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September 19, 2017

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Report to the Mississippi Legislature

## State Government Purchasing: A Review of Recent Statutory Changes and a Case Study

## **PEER: The Mississippi Legislature's Oversight Agency**

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

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

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

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

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September 19, 2017

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

On September 19, 2017, the PEER Committee authorized release of the report titled *State Government Purchasing: A Review of Recent Statutory Changes and a Case Study*.

A handwritten signature in cursive script that reads "Richard Bennett".

Representative Richard Bennett, Chair

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



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# State Government Purchasing: A Review of Recent Statutory Changes and a Case Study

## Executive Summary

### Introduction and Background

During 2014, charges of procurement-related corruption within the Mississippi Department of Corrections caused many legislators to consider legal changes to help prevent such abuses. The three agencies statutorily charged with the oversight of state procurement—the Department of Finance and Administration, Department of Information Technology Services, and the Personal Service Contract Review Board, as well as a special task force appointed by the Governor—reviewed procurement laws and policies seeking ways to strengthen oversight. In 2015 the Mississippi Legislature passed two bills to address risk to the integrity, transparency, and accountability of the state’s procurement process:

- Senate Bill 2400, which amended MISS. CODE ANN. Section 31-7-13(j) (1972), changed commodity purchasing standards relative to emergency and sole-source procurements.
- House Bill 825, which amended MISS. CODE ANN. Section 25-9-120 (1972), revised the composition, jurisdiction, and duties of the Personal Service Contract Review Board. The bill also changed the regulation of sole-source procurements and lowered the oversight threshold for personal services from \$100,000 to \$75,000.

During the 2017 Legislative Session, in an effort to further strengthen oversight, the Legislature passed House Bill 1109, repealing the Personal Service Contract Review Board and transferring its authority, effective January 2018, to the Public Procurement Review Board. These actions minimize the role of the State Personnel Board and increase the role of the Department of Finance and Administration and that of the expanded Public Procurement Review Board.

MAGIC, Mississippi’s Accountability System for Government Information and Collaboration, functions as the statewide accounting and procurement system of record. It is designed to help ensure proper accountability in procurement by routing certain contracts or purchase orders to the three oversight authorities for review and approval.

MAGIC routes procurements for oversight and approval based on the following parameters:

- exemptions pertaining to the agency procuring the contract;
- dollar thresholds established by state law or the oversight authority; and
- multiple contracts with the same vendor in a year.

## **Effects of the 2015 Amendments to Procurement Laws and Regulations on the Procurement Environment**

The three state agencies with oversight authority reported that Senate Bill 2400 had minimal impact on reducing the number of emergency procurements. In contrast, they reported a reduction in sole-source procurements—viewed as a risk to the integrity, transparency, and accountability of the procurement process—after passage of House Bill 825.

Oversight authorities noted other effects, including an increase in the use of brand preference<sup>1</sup> in bid specifications and the statutory approval of 325 contracts in FY 2016 without the benefit of Personal Service Contract Review Board review.

## **Training and Certification Requirements Established by State Law and DFA Regulations**

As required by state law, the Office of Purchasing, Travel and Fleet Management has created a procurement training and certification program to instruct purchasing officials in state law and regulations. Since PEER's 2015 report, the office has made progress in identifying employees in entities under Department of Finance and Administration purview who have purchasing responsibilities. However, not all entities responded to the request from the DFA for information necessary to determine their compliance with the statutorily required training provisions.

With the adoption of reverse auctions as the default method of procurement and the transfer of oversight of personal services to the Public Procurement Review Board, DFA Office of Purchasing, Travel and Fleet Management is considering changes to state procurement manuals and the Certified Mississippi Purchasing Agent class manual prior to submitting these for approval to the Public Procurement Review Board. Given such, training classes are currently halted.

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<sup>1</sup>Brand preference refers to preference for a brand name product (e.g., a preference for Craftsman tools, Honda generators, or Ford vehicles). A procurement official with a brand preference may be inclined to use the product specifications of preferred products to develop bid specifications.



## 2017 Amendments to Procurement Laws and Regulations

During the 2017 Regular Session, the Legislature passed House Bill 1109 to accomplish the following:

- establish procurement best practices;
- abolish the Personal Service Contract Review Board and transfer its authority and responsibilities for personal services to the Public Procurement Review Board;
- make reverse auctions<sup>2</sup> the preferred method of procurement (excluding individual state institutions of higher learning) for commodities and certain other items or services designated in Section 31-7-13 when such procurements exceed \$50,000;
- restrict any agency emergency procurement for the purchase of any commodities or repair contracts to a contract period not to exceed one year; and
- require third-party vendors seeking a protective order for contract information to provide the reasons for the order to any entity or individual requesting these records in accordance with the Mississippi Rules of Civil Procedure. In addition to notice required by the Rules of Civil Procedure, a third party seeking a protective order from the chancery court must also post notice and reasons for seeking the remedy on the state procurement portal at least seven days before filing a petition in chancery court.

## Case Study: Mississippi Department of Education

Following up on concerns raised by legislators regarding various contracts entered into by the Mississippi Department of Education in fiscal years 2014-2016, PEER selected the agency for a case study on procurements made and processed through MAGIC.

The Mississippi Department of Education entered into multiple contracts in fiscal years 2014-2016 having apparent similarities in scope of work and for amounts that collectively exceeded bid thresholds, rather than competitively bidding contracts for such services.

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

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<sup>2</sup>See page 22 for a description of reverse auctions.

PEER found that operational deficiencies in MAGIC—along with inconsistent coding of similar products/services by the MDE—allowed such procurements to be made without proper accountability (i.e., review by a state oversight agency). As such, there is no assurance that goods and services were procured at a competitive rate and may demonstrate inefficient use of state resources.

## Recommendations

1. In view of the considerable changes made in procurement laws in 2015 and 2017, the Legislature should consider allowing the Department of Finance and Administration, the Department of Information Technology Services, and the several state agencies making procurements to develop experience implementing the changes before considering any major revisions of CODE provisions dealing with competitive procurements. The statutorily mandated PEER procurement report scheduled for 2019 will offer the Legislature a comprehensive review of the effects of changes to law in 2015 and 2017 and will offer recommendations for legislative amendment if the Committee considers amendments to be beneficial to the efficiency and effectiveness of the state's procurement system.
2. To ensure that the three MAGIC business owners continue to oversee the MAGIC system, the Legislature should amend MISS. CODE ANN. Section 7-7-3(5) to remove all references to the Mississippi Management and Reporting System Revolving Fund and to set out specific duties that the Mississippi Management and Reporting System Steering Committee<sup>3</sup> shall have related to the continuing oversight, management, and potential modifications to the MAGIC system.
3. Because operational deficiencies in MAGIC allowed procurements to be made without proper accountability during the review period, the Procurement Business Owners<sup>4</sup> should review the following and consider making recommendations to the Department of Finance and Administration to enable MAGIC:
  - a. to detect when an agency enters into contracts with a single vendor within a year with similar (not exact)

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<sup>3</sup>The Mississippi Management and Reporting System Steering Committee, as established by MISS. CODE ANN. Section 7-7-3(5) (1972), consists of the executive directors of the Department of Finance and Administration, the State Personnel Board, and the Department of Information Technology Services.

<sup>4</sup>MAGIC Governance Policy defines the “business owners” as those who have statutory responsibility for specific business processes within MAGIC. The “Procurement Business Owners” are the Department of Finance and Administration, Department of Information Technology Services, the Personal Service Contract Review Board, and the Office of the Attorney General.

- product/service category codes (e.g., all product/service category codes related to consulting services, of which there are approximately 75 such codes) for an amount that exceeds the bid threshold. Such contracts should be routed to the appropriate oversight agency for review.
- b. to detect when an agency submits multiple purchase orders with a single vendor that exceed the bid threshold within a 12-month period. Such purchases should be routed to the appropriate oversight agency for review.
4. In light of the problems with oversight highlighted in this report's case study that were a result of inconsistent coding of contracts in MAGIC, the Procurement Business Owners should ensure that state agencies employing multiple procurement officials
    - a. understand that inconsistent coding of contracts in MAGIC is a problem because it affects state-level oversight;
    - b. ensure that procurement officials are aware of the problem and implement an internal strategy to alleviate the problem (e.g., through training or by adopting a policy or practice whereby multiple procurement officials are involved in coding decisions of contracts that are not immediately apparent) and report such strategies to the MMRS Steering Committee; and
    - c. collaborate with the MMRS Steering Committee when contract coding decisions are unclear.
  5. The Office of the State Auditor should review the findings in this report relative to the personal contracting practices of the Mississippi Department of Education to determine whether department staff acted contrary to state purchasing rules and regulations when procuring the contracts detailed in this report or engaged in contracting practices that are inefficient.

**For more information or clarification, contact:**

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# State Government Purchasing: A Review of Recent Statutory Changes and a Case Study

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## Introduction

### Authority

MISS. CODE ANN. Section 5-3-72 (1972) statutorily requires the Joint Committee on Performance Evaluation and Expenditure Review (PEER) to evaluate on a biennial basis the procurement process used by all state agencies, including, but not limited to, the contract review, reporting, and recordkeeping requirements in MISS. CODE ANN. Section 25-9-120 and the bid requirements in Section 31-7-13. Upon completion of its evaluation, the PEER Committee shall submit a report to the Legislature with its recommendations for improving the procurement process.

The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

### Prior Legislative Action

Oversight of purchasing decisions ensures that the state receives the best value for purchases of goods and services, that agencies comply with the required laws and regulations, and that public funds are appropriately expended. The public sector increasingly views procurement as an important component in delivering value to government and, ultimately, service to taxpayers.

During 2014, charges of procurement-related corruption within the Mississippi Department of Corrections caused many legislators to consider legal changes to help prevent such abuses. The three agencies statutorily charged with the oversight of state procurement—the Department of Finance and Administration, Department of Information Technology Services, and the Personal Service Contract Review Board, as well as a special task force appointed by the Governor—reviewed procurement laws and policies seeking ways to strengthen oversight. In 2015 the Mississippi Legislature passed two bills to address risk to the integrity, transparency, and accountability of the state's procurement process:

- Senate Bill 2400, which amended MISS. CODE ANN. Section 31-7-13(j) (1972), changed commodity purchasing standards relative to emergency and sole-source procurements.
- House Bill 825, which amended MISS. CODE ANN. Section 25-9-120 (1972), revised the composition, jurisdiction, and duties of the Personal Service Contract Review Board. The bill also changed the regulation of sole-source procurements and lowered the oversight threshold for personal services from \$100,000 to \$75,000.

