

In general, the office's commodities and vehicle procurement methods comply with best practices for implementing a selection process with clearly defined standards. As recommended by the ABA, the *Mississippi Procurement Manual* requires that evaluation standards for competitive sealed bids and competitive sealed proposals be based on the evaluation factors set forth in the request for proposals. For small purchases, the *Bureau of Building Manual* tracks state law regarding dollar threshold amounts and procedure requirements. For commodities, regulations require that awards for small purchases be made to the business offering the lowest responsive quotation. In awarding the bids/proposals for commodities and vehicles, the *Mississippi Procurement*

*Manual* mirrors ABA practices by requiring the agency's procurement officer to make a written determination to the offeror and competing vendors showing the basis on which the award was found to be most advantageous to the state based on the factors set forth in the request for proposals.

### **Transparency**

Utilizing its website as a tool for achieving transparency, the office provides access to state commodities and fleet management contracts to communicate procurement information to the public. As discussed earlier, the office also posts upcoming bid opportunities and requests for proposals in order to increase transparency for both vendors and the public. However, as discussed on page 32, PEER did not find commodities and vehicle contracts on the state's Transparency Mississippi website.

Also, the office does not complete a formal debriefing with vendors at the conclusion of the contracting process to dispel any concerns or problems that they might have had with the process. This, coupled with the threshold advertising amount requirements that do not require public competitive advertisement and solicitation, limits what information is made available to the public and to potential vendors.

### ***Bureau of Building, Grounds, and Real Property Management***

***PEER believes that the Bureau of Building, Grounds, and Real Property Management's process for procuring construction-related projects, if implemented as written, complies with best practices. Areas needing improvement include vendor access to competition and transparency.***

### **Vendor Access**

The *Bureau of Building Manual* includes requirements for overseeing the procurement of construction and renovation projects, including furniture and equipment procured as part of the construction and renovation process. PEER believes that the manual complies with best practices for vendor access by requiring public issuance of requests for competitive proposals or invitations for bids and requiring public advertising for construction-related projects greater than \$50,000.

In addition to newspaper advertisement, the contracted principal professional (i. e., the architect or engineer contracted by DFA's Bureau of Building, Grounds, and Real Property Management to lead the project) is required to furnish contract documents to appropriate trade organizations for the use of material suppliers, subcontractors, and others interested in bidding on the project, including construction documents with

specifications, an executed bid proposal form, supplemental drawings, and contract bond. However, before bids can be advertised, the bureau must first approve schematic design documents, then approve the design development documents, then approve the construction document drawings and the project manual.

For construction-related projects of \$50,000 or less, DFA complies with best practices by requiring agencies to follow small purchase procedures. However, these projects require solicitation of only two vendors when there may be other vendors that wish to compete. While vendors have access to bid solicitations and RFP/RFQ notices and the extensive *Bureau of Building Manual* through the DFA website, the bureau does not provide vendors with a user-friendly vendors' guide that includes answers to frequently asked questions, information for points of contact, or a simplified manual on how to do construction with the state.

### **Selection Process**

In general, the bureau's construction-related project procurement method complies with best practices for implementing a selection process with clearly defined standards. As recommended by the ABA, the *Bureau of Building Manual* requires evaluation standards for competitive bids based on the evaluation factors set forth in the request for proposals. For small purchases, ABA suggests following state regulations. For construction-related projects, awards for small purchases should be made to the business offering the lowest responsive quotation. In awarding the bids/proposals for commodities and fleet management procurements, the *Mississippi Procurement Manual* complies with ABA practices by requiring the contract project professional to prepare and submit a certified bid tabulation accompanied by a letter recommending an award to the bureau and using agency. If Public Procurement Review Board approval is required, the bureau then must proceed as expeditiously as possible to present the award at the next publicly held board meeting.

### **Transparency**

In general, the bureau's construction-related project procurement method complies with best practices for implementing a transparent procurement process. The bureau posts all construction-related project contracts awarded each month on the Public Procurement Review Board's website, regardless of whether they required the bureau's or the Public Procurement Review Board's approval. However, a vendor or member of the public

would have to contact the bureau to obtain a copy of the contract itself.

Further, DFA's Bureau of Building, Grounds, and Real Property Management does not complete a formal debriefing with vendors at the conclusion of the contracting process to dispel any concerns or problems that they might have had with the process. This, coupled with the unique threshold advertising amount requirements, which do not require public competitive advertisement and solicitation for construction-related projects of \$50,000 or less, limits competition for and ease of what information is made available to the public and potential vendors.

### **How does the Department of Finance and Administration ensure that actual practices for selecting commodities, vehicles, and construction-related projects comply with rules and regulations?**

DFA's oversight includes approval of the purchase of commodities and vehicles, if purchases reach certain thresholds, as well as procedural avenues for both the correction of mistakes during the bid process and to protest and appeal solicitation and award decisions. Bidders are also asked to be proactive and informed to review the bid specifications and if they have concerns, to raise challenges if they believe such bid specification unfairly restricts competition.

DFA's Bureau of Building, Grounds, and Real Property Management oversees contracting for construction, renovation, furniture and equipment, and maintenance by state agencies and government entities using state funds,<sup>8</sup> including requiring preapproval of construction and renovation projects, professional contracts, and approval of all contracts reaching certain established threshold requirements.

#### *Oversight of Procurement of Commodities and Vehicles*

*The Public Procurement Review Board, acting through the Office of Purchasing, Travel and Fleet Management, has approval authority over the purchase of commodities and vehicles. The Office of Purchasing, Travel and Fleet Management asks bidders to review bid specifications and if they have concerns, raise challenges if they believe that these specifications unfairly restrict competition. Procedures in the Mississippi Procurement Manual allow for correction of mistakes during the bid process. Bidders also have the right to protest and appeal solicitation and award decisions.*

#### **Approval Authority for Purchases**

The Public Procurement Review Board (PPRB) has the power to require agencies to submit a request to the Office

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<sup>8</sup>State funds include any monies appropriated and authorized by the Mississippi Legislature such as general funds, grants, gifts, fees, federal funds, or bonds.



of Purchasing, Travel and Fleet Management for approval<sup>9</sup> of commodities and vehicle purchases as required by the *Mississippi Procurement Manual*.

The Public Procurement Review Board must approve any request for a one-time purchase that exceeds \$500,000 of commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state. However, commodities purchased for resale or raw materials converted into products for resale are not covered, as provided by MISS. CODE ANN. § 31-7-1 (e) (1972).

For purchases of \$500,000 or less, the Office of Purchasing, Travel and Fleet Management supervises the procurement of all commodities, equipment, and printing by state agencies and, upon receipt of a Request for Authority to Purchase (P-1), determines whether the purchase complies with state law. The office has the authority to solicit additional quotes if, upon reviewing the P-1, there is reason to believe that the bids received by the requesting agency are not competitive.

Approval authority for purchases varies depending on the contract type, as follows:

- *Competitive Bid Contracts*: The Office of Purchasing, Travel and Fleet Management requires all state agencies to purchase from the awarded contract vendor unless written approval is obtained from the office. If an agency has determined that the item on contract will not meet the needs of the using agency, the office allows the agency to purchase similar items up to \$1,000 without obtaining P-1 approval.
- *Negotiated Contracts*: Agencies purchasing items covered by a negotiated contract from other than the contract vendor and following the procedures set forth in MISS. CODE ANN. § 31-7-13 (c) (1972) for purchases over \$50,000 shall submit a P-1 to the office for approval prior to making the purchase.
- *Cooperative Contracts*: No exceptions for state agencies are provided for commodities available under cooperative contracts.
- *Statewide Agency Contracts*: The office must approve statewide agency contracts prior to purchase.
- *Open-Market Purchases*: The office must approve purchases of items over \$50,000 not covered by state contract prior to issuance of a purchase order. The office may grant exemption from the P-1 approval

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<sup>9</sup>If required, agencies must submit a Request for Authority to Purchase, P-1, for purchase approval.

requirement if it is determined to be in the best interest of the agency and would be an economically feasible transaction.

- *Rental, Lease, Lease-Purchase of Equipment and Furniture:* The office must approve rental of items that are not covered by any state contract and that are in excess of \$50,000. The office supervises the rental of all commodities by state agencies and determines whether all aspects of the rental are in compliance with state statutes. The office may grant exemption from the P-1 approval requirement if it is determined to be in the best interest of the agency and would be an economically feasible transaction.
- *Oversight Approval of Agency Purchase of Sole Source Procurement of Commodities by Office of Purchasing, Travel and Fleet Management:* Unless otherwise ordered by regulation of the PPRB, the following items are exempt from the competitive bid process, but do require the office's P-1 approval:
  - non-competitive items available from only one source; and,
  - items purchased for research available from only one source.

#### **Bidder's Responsibility for Review of Bid Specifications**

As noted in *How to Do Business With the State of Mississippi*, the Office of Purchasing, Travel, and Fleet Management believes that prospective vendors are one of the first lines of oversight. This publication states that it is the responsibility of the prospective bidder to review the entire request for bids packet and to notify the purchasing entity and/or the office if the bid specifications, bid instructions, or general or special conditions are formulated in a manner that would unnecessarily restrict competition. Any protest or question concerning the specifications or bidding procedures must be received in writing not less than seventy-two hours prior to the bid opening.