## Scope and Purpose

Following passage of S.B. 2400 and H.B. 825 in 2015, PEER published *State Government Purchasing: A Review of State Agencies' Implementation of Recent Statutory Changes and Other Selected Issues* (PEER Report #603). The report described the purchasing and procurement regulatory environment as of the beginning of the biennium for which the PEER Committee is required to produce such a study.

In this 2017 report, PEER

- determined the impact of S.B. 2400 and H.B. 825 on emergency and sole-source procurement;
- determined the extent to which purchasing officials have received purchasing training through the Mississippi Purchasing Certification Program [MISS. CODE ANN. Section 31-7-9 (3)]; and
- identified changes to state procurement law resulting from passage of House Bill 1109 in the 2017 Legislative Session.

Also, PEER addressed legislators' concerns regarding various Mississippi Department of Education procurements for personal services and information technology services, including whether procurements were competitively bid and whether procurements were routed to the appropriate oversight agencies for review.

Finally, PEER sought to review the role of MAGIC (Mississippi's Accountability System for Government Information and Collaboration), the statewide accounting and procurement system, as an accountability tool in the procurement process.

## Method

In conducting this evaluation, PEER

- reviewed the following:
  - the Department of Finance and Administration’s *Mississippi Procurement Manual* as of February 5, 2016;
  - the Department of Finance and Administration’s *Bureau of Building Procedure Manual* as of June 2011;
  - the Department of Information Technology Services’ *Procurement Handbook* as of June 30, 2016;
  - the Personal Service Contract Review Board’s *Rules and Regulations* (July 1, 2016); and
  - applicable state laws.
- interviewed staff of appropriate state agencies.
- collected and reviewed information from the Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board pertaining to the implementation of Senate Bill 2400 and House Bill 825.
- interviewed staff of the Mississippi Management and Reporting System (MMRS) and MAGIC; and
- utilized MAGIC and Transparency Mississippi to review the Mississippi Department of Education’s procurement process associated with selected contracts.

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## Background

This chapter addresses the following questions:

- Who oversees state agency purchasing, and what are their responsibilities?
- What are the training and certification needs related to state government purchasing?
- How does MAGIC (Mississippi's Accountability System for Government Information and Collaboration), the statewide accounting and procurement system, serve as a procurement accountability tool?

### **Who oversees state agency purchasing, and what are their responsibilities?**

**Three state oversight authorities for purchasing—the Department of Finance and Administration, the Department of Information Technology Services, and the Personal Service Contract Review Board—are chiefly charged with administration and oversight of purchasing. However, during the 2017 Legislative Session, passage of House Bill 1109 repealed the Personal Service Contract Review Board and will transfer its authority in 2018 to the Public Procurement Review Board in an effort to further strengthen oversight.**

MISSISSIPPI CODE governs state agency processes for procurement of goods and services (Exhibit 1, pages 5-6, lists the statutory authority for such governance). The CODE delegates responsibility to the following state agencies as oversight authorities to create rules and regulations regarding contracting within their jurisdictions:

- the Department of Finance and Administration (DFA) (within which are the Office of Purchasing, Travel and Fleet Management; the Bureau of Building, Grounds and Real Property Management; and the Public Procurement Review Board);
- the Department of Information Technology Services; and
- the Personal Service Contract Review Board.

However, in an effort to further strengthen oversight, during the 2017 Legislative Session the Legislature passed House Bill 1109. H.B. 1109 repealed the Personal Service Contract Review Board and transfers its authority, effective January 2018, to the Public Procurement Review Board (PPRB). These actions minimize the role of the State Personnel Board and increase the roles of the DFA and the expanded PPRB.

State law provides 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.



## Exhibit 1: Statutory Authority and Oversight Responsibilities of the Purchasing Oversight Agencies

Agency	Statutory Authority	Oversight Responsibilities
Department of Finance and Administration: Office of Purchasing, Travel and Fleet Management (OPTFM)	MISS. CODE ANN. Sections 25-1-77 and 31-7-9 (1972)	<ul style="list-style-type: none"> <li>• Governs the procurement of commodities, which 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.</li> <li>• Promulgates and maintains the <i>Mississippi Procurement Manual</i> and its regulations that govern commodity purchases in the state.</li> <li>• Approves purchases in excess of \$50,000 made by state agencies and sole-source and emergency purchases in excess of \$5,000.</li> <li>• Approves state contracts for commodities at an agreed-upon price or discount (i.e., statewide contracts).</li> </ul>
Department of Finance and Administration: Bureau of Building, Grounds and Real Property Management (Bureau of Building)	MISS. CODE ANN. Sections 31-11-3 to 31-11-35 (1972)	<ul style="list-style-type: none"> <li>• Develops and maintains the <i>Bureau of Building Procedure Manual</i> to govern the procurement of construction-related projects.</li> <li>• Reviews state agency plans to make capital improvements to state-owned public buildings costing \$2 million or more, including plans to make repairs, renovate, construct, remodel, add to, or improve a state-owned public building.</li> <li>• Approves construction purchases in excess of \$50,000 made by state agencies and sole source and emergency in excess of \$5,000.</li> </ul>
Public Procurement Review Board (PPRB)	MISS. CODE ANN. Section 27-104-7 (1972)	<ul style="list-style-type: none"> <li>• Approves OPTFM regulations governing the purchase or lease of commodities and equipment by state agencies.</li> <li>• Reviews and rules on any purchase that exceeds \$500,000 for commodities, goods, merchandise, furniture, equipment, automotive, or other personal property.</li> <li>• Hears protests of solicitations or awards of contracts.</li> <li>• Approves agency construction contracts of \$5,000,000.</li> </ul>

<p>Department of Information Technology Services (ITS)</p>	<p>MISS. CODE ANN. Section 25-53-5 (1972)</p>	<ul style="list-style-type: none"> <li>• Governs 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.</li> <li>• Develops and maintains the <i>Mississippi Department of Information Technology Services Procurement Handbook</i> and its regulations, which govern information technology purchases in the state.</li> <li>• Conducts information technology procurements for purchases in excess of \$50,000 made by state agencies.</li> <li>• Conducts procurements to award and purchase for the Express Products List, which includes vendors who agree to sell certain products at a not-to-exceed price.</li> </ul>
<p>Personal Service Contract Review Board (PSCRB)*</p>	<p>MISS. CODE ANN. Section 25-9-120 (1972)</p>	<ul style="list-style-type: none"> <li>• Governs the procurement of personal and professional services contracts.</li> <li>• Develops and maintains the <i>Personal Service Contract Review Board Rules and Regulations</i> and its regulations, which govern personal and professional contracts in the state.</li> <li>• Approves personal and professional contracts in excess of \$75,000 made by state agencies, except those services exempt by statute.</li> <li>• Maintains a preapproved vendor list that includes providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board.</li> </ul>

\*The passage of House Bill 1109, 2017 Legislative Session, amends MISS. CODE ANN. 25-9-120 (1972) to abolish the Personal Service Contract Review Board and transfers its duties, powers, and resources to the Public Procurement Review Board, effective January 2018.

SOURCE: PEER analysis of MISSISSIPPI CODE.

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## **What are the training and certification needs related to state government purchasing?**

Having trained and certified purchasing agents in state agencies helps to reduce error, waste, and abuse in the purchasing of goods or services. Also, an established training and certification system improves potential for receiving the best possible value on state purchases, ultimately resulting in more effective stewardship of public funds.

The need to have a trained and certified purchasing staff within each agency's purchasing department is paramount to an effective and efficient purchasing program. Knowledgeable staff in charge of purchasing decisions provide the state the following benefits:

- A certified and trained purchasing official minimizes the chance of contract reissuance as a result of flaws in the original contract or purchase order. A purchasing official well-versed in state laws and regulations helps to ensure that purchase orders and contracts are issued correctly on the first attempt. This allows the agency to acquire goods or services within desired time frames.
- Well-trained and certified agency purchasing staff who can easily navigate state purchasing laws and regulations should be able to obtain the best value for each dollar expended.

## **How does MAGIC serve as a procurement accountability tool?**

**MAGIC, the statewide accounting and procurement system, is designed to help ensure proper accountability in procurement by routing certain contracts or purchase orders to the three oversight authorities for review and approval.**

MAGIC, Mississippi State Government's Enterprise Resource Planning (ERP)<sup>5</sup> solution, functions as the statewide accounting and procurement system of record, encompassing Finance (accounting, budgeting, grants management), Logistics (procurement, fleet management, inventory management), and Data Warehouse functionality.

In terms of procurement accountability, MAGIC plays an important role. Effective routing of procurements to the state's oversight authorities—the Department of Finance and Administration, Personal Service Contract Review Board, and Department of Information Technology Services—for review and approval ensures proper accountability. MAGIC also routes legal contracts to the Office of the Attorney General and the State Personnel Board.

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<sup>5</sup>Enterprise Resource Planning (ERP) can be basically defined as a software system that automates and integrates core business processes, such as human resources, finance, and procurement, into a unified enterprise-wide information system.

MAGIC routes procurements for oversight and approval based on the following parameters:

- Exemptions pertaining to the agency procuring the contract—
  - The state’s procurement laws exempt certain agencies, boards, and governing bodies from procurement oversight. For example, the Mississippi Home Corporation procurement of personal services is exempt from oversight from the PSCRB.
- Dollar thresholds established by state law or the oversight authority—
  - Dollar thresholds for procurement dictate whether a contract or purchase order must be routed to an oversight authority for review and approval. Thresholds vary according to procurement item (e.g., the threshold for personal services contracts is \$75,000) and procurement type (e.g., sole-source and emergency contracts have lower thresholds). Also, MAGIC routes any modified contract or purchase order that then exceeds the bid threshold to the appropriate oversight authority.
- Multiple contracts with the same vendor in a year—
  - Each procurement has an associated National Institute of Governmental Purchasing code (hereinafter product/service category code) that defines the type of item or service and the oversight authority responsible for such procurements. If an agency enters into multiple contracts with a vendor using the same product/service category code during a fiscal year, MAGIC routes the contracts to an oversight authority for review if the resultant total exceeds the bid threshold.