#### **Procedures for Correction of Mistakes During Bid Process**

The *Mississippi Procurement Manual* provides guidance for correction of mistakes in the bid process. For example, according to the manual, mistakes shall not be corrected after award of the contract except when the Chief

Procurement Officer<sup>10</sup> or the Agency Procurement Officer<sup>11</sup> makes a written determination that it would be unconscionable not to allow the mistake to be corrected. However, a bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid by following the steps provided in the manual.

### **Bidder's Right to Protest and Appeal**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest in writing to the head of the purchasing agency and send a copy to the Chief Procurement Officer. The protest shall be submitted within seven days of learning of the problem. If the protest is not resolved by mutual agreement of the Chief Procurement Officer and the head of the purchasing agency, the Chief Procurement Officer or the head of the purchasing agency shall promptly issue a decision in writing stating the reasons for the action taken and informing the protester of the right to administrative review.

### ***Oversight of Procurement of Construction-Related Projects***

***DFA's Bureau of Building, Grounds, and Real Property Management oversees contracting for construction, renovation, furniture and equipment, and maintenance by state agencies and government entities using state funds, including requiring preapproval of professional construction and renovation contracts and approval of all contracts within certain cost thresholds.***

The Bureau of Building, Grounds, and Real Property Management exercises two types of oversight of construction-related projects:

- requiring submission of professional construction and renovation contracts for review and preapproval; and,
- requiring submission of construction, furniture and equipment, and maintenance contracts for approval (or approval by PPRB, based on cost thresholds).

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<sup>10</sup>The *Chief Procurement Officer* is the person holding the position of Director of the Office of Purchasing, Travel and Fleet Management.

<sup>11</sup>The *Agency Procurement Officer* is any person duly authorized (or an authorized representative) to enter into and administer contracts and make written determinations on behalf of a procuring agency.

### **Approval of Professional Construction and Renovation Contracts**

The Bureau of Building, Grounds, and Real Property Management must approve a project's architectural and/or engineering contracts if:

- state funds support part, or all, of the construction or renovation project; and,
- architectural, engineering, landscape architectural, interior design, or special consulting services will result in new construction, renovation, or repair of a building with a total cost that exceeds \$25,000.

However, if one or more of the following conditions are met, the contract does NOT have to be submitted to the bureau for review and preapproval:

- self generated<sup>12</sup> or local funds<sup>13</sup> support the entire project;
- it is a city, municipality, school district, or county project supported entirely by local or self-generated funds;
- it is a community or junior college project supported entirely by local or self-generated funds;
- it is a Mississippi Military Department project funded by federal funds or non-state funds (although any project funded by state appropriation must be approved by the bureau); or,
- it is a project resulting from MISS. CODE ANN. Title 37, Chapter 47 (State Aid for Construction of School Facilities).

### **Approval of Construction and Furniture and Equipment Contracts**

Source of funding guidelines for determining whether the Bureau of Building, Grounds, and Real Property Management and the Public Procurement Review Board have approval authority for construction and furniture and equipment contracts are the same as the source of funding guidelines for the approval of professional construction and renovation contracts. Under procedures approved by the Public Procurement Review Board,<sup>14</sup> the DFA Executive

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<sup>12</sup> *Self-generated funds* include any monies received by a using agency whose amount, authorization and/or origin are not enumerated by legislative action.

<sup>13</sup> *Local funds* include any monies resulting from the action of cities, counties or districts, such as general funds, grants, gifts, fees, federal funds, or bonds.

<sup>14</sup> According to MISS. CODE ANN. § 27-104-7 (1) (1972), the Public Procurement Review Board shall be comprised of the Executive Director of the Department of Finance and Administration, the

Director has authorized the following oversight threshold guidelines for construction contracts:

- construction contract awards under \$3,000,000 must be signed by the Director of the Bureau of Building, Grounds and Real Property Management; contract awards between \$3,000,000 and \$5,000,000 must have an additional signature of DFA's Deputy Executive Director; and contract awards over \$5,000,000 must be approved by the Public Procurement Review Board;
- furniture and equipment contract awards under \$1,000,000 must be signed by the Director of the Bureau of Building, Grounds and Real Property Management; furniture and equipment awards between \$1,000,000 and \$2,000,000 must have an additional signature of DFA's Deputy Executive Director; and furniture and equipment contract awards over \$2,000,000 must be approved by the Public Procurement Review Board.

All award decisions for construction, furniture and equipment, and ITS awards in support of construction projects through DFA's Bureau of Building are to be posted publicly on the Department of Finance and Administration's Public Procurement Review Board's website and include:

- the contract number;
- the need for the contract;
- the agency or institution receiving the work;
- the winning bidder;
- the bid amount; and,
- the number of bids.

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head of the Office of Budget and Policy Development, and an employee of the Department of Finance and Administration who is familiar with the purchasing laws of this state.

**Does the public (including vendors) have access to information showing all vendors who provide commodities, vehicles, and construction-related projects to the state and at what price?**

**The public has access to copies of all statewide contracts for commodities and vehicles through the Office of Purchasing, Travel, and Fleet Management’s website, with the exception of small purchasing contracts bid out by individual agencies. The Bureau of Building, Grounds, and Real Property Management lists active construction-related projects of selected agencies on its website, but does not include the prices or copies of the actual contracts.**

The public (including vendors) has access to information showing all vendors who provide commodities and vehicles to the state and at what price. Electronic copies of all contracts for commodities and vehicles are available on the website of the Office of Purchasing, Travel, and Fleet Management. However, small purchasing contracts bid out by individual agencies are not included. Also, PEER’s search of the Transparency Mississippi website did not yield copies of any contracts for commodities or vehicles.

For construction-related contracts, DFA’s Bureau of Building, Grounds, and Real Property Management provides a link labeled “Current Projects” on its website that lists active projects for:

- the institutions of higher learning;
- community and junior colleges;
- the Department of Wildlife, Fisheries, and Parks;
- the Department of Mental Health; and,
- other institutions/agencies/departments.

Posted information includes the contract number, project location, contractor, surety bond provider, and projected completion date, but not all information is complete for all posted projects and prices are not included.

Also, DFA’s Bureau of Building, Grounds, and Real Property Management posts Public Procurement Review Board bid awards from the most recent meeting, including the contract number, location, number of bids/quotes received, and the winning bid amount.

As noted previously, the Mississippi Accountability and Transparency Act of 2008, or MATA (MISS. CODE ANN. § 27-104-55 [1972]) required that DFA develop and operate a searchable website that includes information on expenditures of state funds from all funding sources (i.e., Transparency Mississippi). State law requires agencies to upload and maintain their contract awards and executed contracts in the Award/Contract web interface on Transparency Mississippi.

However, not all contracts are currently included in Transparency Mississippi. PEER's search of that website did not find any contracts for commodities or vehicles. As noted on page 32, copies of contracts for commodities and vehicles are available on the Office of Purchasing, Travel, and Fleet Management's website.

According to the Bureau of Building, Grounds, and Real Property Management, all contracts associated with the construction process may be found on Transparency Mississippi. PEER did not verify whether all such construction-related contracts are included on that website.

### **What types of contracts are exempt from DFA's purchasing requirements by virtue of dollar thresholds or specific exemptions?**

The following are exempt from the preceding requirements by virtue of dollar thresholds or specific exemptions:

- (a) commodities and services produced or offered by state agencies;
- (b) emergency purchases, including emergency fuel;
- (c) vehicles purchased for specific purposes of the Department of Public Safety and vehicles purchased by institutions of higher learning and governing authorities;
- (d) fuel access card services; and,
- (e) selected construction contracts.

The Legislature gave DFA's Office of Purchasing, Travel, and Fleet Management the responsibility of overseeing procurement of commodities and vehicles and gave DFA's Bureau of Building, Grounds, and Real Property Management the responsibility of overseeing procurement of construction-related projects. The Legislature also created statutory exemptions from these oversight guidelines.

***Exemption: Commodities and Services Produced or Offered by State Agencies***  
***If an agency's requirements may be fulfilled by procuring supplies produced or services performed by the state's own programs, the agency does not have to contact the private sector to find a source or to solicit competitive bids.***

If an agency's requirements may be fulfilled by procuring supplies produced or services performed by the State of Mississippi's own programs, such as Mississippi Industries for the Blind, the agency does not have to contact the private sector or solicit competitive bids. For such to occur, the Chief Procurement Officer or the head of the purchasing agency should determine whether such supplies or services meet the state's requirements and

whether the price represents a fair market value for such supplies or services.

***Exemption: Emergency Purchase of Commodities (Other than Computer-Related Equipment)***

***In the event of a qualifying emergency, state agencies may follow emergency procedures for procuring commodities detailed in MISS. CODE ANN. § 31-7-13 (j) (1972).***

In an emergency situation the requirements for purchasing may change. Potentially, three different emergency declarations could take place:

- the agency or governing authority head could declare an emergency;
- the Governor could declare an emergency; or,
- the President could declare an emergency.

MISS. CODE ANN. § 31-7-1 (f) (1972) defines *emergency* as:

*. . .any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.*

State emergency purchase procedures are outlined under MISS. CODE ANN. § 31-7-13 (j) (1972). If the agency head determines that an emergency exists in regard to the



purchase of commodities or repair contracts, and that delaying to allow for competitive bidding would be detrimental to the state, then the agency head is permitted to waive the competitive bidding provisions and make the purchase or repair. However, such purchases must only be made for the purpose of meeting the needs created by the emergency situation.

To ensure oversight of emergency purchases, a description of the commodity purchased, the purchase price, and the nature of the emergency must be submitted to the Department of Finance and Administration. Further, on or before September 1 of each year, the State Auditor must prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee, and the Joint Legislative Budget Committee a report listing all state agency emergency purchases and the supporting documentation for each.