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# Effects of the 2015 Amendments to Procurement Laws and Regulations on the Procurement Environment

Charges of procurement-related corruption in 2014 regarding the Mississippi Department of Corrections prompted legislators to review procurement policies and consider changes to laws to better detect abuses. Several agencies legally charged with the oversight of state procurement, as well as a special task force appointed by the Governor, reviewed procurement laws and policies to identify changes that could strengthen oversight. During the 2015 Legislative Session, the Mississippi Legislature addressed areas that created risk to the integrity, transparency, and accountability of the procurement process.

This chapter addresses the following questions:

- What changes were made to state procurement laws in the 2015 Session?
- What has been the response of the oversight authorities to the new legislation?
- What has been the impact of Senate Bill 2400 and House Bill 825 on the procurement environment of state agencies?

**In 2015 the Legislature passed two bills designed to address concerns regarding accountability and transparency within the state's procurement system. Most notably, the three oversight authorities (Department of Finance and Administration, Personal Service Contract Review Board, and Information Technology Services) reported that the 2015 legislation has reduced the number of sole-source procurements, which are viewed as a risk to the integrity, transparency, and accountability of the procurement process.**

## **What changes were made to state procurement laws in the 2015 Session?**

**Senate Bill 2400 and House Bill 825 addressed concerns regarding accountability and transparency within the state's procurement system. Additionally, H.B. 825 changed the membership and jurisdiction of the Personal Service Contract Review Board.<sup>6</sup>**

S.B. 2400, amending MISS. CODE ANN. Section 31-7-13(j) (1972), changed commodity purchasing standards relative to emergency and sole-source procurements. H.B. 825, which amended MISS. CODE ANN. Section 25-9-120 (1972),

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<sup>6</sup>House Bill 1109, 2017 Regular Session, abolished the Personal Service Contract Review Board and transfers its duties, powers, and resources to the Public Procurement Review Board, effective January 2018.

revised the composition, jurisdiction, and duties of the Personal Service Contract Review Board; restricted sole-source procurements; and lowered the oversight threshold for personal services from \$100,000 to \$75,000.

## **What has been the response of the oversight authorities to the new legislation?**

**The three procurement oversight authorities revised their respective procurement regulations regarding emergency and sole-source procurements to help ensure consistency across state government.**

To comply with Senate Bill 2400 and House Bill 825, the Department of Finance and Administration (DFA), Department of Information Technology Services (ITS), and the Personal Service Contract Review Board (PSCRB), as applicable, revised their regulations regarding emergency and sole-source procurements.

To minimize agency confusion with policies across various types of procurement, both the DFA and ITS adopted policies to mirror those of H.B. 825 for sole-source procurement, which had applied only to personal services. This included (1) advertising of sole-source purchases and (2) an avenue for vendor challenges similar to that in H.B. 825. This was in addition to existing ITS (and DFA) policy requiring agencies that sought IT-related procurements using the sole-source procurement method to provide written justification of why the procurement is considered sole-source.

Additionally, ITS requires advertising only after examining the request for sole-source procurement and concurring with the agency's sole-source determinations; otherwise, ITS conducts a competitive procurement on behalf of the requesting agency.

## **What has been the impact of Senate Bill 2400 and House Bill 825 on the procurement environment of state agencies?**

**The oversight authorities reported that S.B. 2400 had minimal impact on reducing the number of emergency procurements. In contrast, they reported a reduction in the number of sole-source procurements after passage of H.B. 825.**

**Oversight authorities noted other effects, including an increase in the use of brand preference<sup>7</sup> in bid specifications and the statutory approval of 325 contracts in FY 2016 without the benefit of Personal Service Contract Review Board review.**

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<sup>7</sup>Brand preference refers to preference for a brand name product (e.g., a preference for Craftsman tools, Honda generators, or Ford vehicles). A procurement official with a brand preference may be inclined to use the product specifications of preferred products to develop bid specifications.

## What impact has S.B. 2400 had on agencies' use of emergency contracts?

*The three oversight authorities reported S.B. 2400 had minimal impact on reducing the number of emergency procurements. The lack of significant change could be because few existed previously or other measures were in place to supersede S.B. 2400 (i.e., emergency purchases in the instance of life or death).*

Prior to the adoption of S.B. 2400, state agencies could procure commodities under emergencies when their governing boards found that an emergency existed (as defined by MISS. CODE ANN. Section 31-7-1) and the agency could document such an emergency. The agency made the purchase and then notified the Department of Finance and Administration, justifying the need for the emergency purchase and describing what was purchased.

S.B. 2400 amended Section 31-7-13 to require the procuring agency to notify the Department of Finance and Administration in writing of its emergency need for commodities and request DFA approval prior to purchase. S.B. 2400 limited instances in which an agency could purchase without first seeking and obtaining DFA approval to situations in which the emergency threatens the life or health of persons or the protection and preservation of property. Such purchases may be made without prior approval.

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

*The Personal Service Contract Review Board reported emergency procurements for personal services had been steadily decreasing prior to S.B. 2400.*

The PSCRB does not approve emergency contracts for personal services; however, it performs the administrative role of processing the request for emergency procurement in MAGIC. Accordingly, the PSCRB reported that even prior to S.B. 2400 it had noticed decreasing requests for emergency procurements for personal services—from 41 in FY 2010 to 12 in FY 2015.

The Personal Service Contract Review Board has established guidelines for agencies to follow for emergency procurement of personal service contracts. For example, to encourage proper planning and quash the practice of claims being made for emergency procurements that are not true emergencies, PSCRB guidelines limit contracts for emergency procurement to a maximum of one per year (barring a legitimate emergency). If concern arises about an emergency procurement for personal services, staff may report such procurement to the Office of the State Auditor.

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

*Emergency procurements for IT-related items decreased after the passage of S.B. 2400, primarily the result of an absence of major weather-related disasters that would typically necessitate emergency procurements.*

Passage of S.B. 2400 in the 2015 Legislative Session had limited impact on emergency procurements for IT-related items, with ITS averaging seven per year from FY 2010 through FY 2015. ITS received no emergency procurements requests in FY 2016 and only one through February 15 of FY 2017. The lack of any major weather-related emergencies that would necessitate IT-related emergency procurement explains the decline, according to ITS.

An emergency IT-related procurement can also involve software and database support. In FY 2015, prior to approval being required for certain emergencies, ITS issued a CP-1 (acquisition approval document) for Jackson State University's \$237,523 emergency contract with Mythic, Inc. for one-year Oracle software support. However, this was at the request of the university for accounting purposes only.

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

*DFA's Office of Purchasing, Travel and Fleet Management reported that the number of emergency procurements for commodities subject to Department of Finance and Administration oversight has remained relatively the same since passage of S.B. 2400.*

The Office of Purchasing, Travel and Fleet Management reported that the number of emergency procurements for commodities subject to DFA oversight has remained relatively unchanged since passage of S.B. 2400. Now, however, the agency must provide documentation to the DFA of the procurement made, its price, and the nature of the emergency before the procurement unless the emergency impacts life or property, in which case the agency submits documentation afterward.

The OPTFM approved 15 emergency procurements for commodities in FY 2015, 11 in FY 2016, and 12 through June 13 of FY 2017. It approved one emergency contract prior to purchase from FY 2016 through June 13, 2017. All other emergency procurements were considered to threaten life or property; therefore, they did not require preapproval.

The OPTFM rejected three emergency procurements for commodities from FY 2015 through FY 2017. In one case the OPTFM rejected a FY 2016 emergency procurement request from the Mississippi University for Women for Burks Mordecai Builders, Inc., to make repairs to "Shattuck Hall's old kitchen" because the Public Procurement Review Board (PPRB) currently delegates construction contract



oversight to Institutions of Higher Learning. Additionally, the OPTFM rejected Mississippi Valley State University's modified emergency procurement request to purchase seven modular housing units for students from Palomar Modular Buildings, LLC, on September 4, 2014, for \$1,522,657 after approving the original emergency procurement request on July 28, 2014, for \$1,043,534 because the university failed to justify the price increase.

The DFA Bureau of Building, Grounds, and Real Property Management (Bureau of Building) reported six emergency procurements for construction, repairs, building leases, and, as applicable, furniture and equipment in FY 2015; six in FY 2016; and three through March 20 of FY 2017. Per Bureau of Building policy, emergency procurement should only take care of the initial action to stop further damage to property or personnel. For example, the Bureau of Building would permit a tarp and plywood request to protect a damaged roof and windows but would prohibit an emergency request for construction of a new roof, requiring that aspect to be competitively bid.

Given the need to maintain and/or resume operations of state services in the event of an emergency (weather damage, elevator or plumbing outage, etc.), the state established the Capital Emergency Expense Fund. If an agency does not have sufficient available funds to make the emergency procurement for construction and repairs, it may seek review by the Bureau of Building and the PPRB and financial assistance from the Capital Emergency Expense Fund. In such instances, the Bureau of Building has statutory authority to draw funding from the Capital Emergency Expense Fund, including up to \$500,000 per emergency and \$2 million per year. For major emergencies, state buildings are covered by property insurance with a \$500,000 deductible.

The PPRB approved Capital Emergency Expense Fund expenditures for five of six emergency procurement requests for construction and repairs and four of six in FY 2015 and FY 2016, respectively.

#### **What impact has H.B. 825 had on agencies' use of sole-source contracts?**

***The three oversight authorities reported that H.B. 825 (in addition to the adoption of rules and regulations that gave effect to H.B. 825) led to a reduction in the number of sole-source procurements, citing additional scrutiny from oversight authorities or additional public advertisement requirements as reasons.***

In the area of service contracting, since passage of H.B. 825, an agency wanting to make sole-source procurement must use the state procurement portal website established by MISS. CODE ANN. Sections 25-53-151 and 27-104-165

(1972) to solicit vendors for at least 14 days.<sup>8</sup> Following that, it must be able to validate the need for the particular service and establish that the service is only available through the stated vendor. An agency also must document that the amount expended for the service is reasonable and that efforts were made to obtain the best price for the service.

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

*The Personal Service Contract Review Board reported a decrease in the number of sole-source contracts for personal services after the passage of H.B. 825 compared to fiscal years 2010 through 2014.*

From FY 2010 through FY 2014, agencies submitted an average of 26 sole-source personal service contracts per year. The PSCRB reported 11 sole-source personal service contracts in FY 2015 and seven in FY 2016.

When reviewing sole-source procurements for personal services, the PSCRB staff considers the following:

- Did the agency comply with applicable state law (i.e., MISS. CODE ANN. Section 25-9-120) and Personal Service Contract Review Board's *Rules and Regulations* in seeking/entering a sole-source contract?
- Did the agency submit the required declaration establishing the vendor as a sole-source supplier with applicable supporting documentation? This, in most cases, includes a court order declaring the vendor a sole-source supplier.

MISS. CODE ANN. Section 25-9-120(5) states that all sole-source contracts for personal and professional services awarded by state agencies, whether approved by an agency head or the Personal Service Contract Review Board, shall contain in the procurement file a written determination for the approval, using a request form furnished by the PSCRB. The written determination shall document the basis for the determination, including any market analysis conducted in order to ensure that the service required was practicably available from only one source.

The procuring entity shall include a memorandum to the Personal Service Contract Review Board with its sole-source request addressing the following four points:

1. an explanation of why this service is the only service that can meet the needs of the purchasing agency;
2. an explanation of why this vendor is the only practicably available source from which to obtain this service;

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<sup>8</sup>H.B. 825 also provided that an agency may obtain a binding, valid court order that mandates that a particular source or provider be used for the required service. A copy of the court order must be submitted to the PSCRB.

3. an explanation of why the price is considered reasonable; and
4. a description of the efforts that were made to conduct a noncompetitive negotiation to obtain the best possible price.

Additionally, the procuring entity must meet the sole-source procurement advertising requirements specified in MISS. CODE ANN. Section 25-9-120(3)(j)(iii).

### ***Information Technology Services***

*Information Technology Services reported the number of sole-source contracts for IT-related items decreased after the passage of H.B. 825, from 110 in FY 2015 to 86 in FY 2016.*

After the passage of H.B. 825 added new requirements for sole-source procurements for personal services, ITS adopted new rules and regulations accordingly, after which it experienced a decrease in the number of sole-source procurements for IT-related items—from 110 in FY 2015 to 86 in FY 2016 and 29 through February 15 of FY 2017. Prior to ITS adopting such policies, it approved an average of 141 sole-source procurements for IT-related items from FY 2010 to FY 2015. It reached a high of 189 in FY 2014.

Per the Department of Information Technology Services' *Procurement Handbook*, sole-source acquisitions for IT-related items must meet certain criteria:

- The product or services being purchased must perform a function for which no other product or source of services exists.
- The purchaser must be able to show specific business objectives that can be met only through the unique product or services.
- The product or services must be available only from the manufacturer and not through resellers that might offer competitive prices.

To validate a sole-source request, ITS reviews the following: the history of the request; the agency purchase history; and vendor research (i.e., product availability through other vendors).

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

*DFA's Office of Purchasing, Travel and Fleet Management reported that the number of sole-source contracts for commodities decreased after the passage of H.B. 825 from 222 in FY 2015 to 119 in FY 2016. The Bureau of Building reported zero sole-source procurements for construction and repair services.*

Like Information Technology Services, after the passage of H.B. 825 added new requirements for sole-source

procurements for personal services, both DFA OPTFM and the Bureau of Building adopted new rules and regulations to mirror the requirements of H.B. 825.

Since the OPTFM adopted such policies after passage of H.B. 825, it reported a significant decline in the number of sole-source procurements and number of procurements rejected. The OPTFM reported that it approved 119 sole-source procurements in FY 2016, down from 222 in FY 2015. It rejected 42 requests for sole-source procurements in FY 2015, but only four in FY 2016.

The OPTFM rejected agencies' sole-source procurement requests for commodities in FY 2015 and FY 2016 for the following reasons (including but not limited to):

- It did not consider the procurement to be a sole-source request because it determined other vendors were available to provide the product.
- The procuring agency did not provide the justification letters on letterhead with the current date at the top of letter and did not include a signed quote with the purchase price.
- The procuring agency did not include sufficient detail about the item so that a person unfamiliar with the circumstances could better understand the need to forgo normal purchasing procedures. Sufficient details should consist of the following: (a) What is the item? (b) How will the item be used? (c) Do other manufacturers make similar commodities that will do the job or meet the same goals? (d) How is this item unique from all others? (e) What can this item do that others cannot?

Prior to purchase, MISS. CODE ANN. Section 31-7-13(m)(viii) requires the procuring agency seeking sole-source procurement for commodities to certify in writing to the Department of Finance and Administration the conditions and circumstances necessitating the purchase. The *Mississippi Procurement Manual* provides examples of such circumstances that could necessitate sole-source procurement.

Additionally, policy, as stated in the *Mississippi Procurement Manual*, dictates that an agency publish its decision to award a sole-source contract for 14 days on the state's procurement portal website, Transparency Mississippi<sup>9</sup> (<http://www.transparency.mississippi.gov/>) through the "Buying and Selling to Government in Mississippi" web portal. The procuring agency must include the following:

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<sup>9</sup>Transparency Mississippi is the state's website for promoting transparency in government and in spending. Individuals can search contracts published through Transparency MS and vendors, using the "I Sell to Mississippi" portion of the website; can search available opportunities to compete for procurement; and can review posted sole-source procurements.

- a description of the commodity the agency is seeking to procure;
- an explanation of why the commodity is the only one that can meet the needs of the agency;
- an explanation of why the source is the only person or entity that can provide the required commodity;
- an explanation of why the amount to be expended for the commodity is reasonable;
- the efforts that the agency went through to obtain the best possible price for the commodity; and
- procedures for any person or entity that objects and proposes that the commodity published on the procurement portal is not sole-source and can be provided by another person or entity.

Following the approved purchase, per MISS. CODE ANN. Section 31-7-13(m)(viii), the procuring agency must file with the Department of Finance and Administration documentation of the purchase that includes a description of the commodity purchased, the purchase price thereof, and the source from which it was purchased when submitting the applicable payment request.

The Bureau of Building reported zero sole-source procurements for construction and repair services greater than \$5,000 from FY 2015 through FY 2016 entered into MAGIC.

### **What has been the impact on transparency of commodities and information technology procurement?**

***Although H.B. 825 added an additional avenue for transparency by requiring the publishing of sole-source contracts on Transparency Mississippi and by implementing an avenue for vendor challenges, the oversight authorities reported only one instance in which a vendor successfully challenged the use of a sole-source vendor having occurred since implementation of H.B. 825.***

Per H.B. 825, competing vendors that access the state procurement portal, Transparency Mississippi, and discover that an agency is contemplating sole-source procurement can notify the oversight authority as well as the agency advertising sole-source of their comparable service. The requirement to post on the portal gives potential vendors the opportunity to compete by providing an avenue for appeal to the applicable oversight authority (i.e., PSCRB, ITS, DFA), thus adding transparency in the procurement process.

The oversight authorities reported only one instance in which a vendor successfully challenged the use of a sole-source vendor after the implementation of H.B. 825. In

2016, ITS on behalf of the Mississippi State Department of Health (MSDH) attempted to award a sole-source contract to LexisNexis for a LexisNexis® Accurint® for Government Software Subscription Service Renewal.<sup>10</sup> In this case the vendor, Thompson Reuters, successfully challenged the ITS sole-source award, citing that other vendors could provide comparable services.

Learning this, ITS issued a request for proposals on behalf of the MSDH to obtain the services. ITS awarded RFP 3949 for Public Records Search Software for the MSDH to LexisNexis Risk Solutions FL Inc. at a total not-to-exceed a five-year life-cycle cost of \$128,597.89.

The PSCRB, OPTFM, and Bureau of Building reported the occasional call for clarification after publicizing a sole-source award but have not received any formal vendor challenges since the change in the law.

### **Have negative outcomes resulted from changes in procurement laws and regulations?**

#### ***Effects Noted by the Department of Finance and Administration***

*Since the passage of House Bill 825 increased oversight on sole-source procurement, the Office of Purchasing, Travel and Fleet Management has seen an increase in specification of brand preference.*

Generally, the OPTFM reported, agencies have increasingly used brand preference in developing specifications for contracts greater than \$50,000.<sup>11</sup> The Bureau of Building also reported the use of brand preference by agencies in bid specifications, but noted that it had monitored this before the law changed as well.<sup>12</sup>

According to the National Association of State Procurement Officials (NASPO), an agency requirement for a particular proprietary product or service does not automatically justify a sole-source procurement if there is more than one potential bidder or offeror for the item. Additionally, NASPO states an agency's preference for a brand name product alone does not justify a sole-source procurement.

The DFA discourages brand preference unless the procuring agency can justify the brand as meeting certain criteria. For sole-source procurements, the OPTFM and Bureau of Building

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<sup>10</sup>Per the LexisNexis® website, government agencies can use Accurint® for Government's suite of investigative tools to "efficiently locate people, better detect fraud, accurately verify identity, perform in-depth due diligence and more easily visualize complex relationships."

<sup>11</sup>A procurement official with a brand preference may be inclined to use the product specifications of preferred products to develop bid specifications.

<sup>12</sup>State law and procurement regulations, under certain circumstances as specified in MISS. CODE ANN. Section 31-7-13, Section 25-9-120, and ITS procurement regulations, provide guidelines for competitive selection of vendors for commodities and services.

reported that they review bid specifications to determine if they are narrow in scope for the item being procured. The OPTFM and Bureau of Building review specifications for presence of a brand name and for specifications that are unnecessarily too similar to the sole-source product. They also review whether the agency needs the described level of specificity in the product (e.g., does an agency need a speaker system or must the speaker system be compatible with certain software to perform necessary functions?).