***Exemption: Emergency Fuel***

***The state's emergency fuel contract is for the purchase and storage of fuel for use during declared emergency situations and in situations in which an emergency is anticipated. State agencies and governing authorities are not required to use the emergency fuel contract to purchase emergency fuel under the provisions of the emergency fuel contract if the entity determines that another method of fuel procurement would be more beneficial.***

The state's emergency fuel contract is for the purchase of fuel during declared emergency situations and in situations in which an emergency is anticipated, in accordance with MISS. CODE ANN. § 31-7-13 (k) (1972). Through the contract, state agencies and governing authorities may purchase emergency fuel and storage for emergency fuel under several options, depending on the agency's or governing authority's needs and storage capacities. However, state agencies are not required to use the emergency fuel contract to purchase emergency fuel using the provisions of the emergency fuel contract if the entity determines that another method of fuel procurement would be more beneficial.

Under the provisions of MISS. CODE ANN. § 31-7-13 (j) and (k) (1972), the prices offered in the emergency fuel contract may be extended to governing authorities, although this section permits governing authorities to purchase commodities from any source if under emergency declarations.

***Exemption: Vehicles Purchased for Specific Purposes of the Department of Public Safety and Vehicles Purchased by Institutions of Higher Learning and Governing Authorities***

***Vehicles assigned to sworn officers of the Department of Public Safety and vehicles procured by the institutions of higher learning and governing***

***authorities are exempt from the purchasing requirements of MISS. CODE ANN. (1972) § 25-1-77 and the Bureau of Fleet Management.***

In accordance with MISS. CODE ANN. § 25-1-77 (1972), the Bureau of Fleet Management (BFM) promulgates rules and regulations governing the purchase of any motor vehicle by a state department, institution, or agency with regard to the appropriateness of the vehicle for its intended use. In accordance with this CODE section, no state department, institution or agency is to purchase, rent, lease or acquire any motor vehicle, regardless of the source of funds from which the motor vehicle is to be purchased, except under authority granted by the Bureau of Fleet Management.

However, the bureau, upon request, may grant an exemption for any vehicle assigned to a sworn officer of the Department of Public Safety and used in undercover operations when the bureau determines that compliance could jeopardize the life, health, or safety of the sworn officer.

Further, the purchasing provisions of MISS. CODE ANN. § 25-1-77 (8) (1972) and the Bureau of Fleet Management's *Rules and Regulations Fleet Manual* do not apply to any state institution of higher learning or governing authority; however, these *may* be adopted for use by any governing authority.

Under provisions of MISS. CODE ANN. § 31-7-7 (c) (1972), the prices offered in the state's vehicle and police vehicle contracts may be extended to the governing authorities, but these governing authorities may purchase vehicles covered by state contracts from any source offering an identical vehicle at a price that does not exceed the state contract price.

***Exemption: Fuel Access Card Services***

***State agencies are not required to use the state's fuel access card services contract if they determine it is in their best interest not to do so and if approval is given by DFA's Bureau of Fleet Management.***

The Bureau of Fleet Management contracts for fuel access card services on behalf of the state. The fuel access card services contract provides fuel access cards, training, and fuel access card services, including fuel, maintenance plan, and data tracking for a fleet of vehicles. However, state agencies are not required to use the state's fuel access card services contract if they determine it is in their best interest not to do so and if DFA's Bureau of Fleet Management approves.

Under provisions of MISS. CODE ANN. § 31-7-7 (c) (1972), the services offered by the fuel access card services contract may be extended to governing authorities. However, the governing authorities, under provisions of § 31-7-12 (2), may use the state contract or follow the bid

requirements set forth in MISS. CODE ANN. § 31-7-13, as previously discussed.

## **The Role of the Department of Information Technology Services**

Under the authority granted by MISS. CODE ANN. Section 25-53-5 (1972), the Department of Information Technology Services is responsible for procurement of any information technology, computer or telecommunication equipment, electronic word processing and office systems, or services utilized in connection with all state-owned computer equipment. MISS. CODE ANN. Section 25-53-5 (1972) states that the authority given to ITS covers purchases, leases, or acquisitions of computer or telecommunication equipment or services, including telephone systems, facsimile systems, cellular mobile telephone services, and future related technologies to telecommunication and computing services or devices. ITS also has authority over the acquisition of services related to information technology such as technology consulting services.

Beyond what is considered traditional information technology procurement, ITS also has authority over the acquisition of global positioning systems and navigation devices, electronic government initiatives, internet and application services needed to support the internet, printer/copiers, document imaging and management systems, and donations and gifts of information technology made to the state.

Items to which ITS approval and procedural requirements do not apply include ancillary or secondary technology items or services such as specialized medical equipment or computer furniture.

This section addresses the following questions regarding the Department of Information Technology Services' role in contracting:

- How do vendors know about the opportunity to sell a good or service to the state?
- How do vendors enter the process of contracting with the state for the purchase of information technology products or services?
- What is the process for being selected to sell an information technology product or service to the state?
- Do the processes used for procuring information technology products and services comply with best practices?
- How does the Department of Information Technology Services ensure that actual practice in selecting vendors complies with rules and regulations?

- Does the public (including vendors) have access to information showing all vendors who provide an information technology product or service to the state and at what price?
- What types of information technology contracts are exempt from purchasing requirements by virtue of dollar thresholds or specific exemptions?

## **How do vendors know about the opportunity to sell a good or service to the state?**

**Vendors wishing to do information technology business with the state of Mississippi can learn about potential contract opportunities through the ITS website, conventions held in conjunction with the Mississippi Development Authority, newspapers, or by contacting the ITS Procurement Department.**

Given the technological nature of the products and services that are sought by ITS, the logical beginning point for contracting with this state body begins with electronic communication and interaction. By making use of <http://www.ms.gov>, vendors can access procurement or bidding information on projects currently being advertised by the agency or vendors may go directly to ITS's website at <http://www.its.ms.gov>.

Regardless of the avenue chosen, potential vendors may find current requests for proposals (RFPs), information on current and upcoming Express Products Lists (EPL) RFP opportunities, and general RFP advertisements. The information in each of the above-listed websites will inform the potential vendor of the items/services and the specifications needed to fulfill the contract and will also guide the user through the process of how to bid and apply for the contracts by using hotlinks on the sidebar ranging from the entire procurement manual to frequently asked questions (FAQs) of known trouble areas for first-time vendors.

Additionally, ITS, participates in conventions and fairs hosted by the Mississippi Development Authority (MDA) and the Mississippi Association of Governmental Purchasing and Property Agents (MAGPPA). MDA and MAGPPA periodically hold conventions and other public forum meetings to advertise upcoming projects for which the state will be requesting bids. Also, given the specialized nature of these purchases, ITS offers one-on-one informal meetings to guide potential vendors on how to work with ITS and bring their products/services to the state. Vendors interested in these conventions should periodically check the ITS, MDA, and MAGPPA websites for details regarding the events. MDA also has hosted similar events at which minority- and women-owned businesses were invited to obtain information on future contracting opportunities with state agencies.

State law requires ITS to use traditional methods of advertisement in the contracting process. MISS. CODE ANN. Section 25-53-5 (o) (1972) requires ITS to advertise all bids on computer equipment, services, and rentals/leases over \$50,000 in a daily newspaper of general circulation fourteen days prior to receiving sealed bids for the purchase of such service or good.

Contacting ITS by phone regarding contract procurement is also an available option. Inquiries may be made through the ITS Procurement Help Desk at (601) 432-8166.

## **How do vendors enter the process of contracting with the state for the purchase of information technology products or services?**

Vendors enter the process of selling information technology goods or services to the state primarily by responding to requests for proposals, general RFPs and letters of configuration, or special RFPs. Additionally, businesses may participate in the Express Products Lists (EPLs are the result of RFP awards) to have their good or service listed on a database that agencies may purchase from or become members of a cooperative purchasing agreement wherein a third party markets the businesses' products. The cost of the information technology good or service and the needs of the agency or institution wishing to purchase determine the procedure that is utilized.

After the initial step of either making contact with ITS or accessing information on the goods or services being requested by ITS, vendors must then prepare to formulate proposals for bids on the specified good or service. ITS uses several procurement instruments to gain the most advantageous contract for the state. These instruments vary in the depth of their required documentation, advertising requirements, and type and complexity of the item or service to be rendered. The following is a brief summary of those instruments

### ***Individual Requests for Proposals***

***Individual Requests for Proposals (RFPs) are procurement instruments ITS utilizes to arrive at the most competitive price for a good or service based on the needs of the requesting agency. Vendors responding to RFPs must comply with all requirements listed in the RFP request and are evaluated based on a matrix developed for each RFP.***

ITS uses RFPs as the preferred instrument in obtaining competitive pricing and offerings in order to comply with state law. RFPs outline the functional requirements for the equipment, software, and services needed for a single purchase and vendors respond by proposing solutions and pricing estimates that satisfy these requirements.

ITS may develop custom RFPs for procuring high-dollar, complex, and/or unique acquisitions and for single acquisitions by a single agency or institution, ITS staff and the agency or institution develop this document to identify

specific equipment, system, software, and/or service requirements unique to that purchase.