### ***Effects Noted by the Personal Service Contract Review Board***

*H.B. 825 lowered the threshold for procuring personal service contracts from \$100,000 to \$75,000, effective July 1, 2015, causing an increase in the workload for the PSCRB. The number of contracts routed to the PSCRB for consideration rose from 501 in FY 2015 to 661 in FY 2016. Furthermore, the Legislature, under H.B. 825, passed a statutory approval mechanism that results in automatic approval of a contract if the PSCRB does not object to it within 30 days. Under the 30-day rule, 325 contracts were approved by operation of law in FY 2016 (i.e., automatically).*

H.B. 825 made a significant change in the jurisdiction of the PSCRB by lowering the procurement threshold for contracts to be preapproved from \$100,000 to \$75,000. Such a change places a greater number of high-value contracts under the board's jurisdiction for preapproval.

Because of the limited number of current staff reviewing contracts (five employees), the PSCRB board established guidelines to identify which personal service contracts would receive first vetting. It prioritizes contracts according to the following:

1. new contracts;
2. higher value contracts;
3. contracts that did not receive review during the previous period; and
4. renewal or modification of contracts that are statutorily approved.

In FY 2016 the PSCRB failed to meet the 30-day review deadline for all contracts it received, resulting in 325 personal service contracts approved by operation of law (i.e., automatically). The majority (240) were approved during the peak period of April through June [at the close of the fiscal year].

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## 2017 Amendments to Procurement Laws and Regulations

In 2017 the Legislature passed House Bill 1109 designed primarily to establish best practices for state procurement, streamline oversight of procurement, and potentially generate cost-savings by making reverse auctions the default method for certain procurements (e.g., commodities) and consolidating the roles of the Personal Service Contract Review Board into a revised Public Procurement Review Board.

This chapter addresses the following:

- What changes were made to state procurement laws in the 2017 Session?
- What has been the response of the oversight authorities to these changes?

### What changes were made to state procurement laws in the 2017 Session?

**House Bill 1109 revised state policy on procurement, including abolishing the Personal Service Contract Review Board and transferring its duties, powers, and resources to the Public Procurement Review Board, effective January 1, 2018.**

During the 2017 Regular Session, the Legislature passed H.B. 1109 to accomplish the following:

- establish procurement best practices;
- abolish the Personal Service Contract Review Board and transfer its authority and responsibilities for personal services to the Public Procurement Review Board;
- make reverse auctions<sup>13</sup> the preferred method of procurement (excluding individual state institutions of higher learning) for commodities and certain other items or services designated in Section 31-7-13 when such procurements exceed \$50,000;
- restrict any agency emergency procurement with regard to the purchase of any commodities or repair contracts to a contract period not to exceed one year; and
- require third-party vendors seeking a protective order for contract information to provide the reasons for the order to any entity or individual requesting these records in accordance with the Mississippi Rules of Civil Procedure. In addition to notice required by the Rules of Civil Procedure, a third party seeking a protective order from the chancery court must also

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<sup>13</sup>See page 22 for a description of reverse auctions.



post notice and the reasons for seeking the remedy on the state procurement portal at least seven days before filing a petition in chancery court.

### ***Establish Procurement Best Practices***

H.B. 1109 creates standards for procurements by solicitation of requests for proposals or requests for qualifications and provides that the standards shall apply to procurements of commodities, supplies, equipment, construction, technology, personal and professional services, any type of state agency employee benefits, and state agency supplemental insurance and cafeteria plans. Additionally, the bill specifies the following:

- the factors that must be considered when determining to use a request for proposals or requests for qualifications;
- the content to include in a request for proposals or request for qualifications;
- the requirements of pre-proposal conferences;
- the method to properly draft a request for proposals or request for qualifications;
- the evaluation factors to use when reviewing a request for proposals or requests for qualifications;
- the qualifications of the evaluation committee that will evaluate each submitted proposal or qualification;
- the guidelines for discussions once proposals or qualifications have been submitted; and
- the content to be included in the best and final offer.

See the appendix on page 42.

### ***Abolish the Personal Service Contract Review Board and Transfer Its Authority and Responsibilities to the Public Procurement Review Board***

House Bill 1109, 2017 Regular Session, amended MISS. CODE ANN. Section 25-9-120 (1972) to abolish the Personal Service Contract Review Board and transfer all its personnel, property, equipment, inventories, and records to the reconstituted Public Procurement Review Board (PPRB), effective January 1, 2018. The transfer of personnel shall be commensurate with the number and classification of staff positions allocated to the Personal Service Contract Review Board as of June 30, 2017.

In addition to the Public Procurement Review Board's current statutory powers and responsibilities outlined under MISS. CODE ANN. Section 27-104-7(2)(a-e), H.B. 1109 amends MISS. CODE ANN. Section 27-104-7(2) to bestow upon it additional powers and responsibilities previously

held by the PSCRB (e.g., approval of personal services contracts of more than \$75,000).

The bill also revised the composition of the Public Procurement Review Board from three members—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 Office of General Services who is familiar with the purchasing laws of this state (currently the Deputy Executive Director over the Bureau of Building)—to a five-member board, composed of three individuals appointed by the Governor and two individuals appointed by the Lieutenant Governor. The Executive Director of the Department of Finance and Administration remains on the Public Procurement Review Board as an ex-officio and nonvoting member.

Additionally, H.B. 1109 set the qualifications for members of the Public Procurement Review Board and precluded service by some individuals (e.g., an employee or owner of a company that receives contracts subject to the board's approval).

***Make Reverse Auctions the Default Method of Procurement for Commodities and Printing, etc.***

A reverse auction is a process in which buyers announce their need for a product or service and suppliers bid to fulfill that need. In this type of auction, the role of the buyer and supplier is reversed, with the primary objective to compete purchase prices downward. While buyers compete to obtain a product or service in an ordinary auction (also known as a forward auction), sellers compete to obtain business in a reverse auction.

Effective January 1, 2018, House Bill 1109, 2017 Regular Session amends MISS. CODE ANN. Section 31-7-13(2) (1972) to make reverse auctions the default method to be used by all agencies and governing authorities (excluding individual state institutions of higher learning) for procuring commodities and certain other items or services designated in Section 31-7-13 when such procurements exceed \$50,000. By default, reverse auctions will be the mandatory method for procurement of these products and services unless the Public Procurement Review Board approves use of another method.

## What has been the response of the oversight authorities to House Bill 1109?

With the adoption of reverse auctions as the default method of procurement and the transfer of oversight of personal services to the Public Procurement Review Board, DFA's Office of Purchasing, Travel and Fleet Management are considering changes to state procurement manuals and the Certified Mississippi Purchasing Agent class manual prior to submitting these for approval to the Public Procurement Review Board.

Prior to the appointment of the newly reconstituted Public Procurement Review Board, the Department of Finance and Administration, in consult with the existing Personal Service Contract Review Board and its staff, is reviewing and considering necessary changes to state procurement regulations for procurements routed through the Bureau of Building, Grounds, and Real Property Management (namely construction); for procurements routed through the Office of Purchasing, Travel and Fleet Management (commodities, fleet, etc.); and for procurements previously routed through the Personal Service Contract Review Board (personal services) and now routed to the Department of Finance and Administration.

With reverse auctions becoming the preferred bidding method effective January 1, 2018, the DFA is researching the potential impact this may have and is formulating policies and procedures for implementation.

The OPTFM stated that training materials on reverse auctions would need to be developed for agency procurement officials, and that such training should be included as part of the DFA's Certified Mississippi Purchasing Agent program. The OPTFM also noted that staff would need to review and consider changes to the *Mississippi Procurement Manual* to incorporate reverse auctions and recommend such changes to the Public Procurement Review Board.

According to MAGIC staff, the system has the functionality to accommodate reverse auctions; however, state agency staff will have to be trained on the implementation of that particular module.

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# Training and Certification Requirements Established by State Law and DFA Regulations

Successful implementation of the revised purchasing policies will depend on trained and competent purchasing officials within state agencies. The Legislature has mandated the establishment of certification and training requirements to assist state agency employees in carrying out their purchasing duties.

This chapter address the following question: What is the statutorily required training for purchasing officials?

## **What is the statutorily required training for purchasing officials?**

As required by state law, the Office of Purchasing, Travel and Fleet Management has created a procurement training and certification program to instruct purchasing officials in state law and regulations. Since PEER's 2015 report, the office has made progress in identifying employees in entities under Department of Finance and Administration purview who have purchasing responsibilities. However, not all entities responded to the request from the DFA for information necessary to determine their compliance with the statutorily required training provisions.

MISS. CODE ANN. Section 31-7-9(3) [1972] requires the Office of Purchasing, Travel and Fleet Management to adopt regulations governing processes for certifying purchasing officers, including the "Mississippi Purchasing Certification Program, which shall be required of all purchasing officials at state agencies." Accordingly, the OPTFM established the Mississippi Purchasing Certification Program to ensure that state purchasing and contract management personnel are trained in state purchasing laws and regulations. The goal of the program is to offer government purchasing courses and certification testing specifically designed for public procurement in Mississippi.

### **What is the Mississippi Purchasing Certification Program?**

*The Mississippi Purchasing Certification Program provides training on state purchasing laws and regulations in a classroom setting. After training concludes, participants must demonstrate competency in program content by scoring 70% or higher to receive certification for five years.*

The Mississippi Purchasing Certification Program was initially designed to provide two levels of certification: "Certified Mississippi Purchasing Agent" and "Certified Mississippi Procurement Manager." The Office of Purchasing, Travel and Fleet Management developed the course content for the purchasing agent certification program and began offering sessions in early 2014, with the first participants being certified March 6, 2014.

However, according to OPTFM staff, development of course content for the Certified Mississippi Procurement Manager program was delayed due to staff turnover and implementation problems associated with the state's migration to its new accounting system, MAGIC. In 2016 the Public Procurement Review Board gave the OPTFM permission to eliminate plans for the program.

The training to become a Certified Mississippi Purchasing Agent consists of a two-day course with testing on the third day. The program consists of 13 classroom sessions over two days and enables participants to understand state purchasing laws and regulations, identify steps in the procurement process, develop specifications and competitive bids, and understand the procurement oversight responsibilities of the respective authorities. At the conclusion of the 13th session on day three, participants must sit for a 100-question written exam and score 70% or higher to become certified. Certification is valid for five years.