MISS. CODE ANN. Section 25-53-5 (o) (1972) requires that all acquisitions of information technology and services that have a lifecycle cost greater than \$50,000 be awarded on the basis of competitive and open specifications (i. e., specifications created in an open and fair process with an emphasis on interoperability and interchangeability). MISS. CODE ANN. Section 25-53-5 (o) (1972) also requires that the procurement be advertised in a newspaper having general circulation at least fourteen calendar days prior to receiving vendor bids and proposals and with the Mississippi Procurement Technical Assistance Program. Additionally, ITS lists RFPs on its website.

Should a vendor elect to submit a proposal for consideration, that proposal must be submitted to ITS in accordance with all the requirements outlined in the RFP by the date and time specified in the document. On the due date of the proposal, ITS will open, log, and perform a preliminary validation of the proposals received. Then ITS obtains board approval, if required by law, and negotiates a contract with the awarded vendor.

ITS makes the scoring criteria used in the evaluation process available to the proposing vendors in the RFP and also posts the Registry of Proposals on the ITS website immediately following the opening of proposals. ITS evaluates proposals and vendors based on their ability to satisfy the requirements of the RFP and whether the product/service best meets the needs of the purchasing agency/institution over the expected life of the equipment or system. Some of the criteria used for assessing the received proposals are necessarily subjective, such as quality of the good or service.

### ***General RFPs, Letters of Configuration, and Special RFPs***

***General RFPs and letters of configuration are instruments used by ITS when large amounts of specialized equipment or services are required by requesting agencies or institutions. ITS issues special RFPs when requested by an agency or institution of higher learning for establishing a multi-use award for a single agency or group of agencies or institutions of higher learning.***

ITS uses general RFPs for multiple acquisitions by agencies of items such as LAN/UNIX hardware and software, cabling, telephone equipment, mainframe/midrange components, and IT consulting services. General RFPs are used to avoid the time and expense involved in soliciting individual proposals for each of the above-mentioned acquisitions. General RFPs are for use by the ITS staff on behalf of the requesting agency or institution; they are not for use by the agency or institution without ITS's involvement.

ITS advertises periodically to receive proposals from potential vendors on these high-volume categories of information technology. Proposals received in response to these advertisements are maintained for a specified period of time, usually one year. There is no single winning vendor. ITS validates the proposals, but does not perform an evaluation or selection at the time the proposals are submitted.

ITS uses general RFPs in conjunction with competitive procurement requests made by state agencies and institutions of higher learning. When an agency or institution submits a request for equipment, software, or service in a general RFP category, ITS examines the vendor response to that general RFP to determine which vendor's proposal best fits the scope of the agency's or institution's project.

ITS sends a shortened version of the general RFP solicitation, referred to as letter of configuration (LOC), to vendors listed on the general RFP list and each vendor has an opportunity to submit a proposal with pricing and other requested information. Vendors may become eligible for these contracts by placing proposals in response to advertised projects on the ITS website under the general RFP reference information page. ITS bases its selection of the lowest and best alternative submitted in response to the agency's or institution's unique project requirements detailed in the LOC letter.

ITS issues special RFPs when requested by an agency or institution of higher learning for establishing a multi-use award for a single agency or group of agencies or institutions of higher learning. Special RFPs are issued in instances in which more than one client (i. e., an agency/IHL) is in need of an item.

### ***Express Products Lists***

***Express Products Lists (EPL) are databases maintained by ITS of common goods or services that are frequently needed and for which the requesting agency need not get ITS approval to purchase.***

ITS often uses Express Products Lists (EPLs) to assist agencies in purchasing. These are compilations of proposals competitively solicited, evaluated, and awarded, usually to multiple vendors, for information technology commodities. These products include computer software and information technology hardware such as computers, radios, and geographic information systems. These lists are maintained on the ITS website. ITS uses EPLs chiefly for the purchase of routine items needed for information technology purposes. A state agency or institution of higher learning may make use of the EPL for up to the dollar amount specified in that specific EPL without prior approval from ITS.

Businesses wishing to make use of the EPL to sell goods or services should contact the ITS Procurement Help Desk or visit the EPL RFP Reference Information page on the ITS website regarding goods or services currently being advertised by ITS.

### ***Cooperative Purchasing Agreements***

***Cooperative purchasing agreements are agreements between the state and a third party that provide agencies with access to vendors supplying a given item on the basis that such an agreement will allow the state to leverage its purchasing power through high volume.***

A cooperative purchasing agreement is a formal agreement between two or more entities that they will enter product purchase orders together, used on the basis that such an agreement will offer discounts on the item and save time. In order to participate, the agency or institution must show that the price structure will be competitive with other procurement instruments used by ITS and that the resulting contracts will comply with state law in regard to evaluation and bid requirements. To accomplish this, the agency must get permission from DFA and present documentation of why this avenue of purchasing would be advantageous for the state and why in this instance the requesting agency should be exempt from state contracting laws.

Since 2003, ITS has had explicit authority to take advantage of such agreements through two avenues of utilization. MISS. CODE ANN. Section 31-7-13 (m) (xxix) (1972) allows state agencies pursuing cooperative purchasing agreements, made by certified purchasing officers, to be exempt from bid requirements in the purchasing of goods. Additionally, per CODE Section 31-7-7 (b) (1972), DFA is charged with arranging purchasing agreements for the acquisition of commodities by public entities. Once these agreements are established, purchases may be made through CODE Section 31-7-13 (m), which provides an exemption from bid requirements for purchases made through such agreements. ITS has developed its own procedure for cooperative purchasing agreements based on the laws referred to above and operates under the same requirements as those laid out for DFA.

### ***Thresholds***

***Purchasing laws of the state dictate that acquisitions be placed under higher scrutiny and openness measures as the price of the good or service increases. This includes purchases of information technology goods and services.***



Generally, ITS has three cost thresholds that dictate the requirements of advertisement and procedure, as laid out in MISS. CODE ANN. Section 31-7-13 (a) through (c) (1972):

- *Purchases of \$5,000 or less:* The agency or institution may purchase without advertising or otherwise requesting competitive bids unless the purchasing agency or entity has established more stringent procedures for itself.
- *Purchase of more than \$5,000 to but not more than \$50,000 (\$25,000 for projects funded by the American Recovery and Reinvestment Act):* The agency or institution may purchase without advertisement for bids, provided at least two competitive written bids have been obtained.
- *Purchases of more than \$50,000 (\$25,001 and over for projects funded by the American Recovery and Reinvestment Act):* The agency or institution must submit a competitive procurement request form for ITS to advertise, issue written specifications, and receive sealed bids or proposals.

(See Exhibit 2, page 16, of the report.)

## **What is the process for being selected to sell an information technology product or service to the state?**

**ITS utilizes both quantitative and qualitative scoring criteria to determine which vendor wins a contract and to satisfy the statutory requirement that the state award a contract to the vendor with the “lowest and best bid.”**

According to MISS. CODE ANN. Section 25-53-5 (o) (1972), ITS is to award contracts to vendors submitting the “lowest and best bid.” This requires ITS to utilize a scoring system that includes both quantitative and qualitative measures. For each RFP or LOC, ITS works with the requesting agency or institution of higher learning to develop a scoring formula, based on 100 points, prior to the receipt of proposals from potential vendors. As noted previously, for RFPs, the categories used as the evaluation criteria and the number of points assigned to each category and item are finalized and published in the RFP or LOC.

The first determination in the scoring formula is the allocation of the 100 points between cost and non-cost components. Cost will identify the “lowest” proposal required by law, but other components are used to determine the quality of the proposal and are considered in the “best” determination. The number of points allocated to the actual cost of the item/service usually is between twenty-five and ninety points. For some LOCs and invitations to bid, the specific hardware or software components are the only specifications and therefore cost is the only determinant in the contract award process.

This cost-only evaluation is the exception to procurements made by ITS.

Additionally, the higher the service component of the contract, the larger and more complex the project, and the greater risk to the state, the more important the requirement that ITS make use of formulas that have a higher percentage of points allocated to the non-cost portion of the scoring criteria. Some of the non-cost factors considered in the scoring formula for such projects include:

- quality and responsiveness of the proposal;
- technical merit of the proposed solution;
- references;
- company information;
- quality of the project plan; and,
- qualifications of proposed staff.

Once ITS selects the non-cost evaluation criteria for an RFP or LOC, it assigns a weight to each criterion. For some procurements, ITS applies the evaluation criteria in steps. In these instances, each step may designate a threshold criterion that must be met for the proposal to be considered further.

In some instances, a vendor may provide to the RFP or LOC features that add significant value to the state that are above and beyond the requirements of the requested good/service at no additional cost to the state and ITS may award up to five “value added” points to the vendor’s proposal. The scoring criteria issued by ITS specify whether such value added points are available for the contract and how they will be assigned.

Some procurements have optional evaluation steps such as on-site interviews or oral presentations. These options are exercised based on an assessment of the evaluation team regarding whether the extra information would offer a more true and representative examination of the proposed bid.

Scoring non-cost factors in the evaluation criteria is always more subjective than scoring cost information. ITS compares each proposal to the requirements of the RFP but not to other proposals. Unless otherwise needed by the nature of the project, ITS utilizes a consensus scoring approach to assign points on the non-cost criteria. Under the consensus scoring method for evaluating proposals submitted by vendors, evaluators read the prospective proposal, making notes of proposed scoring, observations

of strengths and weaknesses, and questions regarding the vendor's proposal. It is the intent of this process to provide additional insight into the vendor's offering and accurately reflect the merits and value of the vendor's proposal for an item or service.

ITS arrives at cost scores using the lifecycle<sup>15</sup> cost of the good or service. The cost score is determined as the ratio of the difference between a given proposal's lifecycle cost and the lifecycle cost of the lowest valid proposal. The equation used for this formula is used for every proposal evaluation and is calculated as follows:

$$\text{Points Awarded for Cost} = (1 - ((B - A) / A)) * n$$

Where: A=Total lifecycle cost of lowest valid proposal  
B=Total lifecycle cost of proposal being scored  
n=Number of points allocated to cost for this procurement

Simplified, this equation awards the lowest price a perfect score. A proposal that is twenty percent more expensive than the lowest priced offering will receive twenty percent fewer points.

Each RFP and LOC that ITS issues contains a summary description of the criteria and process that will be utilized in the evaluation of proposals. ITS determines the details of the evaluation process and scoring methodology for each RFP prior to the receipt of proposals and a summary point allocation is published in the RFP or LOC. It is the intent of the evaluation process to establish a ranking system based on the requirements of the RFP or LOC.

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<sup>15</sup>*Lifecycle cost* is the total committed cost of the project, instead of the initial or up-front cost of the good or service. It includes all costs associated with obtaining the item, maintaining it, and operating it for the projected life of the equipment.

## **Do the processes used for procuring information technology products or services comply with best practices?**

**ITS utilizes a contract procurement process that adheres to best practices in regard to the access of information to potential vendors, the selection process of contract award, and the transparency of the award and notification of the public.**

As noted previously, PEER gleaned from the ABA's *Model Procurement Code for State and Local Governments* three basic principles of a proper contracting procedure: vendor accessibility, a clear selection process, and transparency of the process and the award. PEER believes that ITS meets and in some cases exceeds what is required by these three principles, based on a review of its policy and procedures manual.

In regard to vendor accessibility, ITS has met and exceeds best practices in how it informs the public and possible vendors about opportunities to do business with the state. Through use of its website, the newspaper, and conventions, ITS makes available to vendors information on contracting opportunities. Further, ITS has a well-developed customer service section on its website that walks a prospective vendor through the process of dealing with the state in contracting matters.

ITS's selection process also follows best practices. While subjectivity does play a role in determining the winner of some contract awards, ITS has developed a matrix that balances the subjectivity of quality of the required good or service with a definitive cost algorithm. Additionally, this scoring matrix is made known to potential vendors in the RFP and the vendors are scored only on this matrix.

The transparency of ITS's contracting procedures is also in line with best practices. ITS and its staff have built in chances for potential vendors to question and ascertain the goals of ITS in the issuance of an RFP and to become informed of the process. Further, ITS has granted the option to have post procurement conferences with vendors to discuss why vendors did or did not win the contract award. Once a contract has been awarded, ITS makes information on the winning vendor and the contract available on its website for viewing by the public.

## **How does the Department of Information Technology Services ensure that actual practice in selecting vendors complies with rules and regulations?**

**ITS ensures that the contract selection process adheres to rules and regulations of the state by use of ITS staff monitoring and by ensuring that all contracts be approved by the ITS Executive Director and/or the ITS Board, as required by statute. Further, ITS uses post-procurement reviews to ensure compliance with state law and regulations and to inform vendors of requirements.**

ITS acts as an expert resource available to state agencies and institutions of higher learning for making better choices in acquiring information technology and for brokering deals between the vendors and the requesting agencies. Ultimately, it is the responsibility of the agency seeking to purchase to ensure that the product or service contracted for is delivered on time and of sufficient quality to meet the requested specifications.

ITS uses several levels of oversight in advertisement, negotiation, and award procedures to ensure compliance with state law and ITS regulations. Two representatives of the Attorney General's Office work with both vendors and agencies or institutions seeking to purchase information technology to ensure compliance with the procedures laid out in law and regulation. Additionally, these individuals work with vendors to construct and negotiate contracts that both conform to state law, for vendor and public protection, and offer the best result for the state of Mississippi. Once contracts reach the point at which approval is required, the Executive Director of ITS and the ITS Board review the contracts for accuracy and compliance with state laws and regulations and determine whether acceptance of the terms of the contract or renegotiation are in order.

Another tool ITS utilizes to ensure that the processes of evaluation of a proposal and awarding of a contract are fair, open, and completely understood by the participating vendors is the post procurement review. This review is a business meeting conducted by ITS at the vendor's request after the award of an RFP or LOC, in which the parties--ITS staff involved in the particular procurement and the potential or winning vendor--discuss the steps of the procurement process, the results of the process, and any concerns that any party might have had in the course of the process. The concerns addressed may include a detailed walkthrough of the scoring system for a given project, grievances regarding the wording of a procurement document, or any procedure that the vendor found unclear, difficult to follow, or unduly burdensome.

Should a vendor believe that the process of awarding a contract has in some way violated the regulations put forth by ITS or the laws of the state, ITS has developed a

system of appeals for decisions made by the ITS Board or Executive Director. This process requires that the offended vendor file a protest with ITS, after which a protest conference will be scheduled with ITS staff and the vendor to air grievances. Subsequently, the Executive Director issues a written response on the merits of the complaint. Should a vendor still believe that the decision of the Executive Director was flawed, the vendor has the option to appeal further before the ITS Board. If the vendor believes that the ITS Board has failed to alleviate the concerns or protest, the vendor may then file action in the appropriate court of jurisdiction within the state.

### **Does the public (including vendors) have access to information showing all vendors that provide an information technology product or service to the state and at what price?**

**On its website, ITS maintains a list of information regarding the awarding of contracts for information technology goods and services ranging from competitive and sole source procurements, emergency purchases, exemptions from ITS purview, and modifications to previous approvals of awards valid within the last fiscal year, information relating to the post-proposal status of information relating to LOCs, actions taken by the ITS Board, and an EPL directory. Also, the website contains information on how to complete a public records request regarding any contract awarded, should the information provided elsewhere not be sufficient.**

In order to keep the public and potential vendors informed of contract decisions made by the department, ITS maintains a database of procurement statuses, awards, and approval information on its website. The database, housed under the Procurement tab on the website, lists projects that have had proposals received by and authorized by ITS. The website separates the information into the CP-1 Acquisition Approval Database, LOC Information following the Opening of Proposals, ITS Board Actions, and EPLs.

- The *CP-1 Acquisition Approval Database* link contains information regarding ITS's issuance of CP-1 Acquisition Approval documents for: competitive and sole source procurements, emergency purchases, exemptions from ITS purview, and modifications to previous approvals of awards valid within the last fiscal year. By following the link, a vendor or the public may learn which agency received the good, a description of the project, the procurement type, the vendor supplying the good, the lifecycle cost of the good, and the start and end date of the contract award.
- *LOC Information Following the Opening of Proposals* links to information relating to the post-proposal status of information for LOCs solicited for by ITS. Under this link, the public can learn which agency has issued the LOC, the due date of such a contract, and a description of the product sought. Additionally, by

clicking the individual LOC, a viewer can find, among other things, contact information for the consultant working on behalf of ITS for the LOC, the scoring methodology used for the award, register of the proposal (when the contract was received and awarded), notification of award, amendments made to the contract, and questions presented to ITS for clarification purposes on the contract requirements.

- *ITS Board Actions* links to the agenda and approved minutes of the ITS Board meetings, at which decisions are made on procurements that are above the dollar threshold amounts listed in ITS regulations. Under this link, ITS provides the location, date, time, and the agenda discussed at that meeting, including decisions made on high-dollar items that are before the board.
- *EPLs* links to information related to the proposals submitted in response to RFPs issued for products and services to be included on the Express Products Lists. By making use of this link, the public can find a complete directory of the EPLs, including the purchase limit dollar amount for each EPL. ITS has separated the EPL purchases into categories as follows:
  - EPL Interactives—desktop- and mobile-based computers, monitors, workstations, printers, window based servers, video conference equipment, and audiovisual components;
  - Software EPLs;
  - Geographic Information Systems EPLs;
  - Other EPLs--Apple products, automated barcode scanners, cabling projects, and E-911 Public Safety Answering Point; and,
  - Security Procurement Tools.

Additionally, links are provided to guidelines on what happens when products exceed EPL limits and information on American Recovery and Reinvestment Act (ARRA) stimulus purchases.

Should any of the above-listed links not provide the public or a vendor with the information that they believe is needed to be informed fully on the issuance of a specific contract, ITS also provides a link to ITS's Public Record Policy and Procedures so that the person may recover information not listed on the site.

## **What types of information technology contracts are exempt from purchasing requirements by virtue of dollar thresholds or specific exemptions?**

By statute, only those projects of institutions of higher learning that are fully funded through federal sources are exempt from ITS rules and regulations. However, under ITS regulations, purchases under \$5,000 for agencies are exempt from the normal contracting procedures of the state. Additionally, ITS has developed a process whereby an agency may remove itself from the procedural involvement of ITS in limited instances.

As noted previously, state law requires all state agencies and institutions of higher learning to follow ITS procedures in procuring information technology, but a statutory exception does exist for acquisitions made by institutions of higher learning made wholly with federal funds. No exception is made for state agency projects that are federally funded, use grant money, or are paid for through nontraditional funding sources.

State agencies are also given exemptions to acquire sole source items/services that have a lifecycle cost of less than \$5,000 and do not require ITS approval. Institutions of higher learning are granted an exemption up to \$250,000 of the lifecycle cost of the item or service, so long as the criteria above are met and the institution's CIO has reviewed and approved any sole source purchase above \$5,000. Anything over the \$250,000 threshold requires ITS approval.