The Office of Purchasing, Travel and Fleet Management offers this course six times per year—every other month, beginning in January. Maximum class size is 25 participants, which allows the OPTFM to train and certify up to 150 purchasing agents per calendar year. Although demand for the purchasing agent certification program has been strong, the OPTFM has temporarily suspended the program until the Department of Finance and Administration revises the *Mississippi Procurement Manual* to incorporate the new requirements included in House Bill 1109, specifically the provisions relating to state agency use of reverse auctions.

#### **Who is required to receive training, and who has received training?**

***Although since PEER's 2015 report the Department of Finance and Administration has made progress identifying employees under its purview who have purchasing responsibilities, not all entities requested to provide the necessary purchasing official information to the DFA have done so.***

Per MISS. CODE ANN. Section 31-7-9(3) (1972), the Mississippi Purchasing Certification Program is required of all purchasing officials at state agencies. However, PEER, in its 2015 report *State Government Purchasing: A Review of State Agencies' Implementation of Recent Statutory Changes and Other Selected Issues* observed that because of variations in job titles among state employees who have purchasing duties, the Office of Purchasing, Travel and Fleet Management could not definitively determine the number of employees who are subject to the training or the percentage of purchasing officials within the state who have been certified.

In response to PEER's 2015 report recommendation that the Department of Finance and Administration maintain a list of agency staff responsible for purchasing, the DFA attempted to compile such a list. The previous DFA Executive Director contacted the executive directors of state agencies, boards, and commissions; presidents of state institutions of higher learning; and presidents of community and junior colleges requesting that they report to the Office of Purchasing, Travel and Fleet Management, no later than February 29, 2016, the name, e-mail address, job title, and phone number for each of their purchasing officials.

The DFA defined purchasing official as

- *any administrator, superintendent, purchase clerk, or other chief officer so designated having general or special authority to negotiate for and make contract for or purchase for any governing authority or agency;*
- *any person duly authorized to enter into and administer contracts and make written determinations with respect thereto; or*
- *an authorized representative acting within prescribed limits, that is, having the authority to issue a purchase orders, issue invitations to bid, received and accept bids, negotiate contract clauses, etc., for the purposes of this policy.*

In response to the DFA's request, 117 of the 119 entities under its purview self-reported the required information for 391 procurement officials. Based on a cursory review of the self-reported information, in addition to the fact that the Board of Psychological Examiners and the State Board of Examiners for Licensed Professional Counselors provided no information, PEER concludes that agencies may not have listed all of their procurement officials, as defined by the DFA, due to the varying position titles.

According to OPTFM staff, as of March 16, 2017, 228 employees from 58 agencies had received designation as a Certified Mississippi Purchasing Agent. This number of represents an increase from 180 and 150 certified purchasing agents in 2016 and 2014, respectively.

However, without a comprehensive list of purchasing officials in entities under DFA purview, it is challenging for OPTFM staff to document which purchasing officials have been certified as statutorily required.

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# A Case Study: The Mississippi Department of Education

PEER selected the Mississippi Department of Education for a case study to demonstrate how certain procurements were made, how those procurements were processed through MAGIC (Mississippi's Accountability System for Government Information and Collaboration), and how the procurements were reviewed by state oversight authorities—i.e., DFA, ITS, and PSCRB. PEER selected the Department of Education for the case study because legislators had questioned various contracts entered into by the department.

This chapter addresses issues PEER found regarding the following MDE contracts or procurements:

- Contracts with Research in Action in FY 2015;
- Contracts related to information technology—
  - Blue Sky Innovative Solutions and Dr. John Q. Porter in fiscal years 2014 and 2015,
  - Elton Stokes in fiscal years 2014-2016, and
  - Sharon Semper, doing business as DataOne IT Solutions in FY 2016; and
- Procurements from The Kyles Company in FY 2015.

**The Mississippi Department of Education entered into multiple contracts in fiscal years 2014-2016 with apparent similarities in the scope of work for amounts that collectively exceeded bid thresholds, rather than competitively bidding contracts for such services. A reasonable person could conclude this contracting practice is an inefficient use of resources.**

## **MDE Contracts with Research in Action**

**The Mississippi Department of Education awarded Research in Action five contracts that covered similar services in FY 2015. Each contract amount was less than the bid threshold but when combined, exceeded the threshold at \$200,855. Although the MDE provided the same product/service category codes for four of the contracts, MAGIC did not route the contracts for review by the Personal Service Contract Review Board because of a flaw in the system (which has since been corrected). Still, entering into five contracts within one fiscal year with one vendor may have risked waste of taxpayer dollars because the services were not competitively bid and the lowest price may not have been realized.**

Generally, best practices for competitive procurement discourage entering into multiple individual contracts with the same vendor within a single year. Yet the Mississippi Department of Education awarded five contracts to

Research in Action in FY 2015, the company of its former Chief Research and Development Officer, J.P. Beaudoin. Each contract fell below the bid threshold of \$100,000; however, the combined total of all contracts was \$200,855.

#### **Flaw in MAGIC Corrected**

***Although the Mississippi Department of Education provided the same product/service category code for four contracts with Research in Action in FY 2015, because the first contract for \$96,730 was paid before the remaining contracts were executed, MAGIC did not route the subsequent contracts for review by the PSCRB. However, MAGIC staff has since corrected that flaw in the system.***

PEER reviewed the Research in Action contracts to determine whether they were flagged by MAGIC and routed to the appropriate oversight bodies for review and approval. The Mississippi Department of Education entered into four separate contracts with Research in Action from September 2014 through April 2015, each with the same product/service category code, 91838, for Services Consulting/Education/Training—all within FY 2015. The initial Research in Action contract was for \$96,730—below the then-\$100,000 threshold for personal service contracts. However, the following three Research in Action contracts—\$23,000; \$19,000; \$15,000—pushed the combined total to \$153,730, well above the then-\$100,000 threshold for PSCRB oversight for personal services.

MAGIC staff reported that the Research in Action contracts did not route to an oversight authority because the first contract was flagged as expired when a purchase order for the full amount of the contract was created immediately after the contract was approved. MAGIC staff has since corrected that flaw within the system. Currently if multiple contracts with the same product/service category codes are executed within the same fiscal year and collectively exceed the bid threshold, MAGIC will route the contract to the proper oversight authority.

#### **Inefficiency as the Result of Similarities in Scope of Work**

***The Mississippi Department of Education's contracts with Research in Action in FY 2015 had similar purposes in that they involve consulting related to school assessment and accountability. MDE's method for procurement did not allow for proper accountability via review by a state oversight authority and could be considered by a reasonable person as failing to make the best use of state resources.***



**Exhibit 2: MDE’s Procurement of Services from Research in Action, LLC (FY 2015)**

Vendor	Product/Service Category Code	Product Category Description	Original/Modified Amount	Contract Period	Purpose
Research in Action, Inc.	91800	Serv Consulting	\$ 47,125	7/28/2014 – 9/30/2014 Modified 8/5/14	Develop audit process for school accountability model
Research in Action, Inc.	91838	Serv ConsultEduTrng	\$ 96,730	9/10/2014 – 6/30/2015	Develop student learning objectives
Research in Action, Inc.	91838	Serv ConsultEduTrng	\$ 23,000	9/19/2014 – 6/30/2015	Provide district support for the Office of Accreditation and Accountability
Research in Action, Inc.	91838	Serv ConsultEduTrng	\$ 19,000	2/4/2015 – 6/30/2015	Provide technical assistance in regard to the school accountability model and assist in the implementation of standard-setting process
Research in Action, Inc.	91838	Serv ConsultEduTrng	\$ 15,000	4/17/2015 – 6/30/2015 Modified 5/12/2015	Review and revise graduation requirements to add options for students to meet all graduation requirements
<b>TOTAL</b>			<b>\$200,855</b>		

SOURCE: PEER analysis of MAGIC and Transparency Mississippi data and information.

MDE contracts with Research in Action in FY 2015 (Exhibit 2) show that the purposes for the contracts were

- to develop an audit process for school accountability model;
- to develop student learning objectives;
- to provide district support for the Office of Accreditation and Accountability;
- to provide technical assistance in regard to the school accountability model and assist in the implementation of standard-setting process; and
- to review and revise the graduation requirements.

While the scope of each contract varies in wording, all contracts involve consulting related to school assessment and accountability. Further, the MDE used the following product/service category codes to classify the contracts,

which demonstrates the similarities in the services being procured:

- Services Consulting (#91800);
- Services Consulting/Education/Training (#91838).

Entering into five contracts within one fiscal year with one vendor to provide similar services could be considered improvident. The purpose of a competitively bid contract is to generate competition, prevent favoritism, and to help ensure the best goods and services at the lowest practicable price. MDE's method for procuring services from Research in Action through multiple contracts failed to reap savings that might have been gained through a competitively bid contract.

#### **Recent Contract with Research in Action**

After J.P. Beaudoin resigned from the Mississippi Department of Education, the MDE contracted with Research in Action for \$48,076 to produce the annual report for the state and local educational agencies for school years 2014-2015 and 2015-2016 in compliance with state/federal guidelines and MDE policies. The contract term was May 5, 2017, through June 30, 2017.

### **MDE Contracts Related to Information Technology Resources and Services**

The Mississippi Department of Education awarded eight contracts to four contractors/contract employees for similar services in fiscal years 2014 through 2016 for a total of \$604,836.60. Each of the six contracts procured in FY 2015 was less than the bid threshold but when combined exceeded the threshold at \$384,464. As a result of multiple factors (e.g., varying product/service category codes), MAGIC did not route the contracts to either PSCRB or ITS for review and approval. Further, PEER questions MDE's use of such contracting practices, given the similarities in the scope of work.

The following sections describe contracts between MDE and

- Blue Sky Innovative Solutions and Dr. John Q. Porter;
- Elton Stokes and Sharon Semper, doing business as DataOne IT Solutions.

All of the contracts were related to IT resources and services. (See Exhibit 3 on page 36.)