While not codified, one exemption was determined and created by the Supreme Court of Mississippi in 1988 that removed the courts of the state from the purview of ITS and its regulations. The reasoning of that order was that to adhere to the doctrine of separation of powers and remain a complete "tripartite government" and remain consistent with previous interpretations of law that the courts do not fit in the traditional definition of "agency" for regulatory purposes, the courts should themselves have power to determine what procedures to follow in the procurement of information technology (*In re MJIS*).

### ***Special Circumstances that Allow Exemption from Normal Purchasing Guidelines***

***In cases of emergency purchases or for goods or services offered only by one vendor, state law allows for exemption from normal contracting procedure to acquire these goods or services, so long as certain procedures and obligations are met.***

Under MISS. CODE ANN. Section 31-7-13 (m) (viii) (1972), noncompetitive items (items that have no other competitor supplying the good or service) available from only one source may be exempted from bid requirements. This



exemption is codified at MISS. CODE ANN. Section 25-53-5 (p) (1972) and permits ITS to make use of the purchasing provision when applicable and appropriate.

To be applicable, certain criteria must be met before procurement under this exemption may be made. To qualify, an agency or institution of higher learning must demonstrate that:

- the product or service being purchased must perform a function for which no other product or source of service exists;
- the purchaser must be able to show specific business objectives that can only be met through the unique product or service; and,
- the product or service must be available only from the manufacturer and not through resellers that could submit competitive pricing for the product or service.

The purchasing agency or institution should obtain and submit to ITS a written proposal detailing the above and document the exact product and service to be provided, timeframes for delivery, and associated pricing information. Additionally, documentation from the manufacturer or provider of the item/service to be provided must accompany the sole source procurement request detailing the uniqueness of the product or service.

As stated in MISS. CODE ANN. Section 31-7-13 (j) (1972), a state agency may make use of emergency purchasing procedures under special circumstances that circumvent the normal purchasing procedure (see page 65 for the statutory definition of “emergency”). In order to make use of an emergency purchase exemption, the agency’s board or executive director must first determine that an emergency exists such that “the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state.”

The emergency purchase laws require that the agency file documentation of the emergency purchase. In response to this, ITS has developed an emergency purchase form. For this type of purchase, ITS requires that agencies submit the form, along with the necessary certification fulfilling the reporting requirements for emergency purchases, as soon as possible after the emergency purchase is made.

### ***Exemption Procedure***

***In certain instances, ITS allows individual agencies to acquire information technology goods or services without the involvement of ITS when it is determined by ITS that the agency in question has the required expertise to make such purchases.***

Under Section 013-040 of the Mississippi Department of Information Technology Services *Procurement Handbook*,

ITS and its board may grant exemptions to allow agencies and institutions to handle specific information technology purchases that require solicitation of bids or proposals without the involvement of ITS. The purpose of the exemption procedure is to allow agencies or institutions with the in-house resources and expertise the latitude to procure projects involving traditional information technology equipment, software, or services without ITS involvement.

Upon receipt of the agency's or institution's request for exemption, ITS staff review the information submitted on the exemption request form, including the procurement approach that will be used and the estimated total lifecycle cost of the purchase. The request is then either approved by the ITS Executive Director or presented to the ITS Board for approval if the total lifecycle cost exceeds the director's approval threshold.

When approval for an exemption is received, the agency/institution may then proceed with the purchase of the requested good or service without further involvement of ITS. However, this exemption cannot be used in conjunction with using a sole source provider. Further, the requirement of soliciting bids or proposals for services that can be competitively procured is not waived by the ITS exemption. All applicable state laws for competitive procurement must still be followed by the agency/institution.

### ***Delegation and its Impact on Exemptions***

***Under certain conditions ITS may delegate to the requesting agency or institution of higher learning exemption from the required contracting procedure for items or services below a certain cost threshold, if certain procedures and processes are met.***

Most purchases of technology-related goods or services in the state require the approval of the Executive Director of ITS. MISS. CODE ANN. Section 25-53-21 (f) (1972) states that the ITS Executive Director shall:

*. . .receive, review, and promptly approve or disapprove all requests of agencies of the state for the acquisition of computer equipment or services, which are submitted in accordance with rules and regulation of the authority.*

However, under MISS. CODE ANN. Section 25-53-25 (2) (1972), it is possible for ITS to delegate the purchase of certain items to the agency that desires to make the purchase. As stated in CODE Section 25-53-25 (2):

*The authority [i.e. ITS Board] may establish policies and procedures for the purpose of delegating the bidding and contracting*

*responsibilities related to the procurement of computer equipment or services to the purchasing agency. Such policies and procedures must address the following issues:*

- 1. Establish categories of equipment or services affected;*
- 2. Establish maximum unit and/or ceiling prices of such procurements;*
- 3. Establish reporting, monitoring and control of such procurements; and*
- 4. Establish other such rules and regulations as necessary to fully implement the purposes of this section.*

*Nothing in this subsection shall be construed to imply exemption from the public purchases law, being Section 31-7-1 et seq.*

If the above requirements have been met and the agency has been granted delegation exemption status by the Executive Director of ITS, then that state agency may make certain purchases without ITS approval.

PEER notes that the delegation threshold amounts are different for state agencies and for institutions of higher learning. In the case of institutions of higher learning, the approval of technology purchases below the cost threshold requiring ITS approval is specifically delegated to the individual institution's Chief Information Officer. Because ITS has delegated the procurement process to institutions of higher learning for certain dollar amounts above the threshold for competitive bidding, this delegation also includes giving the institution the authority to advertise and issue a request for bids, invitation to bid, request for proposals, or other competitive instrument, evaluate responses, make an award, and negotiate and execute a contract.

## **The Role of the Personal Service Contract Review Board**

MISS. CODE ANN. Section 25-9-120 (1972) creates the Personal Service Contract Review Board. The board consists of:

- the State Personnel Director;
- the Executive Director of the Department of Finance and Administration, or his designee;
- the Commissioner of Corrections, or his designee;
- the Executive Director of the Department of Wildlife and Fisheries, or his designee; and,

- the Executive Director of the Department of Environmental Quality, or his designee.

Among other things, the board is responsible for:

- promulgating rules and regulations governing the solicitation and selection of contractual services personnel, including personal and professional services contracts (with some exceptions; see MISS. CODE ANN. Section 25-9-120 [3] [a]);
- approving all personal and professional services contracts for more than \$100,000; and,
- developing standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping and the financial responsibility of contractors.

This section addresses the following questions regarding the Personal Service Contract Review Board's role in contracting:

- How do vendors know about the opportunity to contract for personal services?
- How do vendors enter the process of contracting for personal services?
- What is the process for being selected to provide personal services to the state?
- Does the selection process comply with best practices?
- How does the Personal Service Contract Review Board ensure that actual practice in selecting vendors complies with rules and regulations?
- Does the public have access to information showing all vendors who provide a personal or professional service to the state and at what price?
- What types of personal service contracts are exempt from purchasing requirements by virtue of dollar thresholds or specific exemptions?

## **How do vendors know about the opportunity to contract for personal and professional services?**

**Vendors may learn of opportunities for personal service contracting with the state through websites or through traditional print media advertisements (when contract amounts exceed \$100,000). For most contracts, the PSCRB relies on the vendor to make contact with an agency to become part of the prequalified supplier list or to receive solicitation from the agency when it needs services.**

Vendors may access the Personal Service Contract Review Board's website directly at <http://www.mspb.ms.gov/personal-service-contract-review-board.aspx> or through the State Personnel Board website (<http://www.mspb.ms.gov/>) by clicking on the

“Personal Service Contract Review Board” link. The SPB website also has a link to Transparency Mississippi under “Resources” on the State Personnel Board’s homepage, as required by state law.

The Personal Service Contract Review Board requires state agencies to use traditional print media to advertise for personal service contracts. PSCRB regulations require that services that are estimated to cost over \$100,000 be publicized in a newspaper published in the area of the requesting agency or a newspaper of general circulation of the area pertinent to the procurement, in industry media, or in a government publication designed for giving public notice.

A vendor may also contact a state agency directly regarding the services that that vendor provides under the unsolicited offer avenue. Under this avenue, a vendor may supply in writing a detailed description of the service that the vendor can offer, showcasing the uniqueness or innovativeness of the service and how it can help or be advantageous to the state. The offers are evaluated on the utility or advantage they would provide to the state and are awarded under the same procedure as sole source procurements.

Vendors may also become listed on the Preapproved Vendor List. The list is a compilation of potential vendors who may have a service to offer the state. A vendor need only send information to PSCRB to be placed on this list. By being placed on this list, a vendor will be on the solicitation mailing list and receive correspondence regarding potential work for the state.

Additionally, agencies may send out invitations for bids or notices of availability of invitations for bids to vendors in instances in which competition among many providers is required. This direct contact with the vendors indicates where, when, and for how long invitations for bids may be obtained and generally describes the service needed and other appropriate information.

Should a vendor not know of the above arenas of information or want to speak directly with a Personal Service Contract Review Board representative, contacting the State Personnel Board or Personal Service Contract Review Board by phone is an option.

## How do vendors enter the process of contracting for personal and professional services?

Vendors enter the process of selling personal and professional services to the state primarily through one of five ways: competitive sealed bidding, competitive sealed proposals, small purchases, sole source procurements, and emergency procurements. The cost of the service determines what procedure is utilized.

In understanding how a personal services vendor is to prepare a bid or proposal development, it is first helpful to understand how the agency requesting the service goes about developing and preparing for the contract.