## Contracts with Blue Sky Innovative Solutions and Dr. John Q. Porter

***The Mississippi Department of Education awarded Blue Sky Innovative Solutions and Dr. John Q. Porter (Blue Sky's CEO) four contracts that covered similar services in fiscal years 2014 and 2015 (one in FY 2014 and three in FY 2015) for a total of \$341,954.40. Each contract amount in FY 2015 was less than the bid threshold but when combined exceeded the threshold at \$243,454.40. However, the contracts were not routed to a state oversight entity.***

Generally, best practices for competitive procurement discourage entering into multiple individual contracts with the same vendor within a calendar year instead of competitively bidding one contract for services. The MDE awarded Blue Sky Innovative Solutions and John Q. Porter (Blue Sky's CEO) four contracts that covered similar services in fiscal years 2014 and 2015. Following is a brief description of these contracts:

### FY 2014

- *March 2014 to June 2014:* \$98,500 contract with Blue Sky to conduct an organizational review of the MDE Office of Management Information Systems. The compensation was \$29,050 initially, amended in May 2014 to \$98,500, payable upon completion of specified tasks. The contract was signed by John Porter as CEO for Blue Sky Innovative Solutions.

### FY 2015

- *July 2014 to June 2015:* \$98,500 contract with Blue Sky to continue the organizational review and oversight of the Office of Management Information Systems with same duties as the company's first contract, including the creation of a customer service plan. The contract was signed by John Porter as CEO of Blue Sky Innovative Solutions.
- *October 2014 to June 2015:* \$48,500 contract with Blue Sky to create an IT governance strategy and develop a state accountability reporting application. The contract was signed by John Porter as CEO of Blue Sky Innovative Solutions.
- *January 2015 to termination of contract in June 2015:<sup>14</sup>* \$96,454.40 contract with Dr. John Porter (as a contract employee) to study the organization of the department's Office of Technology and Strategic Services (OTSS), formerly the Office of Management Information Systems, including implementing the modernization program for the OTSS; conducting a national search to select a new Chief Technology Officer and Assistant Chief Technology Officer;

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<sup>14</sup>Dr. John Porter became a full-time, permanent MDE employee on June 1, 2015, with a position title of Chief Information Officer.

developing transition documentation; completion of transition activities for the new organization and Chief Information Officer; and identifying and implementing collaborative processes across the organization.

MAGIC did not route these contracts to a state oversight entity because of coding issues, discussed in the following section.

### Agency Coding of Contracts Limits MAGIC's Utility for Oversight

***Because the Mississippi Department of Education entered into two contracts with Blue Sky and assigned them different consulting-related product/service category codes in FY 2015, MAGIC did not automatically route either contract to a state oversight entity for review and approval, even though the combined total exceeded the bid threshold.***

The Mississippi Department of Education entered into the initial contract in FY 2015 with Blue Sky for \$98,500, \$1,500 below the \$100,000 threshold for PSCRB approval in July 2014.<sup>15</sup> The department then entered into the second contract with Blue Sky for \$48,500 in October (\$1,500 under the threshold requiring State Board of Education approval). The combined contracts totaled \$147,000.

Because the MDE opted to enter into a second, separate contract rather than modify the budget of the initial contract, MAGIC did not route the contract to the Personal Service Contract Review Board for approval. Consequently, per State Personnel Board employees, the PSCRB did not review these contracts. MAGIC staff noted that if the MDE had amended the original contract (i.e., used the same contract number), the contract would have been routed to the PSCRB for review.

Additionally, the MDE assigned each contract with Blue Sky different product/service category codes:

- 91800 – Services Consulting;
- 91838 – Services Consulting/Education/Training.

Although both are labeled “services consulting,” they have different five-digit product/service category codes. As a result, although the two contracts combined had an amount exceeding the threshold of \$100,000 and were procured in the same fiscal year, MAGIC did not route either contract to an oversight authority for review and approval.

When a contract is entered into MAGIC, the system conducts a query to determine whether there are additional active contracts using the following criteria:

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<sup>15</sup>House Bill 825, 2015 Regular Session, lowered the procurement threshold for personal services from \$100,000 to \$75,000 beginning on July 1, 2015.

- agency,
- vendor,
- product/service category (five-digit code),
- where the validity start date falls within the current budget year (July 1 to June 30).

When the system identifies additional active contracts, MAGIC checks the combined total value against the oversight threshold using the oversight workflow approval logic. If the combined total value is greater than or equal to the oversight threshold value and the agency is not exempt from procurement regulations/oversight, the contract is routed to the appropriate oversight authority for approval.

The limitation to such is that it requires the procurement official to select the correct—and more so—the same product/service category code each time, despite there being more than 7,000 five-digit such codes as opposed to routing the procurements based on the 262 three-digit product/service category class codes. For example, the three-digit product/service category class code “918 - Consulting Services” has 76 different five-digit product/service category codes, of which at least nine could be considered for information technology.

Procurement of IT-related contracts, including IT-related contracts for consulting services, have a lower bid threshold—\$50,000—than procurement of personal services in general. The MDE opted to use product service/category codes in procuring such services—91800, 91832, and 91838—for general consulting services or educational/training consulting services in procuring consulting contracts for IT-related work (i.e., Blue Sky, John Porter, Elton Stokes, and Data One).

When PEER requested an explanation from the MDE as to why it opted to use product service/category codes—91800, 91832, and 91838—for general consulting services or educational/ training consulting services in procuring consulting contracts for IT-related work (i.e., Blue Sky, John Porter, Elton Stokes, and Data One) instead of IT codes, the MDE responded that multiple staff in the procurement office are responsible for assigning procurement codes to procurement contracts. The MDE contends that because MAGIC has more than 7,000 procurement codes, including 76 for consulting services, it is possible that different department procurement staff assign different codes to similar contracts. However, it does not appear that the MDE has policies or procedures in effect to ensure that staff uniformly utilize appropriate procurement codes for similar contracts.

## Contracts with Elton Stokes and Sharon Semper

***In addition to the contracts for IT-related services with Blue Sky and Dr. John Porter, the Mississippi Department of Education contracted with Elton Stokes (as a personal services contractor and a contract employee) and his wife, Sharon Semper (doing business as DataOne IT Solutions LLC) for data management services in fiscal years 2014 through 2016 for a combined total of \$262,882.20.***

The Mississippi Department of Education awarded Elton Stokes three contracts from August 2014 through June 2016 covering similar services totaling \$214,643 without bidding out the initial contract or latter contracts.

- August 2014–December 2014: \$48,000 contract with Elton Stokes, Jr., to review data requirements and build data management resources.
- January 27, 2015–June 30, 2015: \$93,010. Elton Stokes became a contract employee of the MDE to conduct an organizational review of the Office of Technology and Strategic Services.
- July 2015–June 2016: \$73,633 for Elton Stokes, as a contract employee, to assist with the development of an IT strategy and monitor MDE's data warehouse system. In October the Mississippi Board of Education approved extending the contract from December 2015 to June 2016 and increasing the total cost by \$25,578.
- January 2016 to June 2016: \$48,240 contract with Sharon Semper doing business as DataOne IT Solutions LLC<sup>16</sup> to monitor the MDE data warehouse and develop an IT strategy.

See Exhibit 3 on page 36 for an illustration of the MDE contracts with Elton Stokes.

The Mississippi Department of Education entered into an initial contract with Elton Stokes as a contractor for \$48,000—under the \$50,000 threshold for Mississippi Board of Education approval—in March 2014. It then entered into a second contract with Elton Stokes for \$93,010—under the \$100,000 threshold for PSCRB approval.

Because the Mississippi Department of Education opted to enter into a second, separate contract instead of modifying the budget of the initial contract, automatic routing of the contract to the PSCRB for approval did not occur although the combined total exceeded the \$100,000 threshold (\$141,010) that triggers review.

Per DFA MAGIC staff, had the agency amended the contract, when the \$100,000 threshold was exceeded, the contract would have been routed to the PSCRB. As long as

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<sup>16</sup>Elton Stokes is listed as the contact person for DataOne on Maryland Marketplace and an ITS procurement document identifying valid vendors for General RFP 3775.

the agency uses the same contract number, the Statewide Payroll and Human Resource System (SPAHRs) routes the contract to the PSCRB for review when the threshold (now \$75,000) has been exceeded.

Additionally, the Department of Education initially contracted with Elton Stokes through MAGIC as a personal service contractor. The latter two contracts with Elton Stokes were as a contract employee through SPAHRs and as such also would not have routed through MAGIC.

### **Inefficient Use of Resources Because of Similarities in Scope of Work**

***MDE's multiple contracts with Blue Sky, Dr. John Porter, Elton Stokes, and Sharon Semper all involve the reorganization and management of MDE's Management Information Systems Department and data warehouse. PEER questions MDE's practice of entering into multiple contracts rather than competitively bidding one contract under the purview and guidance of the Department of Information Technology Services. A reasonable person could argue that such contracting practices demonstrate a lack of efficiency.***

For the contracts in question, it seems to PEER that only the phrasing of the statements of work provide any difference, while the purposes are similar. All contracts were related to the reorganization and management of the Management Information Systems Department and data systems. Thus, PEER questions the efficiency of entering into multiple contracts for similar services, as it appears to show potential waste of resources.

The Mississippi Department of Information Technology Services was created by the Legislature to maximize the use and benefit of information technology in state government by promoting full cooperation, coordination, cohesive planning, and maximum compatibility among all state agencies and institutions of higher learning.

The responsibilities of ITS in the procurement of technology for the state include the following:

- furnishing customers with technical guidance and assistance in complying with the legal requirements of state purchasing laws for information technology;
- maximizing competition among technology manufacturers and service providers;
- maximizing the compatibility of the state's information resources;
- acquiring complete information technology solutions that provide the best combination of functionality and cost; and
- leveraging the state's combined purchasing power to provide the best possible discounts.