An agency has five possible methods of selecting a contract for professional and personal services: competitive sealed bidding, competitive sealed proposals, small purchases, sole source procurements, and emergency procurements. Each one has unique distinctions and procedural requirements that are designed to protect and offer the best return on investment. Each one of these contracts, and their accompanying procedural requirements, is dictated by the amount of the actual contract.

Pursuant to the rules and regulations of PSCRB:

- *Service contracts for less than \$50,000* may be procured by any agency following the rules outlined by PSCRB without PSCRB approval;
- *Service contracts over \$50,000 and not over \$100,000* may be procured from the lowest responsible bidder after obtaining three written quotes in conformity with the small purchase provision; and,
- *Service contracts over \$100,000* may be procured from the lowest responsible bidder or the best proposal after advertising and soliciting for bids or proposals in accordance with PSCRB rules and subject to approval by the PSCRB.

### ***Competitive Sealed Bids***

An agency uses competitive sealed bidding when a determination is made that this is the best method to accomplish the goals of the agency requesting this type of personal service. The process for competitive sealed bidding begins with the invitation for bids issued by the agency and includes instructions and information to bidders concerning bid submission requirements, the purchase description, evaluation factors, delivery or performance schedule, inspection and acceptance requirements that are not included in the purchase description, and the contract terms and conditions, including warranty and bonding or other security

requirements. Upon receipt by the agency, bids are opened in the presence of one or more witnesses at a time and place designated in the invitation for bids. Bids are then evaluated on the basis of factors and criteria detailed in the invitation for bids. The contract should be awarded to the lowest responsible bidder whose bid meets the requirements laid out in the invitation for bids.

### ***Competitive Sealed Proposals***

An agency uses the competitive sealed proposal method in instances in which competitive sealed bidding is deemed by the agency head to be either impracticable or not advantageous to the state. To participate in competitive sealed proposals, a potential vendor must supply a proposal that contains the following information, among other information, unless otherwise instructed in the RFP: description of work involved, an estimate of when and for how long the services will be done, a statement of information regarding the business, and a statement of what, if any, information is a trade secret. Additionally, public notice must be given in accordance with PSCRB's rules and regulations if the contract is anticipated to exceed \$100,000.

### ***Small Purchases***

The PSCRB defines *small purchase* procurement as procurement of a contract not exceeding \$100,000. As outlined in the above price threshold breakdown, depending on the cost of the service to be provided, the type of advertisement, number of bids required, and number of quotes required differ. Contracts for small purchases are awarded based on the lowest and best bid or proposal. Generally, in response to these bids or proposals, vendor must supply a statement of the price, terms of the agreement, a description of the service offered by the contractor to the agency, and the name, address, and telephone number of the offeror.

### ***Sole Source Procurement***

*Sole source procurement* is used in situations in which a service is available from only a single supplier. The determination is made by the agency head, and put in writing, as to whether such a service is unique to only one supplier. Such contracts may be issued without competition. The agency head then conducts negotiations on such contracts regarding price, delivery, and terms. If the contract amount is greater than \$100,000, the contract must be put before the PSCRB for final approval before services are rendered.

### ***Emergency Procurement***

*Emergency procurement* is a procurement route utilized by agencies in time of emergency when the emergency meets the definition in MISS. CODE ANN. § 31-7-1 (f) (1972) (see page 65). Emergency purchases are limited to those services that are necessary to meet the immediate emergency. Under emergency procurement guidelines, ordinary requirements of competitiveness and procedure may be bypassed if such application would inhibit quick response to the emergency. A written determination for the basis and selection of the procurement must be made by an agency head and included in the contract file.

### ***Preapproved Vendor List***

Additionally, a vendor may enter the process of competing for state business by making use of the preapproved vendor list. Under MISS. CODE ANN. Section 25-9-120 (d) (1972), the PSCRB may “establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board.” This list is made available at [www.mspb.ms.gov](http://www.mspb.ms.gov).

To become part of this list, a vendor must have already placed a bid for a state contract. After an invitation for bids has been issued, any vendor may respond with a bid that the company or firm believes is competitive. PSCRB may select the lowest bids from this process and place them on the list described above for agencies to use at their discretion.

## **What is the process for being selected to provide personal services to the state?**

**PSCRB utilizes scoring criteria set out in each request for bids or proposals. Using these criteria, PSCRB awards the contract based on either the contract being the most advantageous to the state or the lowest and best bid (depending on the type of procurement instrument being used).**

The process of being selected to sell a service to the state begins when the executive director of a state agency decides that a service is needed by that agency that cannot be fulfilled in-house. Following this determination, the agency files an invitation for bids or request for proposals with the PSCRB staff and may ask for a consultant review prior to the issuance or advertisement of the contract with PSCRB. If requested to review the IFB or RFP, PSCRB staff will then make recommendations to the using agency. The agency may then solicit offers in the authorized mechanisms outlined above.



After advertising and receiving the bids or proposals for a contract, as determined by the contract's estimated cost, agencies are then required to evaluate and determine the most appropriate contract offer for the service needed. In the case of competitive sealed bidding, bids are evaluated based on the condition set forth in the invitation for bids, which may include criteria to determine the acceptability of workmanship, delivery, and suitability for the particular project purpose. Those criteria that affect the bid price and are considered in the evaluation for the award will be objectively measured when possible. Following a satisfactory score in the evaluation, the contract is then awarded to the lowest bidder whose bid met the requirements and criteria laid out in the invitation for bids.

For the determination of the award for competitive sealed proposals, proposals are evaluated on the relative importance of price and the evaluation factors laid out in the request for proposals. Unlike the award for competitive sealed bidding, competitive sealed proposals are evaluated based on a determination of the contract that takes into account price and the factors laid out in the request for proposals and one that is deemed most advantageous to the state. For small purchases, awards are based on the lowest and best bid or proposal.

### **Does the selection process comply with best practices?**

**PEER believes that the Personal Service Contract Review Board's procedure for selecting vendors for personal service contracts complies with best practices. However, PEER has identified areas needing improvement, including improving vendor access to information and improving transparency.**

For a state agency to administer contracts in a fair and open manner, several factors are essential. As noted previously, PEER gleaned from the ABA's *2000 Model Procurement Code for State and Local Governments* three factors indicative of a proper public contracting procedure: vendor access, a clearly defined selection process, and transparency. PEER believes that PSCRB's contracting processes meet the requirements of a clearly defined selection process, but could improve in the areas of vendor access and transparency.

With regard to vendor access to procurement information, PSCRB does advertise for potential service contracts for its Preapproved Vendor List in newspapers. However, this is the only avenue of public advertisement used. PSCRB relies heavily on the individual vendor to either solicit business directly with the agency in need of its services, be placed on the prequalified vendors list, or the agency is expected to contact potential vendors.

The selection process that PSCRB employs complies with what PEER has identified as best practices. In the RFP or

request for bids, PSCRB requires the identification of evaluation factors to be used in the scoring process and relies only on those criteria for determining the award of the contract. While the different types of contract instruments used by PSCRB have differing criteria, each has a dedicated system of scoring laid out in regulation.

Regarding transparency (to the vendor and the public), PEER believes that PSCRB could improve. Until the advent of Transparency Mississippi, information relating to the award of contracts was not available to the public. On the PSCRB website this information is still is not available. Until recently, the public or a business would have no indication of with whom or for how much a business was doing business with the state. While Transparency Mississippi alleviates much of the concern for public disclosure of this information, having such information on PSCRB's website would, until the public becomes more accustomed to Transparency Mississippi, be more beneficial to both the public and possible future vendors.

Further, PSCRB does not utilize a system of debriefing vendors to dispel concerns or problems that they might have had with the process. This, coupled with the unique threshold advertising amount requirement that possible contracts need only be advertised if the service in question will cost more than \$100,000, limits what information is made available to the public and potential vendors.

### **How does the Personal Service Contract Review Board ensure that actual practice in selecting vendors complies with rules and regulations?**

The Personal Service Contract ensures that actual practices in selecting vendors comply with the *Personal Service Contract Review Board Rules and Regulations* by: (a) pre-reviewing each invitation for bids or request for proposals prior to advertisement; (b) approving professional and personal service contracts that exceed \$100,000; (c) debarring or suspending vendors not in compliance with state procurement regulations; and, (d) reporting vendors for anti-competitive practices.

As noted previously, under MISS. CODE ANN. § 25-9-120 (3) (a) (1972), the Personal Service Contract Review Board has the authority to promulgate rules and regulations governing the solicitation and selection of contractual services personnel, including personal and professional services contracts or any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of personal service contracts exempted by state law or the board's own rules and regulations.

***Pre-Review of Invitations for Bids and Requests for Proposals, by Agency Request***

***Prior to an agency issuing an invitation for bids or request for proposals, an agency may submit its invitation for bids or request for proposals to the Personal Service Contract Review Board for consultant review.***

Prior to an agency issuing an invitation for bids or request for proposals, agencies may electronically submit an invitation for bids or request for proposals for a contract under the purview of the Personal Service Contract Review Board to the board's staff for review. The board's staff then reviews the invitation for bids or request for proposals specifically to evaluate compliance with the *Personal Services Contract Review Board Rules and Regulations*.

The board's staff notifies the agency of necessary and/or suggested changes. Responsibility for the content of all invitations for bids and requests for proposals rests with the agency. Review by board's staff does not guarantee approval of the procurement and/or the contract by the Personal Service Contract Review Board. Agencies are encouraged to allow as much time in advance of advertisement as possible for this review.

***Authority to Approve Professional and Personal Service Contracts that Exceed \$100,000***

***Once contracts are awarded, under MISS. CODE ANN. § 25-9-120 (3) (b) (1972), the Personal Service Contract Review Board must approve all professional and personal service contracts under its authority that exceed \$100,000.***

In accordance with the *Personal Services Contract Review Board Rules and Regulations*, the total amount of the contract is used to determine the appropriate procedures for procurement of services and oversight as follows:

- *service contracts for \$50,000 or less* may be procured by an agency from any source following agency rules and regulations and do not require PSCRB approval;
- *service contracts greater than \$50,000 and not exceeding \$100,000* may be procured by an agency from the lowest acceptable bidder after obtaining three written quotes in conformity with the small purchases provisions of the *Personal Services Contract Review Board Rules and Regulations* and do not require PSCRB approval;
- *service contracts over \$100,000* may be procured from the lowest bidder or the best proposal after advertising and soliciting for bids or proposals in accordance with *Personal Services Contract Review Board Rules and Regulations* and are subject to approval by the PSCRB.

If the cumulative total of multiple service contracts between an agency and a vendor exceeds \$100,000, the Statewide Payroll and Human Resource System (SPAHRs) automatically routes the contract to the PSCRB for approval. Also:

- *Sole-source procurement* is not permissible unless the service is available from only a single supplier. The agency head determines whether procurement must be made as a sole-source purchase. Such determination and the basis for the decision must be in writing. If the contract amount is greater than \$100,000, the contract must still be forwarded to the PSCRB for approval prior to any services being rendered.
- Any state agency may make *emergency procurements* when an emergency condition arises and the need cannot be met through normal procurement methods; however, the agency head must approve this action in advance. The contract should be forwarded to the PSCRB within ten days of execution for SPAHRs processing if the contract amount is greater than \$100,000.

See page 20 for information on which contracts are exempted from Personal Service Contract Review Board oversight.

#### ***Authority to Audit Personal or Professional Service Contracts***

***Under MISS. CODE ANN. § 25-9-120 (3) (h) (1972), the Personal Service Contract Review Board has authority to request the State Auditor to conduct a performance audit of any personal or professional service contract.***

Under MISS. CODE ANN. § 25-9-120 (3) (h) (1972), the Personal Service Contract Review Board has the authority to request the State Auditor to conduct a performance audit of any personal or professional service contract.<sup>16</sup> The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. The state is also entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract.

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<sup>16</sup>Guidelines for conditions for an audit may be found in *Personal Services Contract Review Board Rules and Regulations* 3-602.04.2.

### ***Authority to Debar or Suspend Vendors***

***The Personal Service Contract Review Board, after consultation with the agency seeking services and the Special Assistant Attorney General assigned to the State Personnel Board, have the authority to debar or suspend a person (i. e., vendor) for cause from consideration for award of contracts, if the person is convicted of certain crimes, in violation of certain ethical standards, or in violation of certain contract provisions.***

The *Personal Services Contract Review Board Rules and Regulations* state:

*With reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Personal Service Contract Review Board, after consultation with the using agency and the Special Assistant Attorney General assigned to the Mississippi State Personnel Board, have the authority to debar a person for cause from consideration for award of contracts.*

Debarments are for a period of two years. The Personal Service Contract Review Board, after consultation with the using agency (i. e., the agency that has used the services supplied by the contractor) and Special Assistant Attorney General, also has the authority to suspend a person from consideration for award of contracts if there is probable cause for debarment.

As noted in the *Personal Services Contract Review Board Rules and Regulations*, the causes for debarment or suspension include the following:

- conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a Mississippi contractor;
- conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- violation of contract provisions, as set forth below, of a character that is regarded by the PSCRB to be so serious as to justify debarment action; including,

- deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract or,
- a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- any other cause the PSCRB determines to be so serious and compelling as to affect responsibility as a Mississippi contractor, including debarment by another governmental entity for any cause listed herein; and,
- for violation of the ethical standards set forth in Chapter VI (Ethics in Public Contracting).

#### ***Reporting of Vendors for Anti-Competitive Practices***

***The PSCRB's rules and regulations require the board and the governmental entities under its purview to report any anti-competitive practices discovered in the course of procuring personal and professional service contracts.***

The PSCRB's Regulation 3-702 requires the board and the governmental entities under its purview to report any anti-competitive practices discovered in the course of procuring personal and professional service contracts. When the agency, for any reason, suspects bidders or offerors are colluding or partaking in other anti-competitive practices,<sup>17</sup> the agency's procurement officer shall transmit the relevant facts to the Attorney General.

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<sup>17</sup>An *anti-competitive practice* is a practice among bidders or offerors that reduces or eliminates competition or restrains trade. An anti-competitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from illicit business actions, which have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid. Indications of suspected anti-competitive practices include, but are not limited to, identical bids or proposals, rotated low bids or proposals, sharing of the business, "tie-in" sales, resale price maintenance, and group boycotts.

**Does the public have access to information showing all vendors who provide a personal or professional service to the state and at what price?**

**Under MISS. CODE ANN. § 25-9-120 (3) (i) (1972), the Personal Service Contract Review Board must prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, including collecting any necessary information from state agencies in making such reports. Electronic copies of all preapproved vendor lists for personal services are available on the Personal Service Contract Review Board's website but no other personal service contracts are listed on the PSCRB website.**

Under MISS. CODE ANN. § 25-9-120 (3) (i) (1972), the Personal Service Contract Review Board must prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, including collecting any necessary information from state agencies in making such reports. However, as stated on page 20, multiple personal and professional services have been exempted from the oversight of the Personal Service Contract Review Board, making it more difficult for the public to gain access to personal service contracting procurement information in a more centralized location.

Electronic copies of all preapproved vendor lists for personal services are available on the Personal Service Contract Review Board's website at <http://www.mspb.ms.gov/personal-service-contract-review-board/preapproved-vendor-information.aspx>. The Personal Service Contract Review Board has preapproved vendor lists for (a) armed security services, including car patrol and foot patrol, (b) janitorial services, (c) nursing services, (d) temporary staffing, (e) unarmed security guards, and, (f) background screening services. However, no other personal service contracts are listed on the Personal Service Contract Review Board's website.

The *Personal Services Contract Review Board Rules and Regulations* require the following transparency clause in all contracts for services, requests for proposals, and invitations for bids pertaining to contracts for personal and professional contracts under its purview:

*This contract, including any accompanying exhibits, attachments, and appendices, is subject to codified as section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 31-7-13 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this contract is*

*required to be posted to the Department of Finance and Administration's independent agency contract website for public access. Prior to posting the contract to the website, any information identified by the Contractor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.*

According to the Personal Service Contract Review Board, all personal or professional service contracts under its purview should be subject to the Mississippi Accountability and Transparency Act of 2008 and should be found at [www.transparency.mississippi.gov](http://www.transparency.mississippi.gov).

While PEER's search of the Transparency Mississippi website did find personal and professional service contracts for several agencies, including some both above and below the \$100,000 threshold, PEER did not verify whether all personal or professional service contracts under the Personal Service Contract Review Board's purview are included in Transparency Mississippi.

### **What types of personal service contracts are exempt from purchasing requirements by virtue of dollar thresholds or specific exemptions?**

**Personal and professional service contracts of \$100,000 or less, as well as all personal service contracts paid for "net-of-fee" (i.e., by a third party), do not require the Personal Service Contract Review Board's approval. Further, personal service contracts procured by the Department of Transportation are exempted and contracts for certain specified services are exempted under CODE Sections 25-9-120 (3) (a) and 31-7-13 (m) (1972).**

As stated previously, personal service contracts of \$100,000 or less do not require the Personal Service Contract Review Board's approval. Also, personal service contracts for which the payment method is strictly "net-of-fee" (i. e., paid by a third party) do not come under the purview of the board.

MISS. CODE ANN. § 25-9-120 (3) (a) (1972) exempts the following types of personal service contracts from the Personal Service Contract Review Board's approval authority, regardless of the amount of the contract:

- attorneys;
- accountants;
- auditors;
- physicians;



- dentists;
- architects;
- engineers;
- veterinarians; and,
- utility rate experts.

MISS. CODE ANN. § 25-9-120 (3) (a) (1972) also exempts:

- personal service contracts entered into for computer- or information technology-related services governed by the Department of Information Technology Services; and,
- personal service contracts entered into by the Department of Transportation.

MISS. CODE ANN. § 31-7-13 (m) (1972) exempts personal service contracts for equipment repairs and the *Personal Services Contract Review Board Rules and Regulations* also exempts actuaries.

Finally, the Personal Service Contract Review Board grants exceptions to its rules and regulations when it determines it is in the best interest of the state to do so. However, the board must remain within the bounds outlined in its enabling legislation in MISS. CODE ANN. § 25-9-120 (3) (a) (1972).

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## PEER Committee Staff

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

### Administration

Tracy Bobo  
Larry Landrum  
Rosana Slawson  
Gale Taylor

### Corrections Audit

Lou Davis

### Reapportionment

Ben Collins

### Evaluation

Kim Cummins  
Matthew Dry  
Lonnie Edgar  
Barbara Hamilton  
Matthew Holmes  
Kevin Mayes  
Angela Norwood  
Jennifer Sebren  
Jenell Ward  
Ava Welborn  
Sarah Williamson  
Julie Winkeljohn  
Ray Wright

### Performance Budgeting

Brian Dickerson  
David Pray  
Linda Triplett