### Exhibit 3: Blue Sky Innovative Solutions, John Porter, Elton Stokes, and DataOne IT Solutions

Vendor	Contract ID / Number	Product/Service Category Code	Product Category Description	Original / Modified Amount (\$)	Contract Period	Statement of Work
Blue Sky (John Q. Porter)	8200011090	91832	Serv ConsultNotClass	29,050.00 98,500.00	3/12/2014 - 6/30/2014 Modified End 8/31/2014	To conduct an organizational review of the Office of Management Information Systems (MIS) at the Mississippi Department of Education. The review will include an evaluation of current staffing, position classification, and organizational structure. Contractual services will include the collection of data, development of a report of findings and recommendations, and creation of a roadmap delineating phased tasks leading to implementation of a plan of action that will enable MIS to provide quality customer service both internally (MDE program offices and Special State Schools) as well as externally (school districts).
Blue Sky (John Q. Porter)	8200011871	91800	Serv Consulting	98,500.00	7/1/2014 - 6/30/2015	Provide oversight for the Office of Management Information Systems
Elton Stokes, Jr.	8200013569	91832	Serv ConsultNotClass	48,000.00	8/26/2014 - 12/31/2014	Contractor will review the data requirements of the Department and will assist the Department in building resources and capacity in the area of data management.
Blue Sky (John Q. Porter)	8200014831	91838	Serv ConsultEduTrng	48,500.00	10/8/2014 - 6/30/2015	Contractor will design and lead adoption of an IT Governance strategy which will facilitate alignment of cross office initiatives for better project and resource management. The work will include work with program office staffs to develop competency in business process management to bring about efficiencies in key activities which impact schools, districts, and agency program offices. In addition, the contractor will complete the management of the development of a new state accountability reporting application to modernize and replace the previous antiquated system managed by third party contractors.
* John Q. Porter	93627	N/A	N/A	96,454.40	1/20/2015 - 6/30/2015	Implement modernization program of OTSS; conduct national search for CIO; and, oversight of OTSS
Elton Stokes, Jr.	93679	N/A	N/A	93,009.60	1/27/2015 - 6/30/2015	Assist in development of governance strategy for alignment across offices for better management, and implementation of new MDE data warehouse system.
Elton Stokes, Jr.	95729	N/A	N/A	48,054.96 73,632.60	7/1/2015 - 12/31/2015 Modified End 6/30/2016	The contractor will assist and continue the development of a Governance Strategy for the alignment across offices for better project management. Additionally, the contractor will assist in the implementation and monitoring of the new MDE Data Warehouse system.
DataOne IT Solutions, LLC (Sharon Semper/ Sharon Stokes)	8200023291	91832	Serv ConsultNotClass	48,240.00	1/22/2016 - 6/30/2016	The contractor will assist in the implementation and monitoring of the new MDE Data Warehouse system and the development of a Governance Strategy for the alignment across offices for better project management.

\*MDE terminated the John Q. Porter contract effective June 1, 2015, and hired him as a full-time employee June 1, 2015.

NOTE: For the individual contracts without product code/category descriptions (labeled N/A in the table), because these individuals were contract employees, product code/category description is not applicable.

SOURCE: Transparency Mississippi.



Because the Mississippi Department of Education did not use ITS in its procurement process, it did not reap available benefits, for example, by maximizing competition to achieve the best value.

## **MDE Payments to The Kyles Company**

The Mississippi Department of Education made payments to The Kyles Company totaling \$214,469.70 during FY 2015 for computer-related goods and services; however, the department did not have a contract with The Kyles Company. Because MAGIC does not have accountability parameters in place to track purchase orders issued without a contract in the same fiscal year, to the same vendor, by the same agency, for the same product/service category codes, none of these procurements were routed to an oversight authority for review. Thus, there is no assurance that the goods and services were procured at a competitive rate.

The Kyles Company billed the MDE five invoices during FY 2015 totaling \$214,469.70 for computer-related goods and services. MDE did not enter into a contract for any of these services. The invoices cited include:

10/9/14 - \$49,300.00 - MAGIC Document # 5100034980

10/9/14 - \$49,950.00 - MAGIC Document # 5100034988

12/1/14 - \$28,994.70 - MAGIC Document # 5100066164

1/28/15 - \$36,700.00 - MAGIC Document # 5100108649

4/30/15 - \$49,525.00 - MAGIC Document # 5100142315

See Exhibit 4 on page 39 for an illustration of The Kyles Company procurement.

### **Deficiency in MAGIC Related to Purchase Orders**

*The Mississippi Department of Education paid The Kyles Company through purchase orders not connected to a contract. MAGIC does not include “edit checks” to track purchase orders issued without a contract in the same fiscal year, to the same vendor, by the same agency, for the same (or like) product/service category codes. As a result, none of these procurements were routed to an oversight authority for review. Thus, there is no assurance that the computer-related goods and services were procured by the MDE at a competitive price.*

According to DFA staff, edit checks<sup>17</sup> in MAGIC prohibit a procurement official from entering a purchase order into MAGIC that is not “tied” to a contract in the system and is in excess of an applicable procurement threshold (e.g., \$50,000 for a commodity purchase). The procurement official would receive an error message should the official attempt to enter such a purchase order into MAGIC. However, MAGIC does not include edit checks to track purchase orders issued without a contract in the same fiscal year, to the same vendor, by the

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<sup>17</sup>An edit check, also referred to as an edit test, checks data entered into a data entry system for validity. Entries that fail an edit check often are returned so that they can be corrected.

same agency, for the same (or like) product/service category codes.

Therefore, it is possible for an agency to issue multiple purchase orders below the bid threshold in the same fiscal year with the same vendor without bidding out for services or receiving IT procurement approval from ITS, documented as a CP-1.

With regard to The Kyles Company, the MDE made payments to the company totaling \$214,469.70 without entering relevant procurement documents—quotes and purchase orders, at a minimum—into MAGIC. The MDE contends that department staff cannot now locate procurement documents associated with these payments as the individual who handled the transactions is no longer an employee. Therefore, it is not possible for the MDE or an external reviewer to determine whether the computer-related goods and services were procured at a competitive rate.

ITS stated that, in general, if the MDE had questioned ITS and/or PSCRB about purview before the procurement was made, it would have either separately or collectively determined under whose purview it fell and advised the MDE of such. ITS stated that it was not contacted upfront about the procurement and has not procured any hardware, software, or IT services awarded to The Kyles Company on behalf of the MDE. ITS also stated that the lack of information in the bid file makes it difficult to determine under which oversight authority's purview the services would have fallen.

If all of the expenditures cited previously are for one project, the project falls above the "competitive bid limit" for IT (\$50,000) and personal services (then above \$100,000) and should have been awarded based on an RFP or other bid process.

PEER notes that the Mississippi Department of Education entered into a contract with The Kyles Company (also known as Joseph Kyles/The Kyles Group, contract #8200022372) for \$49,908 for the period October 29, 2015, through June 30, 2016. (This contract is not one of the contracts cited on page 39, and it occurred after the payment for those contracts.) The MDE contracted with The Kyles Company to provide job-imbedded professional development and technical support to teachers related to, but not limited to, using real-time student responses to modify instructional practices via ALL In Learning<sup>18</sup> student response systems.

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<sup>18</sup>ALL In Learning is a maker of a Student Response System (SRS). Using cloud-based technology, an SRS allows teachers to pose questions to students; gather their students' responses using clicker pads; and adjust lessons based on student responses. ALL In Learning also uses web cameras, tablets, or smartphones to enable teachers to collect data for summative, common, and formative assessments.

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**Exhibit 4: The Kyles Company**

<b>Date</b>	<b>Item Procured</b>	<b>Procurement Method</b>	<b>MAGIC Document #</b>	<b>Product/Service Category Code</b>	<b>Amount</b>
10/9/14	Document Student Response System Compatible with ALL In Learning and Cloud Technology	Invoice	5100034980	78585 - DFA - SchoolEquipReading Prod	\$ 49,300.00
10/9/14	Document Web Camera Compatible with ALL In Learning and Cloud Technology	Invoice	5100034988	88061 - ITS - VisualEquipOverhea	\$ 49,950.00
12/1/14	Record level jacketed fiche product # 187.096	Invoice	5100066164	71550 - DFA - Publications- Microfilm	\$ 28,994.70
1/28/15	Course Content/ Test Banks Compatible with ALL In Learning and Cloud Technology	Invoice	5100108649	71535 - DFA - Publications- Electro	\$ 36,700.00
4/30/15	Document Student Response System with ALL In Learning and Cloud Technology	Invoice	5100142315	92002 - ITS - CompServicesAccess	\$ 49,525.00
<b>FY 2015 Total</b>					<b>\$ 214,469.70</b>

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SOURCE: MAGIC; Invoices from The Kyles Company.

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## Recommendations

1. In view of the considerable changes made in procurement laws in 2015 and 2017, the Legislature should consider allowing the Department of Finance and Administration, the Department of Information Technology Services, and the several state agencies making procurements to develop experience implementing the changes before considering any major revisions of CODE provisions dealing with competitive procurements. The statutorily mandated PEER procurement report scheduled for 2019 will offer the Legislature a comprehensive review of the effects of changes to law in 2015 and 2017 and will offer recommendations for legislative amendment if the Committee considers amendments to be beneficial to the efficiency and effectiveness of the state's procurement system.
2. To ensure that the three MAGIC business owners continue to oversee the MAGIC system, the Legislature should amend MISS. CODE ANN. Section 7-7-3(5) to remove all references to the Mississippi Management and Reporting System Revolving Fund and to set out specific duties that the Mississippi Management and Reporting System Steering Committee<sup>19</sup> shall have related to the continuing oversight, management, and potential modifications to the MAGIC system.
3. Because operational deficiencies in MAGIC allowed procurements to be made without proper accountability during the review period, the Procurement Business Owners<sup>20</sup> should make recommendations to enable MAGIC
  - a. to detect when an agency enters into contracts with a single vendor within a year with similar (not exact) product/service category codes (e.g., all product/service category codes related to consulting services, of which there are approximately 75 such codes) for an amount that exceeds the bid threshold.

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<sup>19</sup>The Mississippi Management and Reporting System Steering Committee, as established by MISS. CODE ANN. Section 7-7-3(5) (1972), consists of the executive directors of the Department of Finance and Administration, the State Personnel Board, and the Department of Information Technology Services.

<sup>20</sup>MAGIC Governance Policy defines the "business owners" as those who have statutory responsibility for specific business processes within MAGIC. The "Procurement Business Owners" are the Department of Finance and Administration, Department of Information Technology Services, the Personal Service Contract Review Board, and the Office of the Attorney General.

Such contracts should be routed to the appropriate oversight agency for review.

- b. to detect when an agency submits multiple purchase orders with a single vendor that exceed the bid threshold within a 12-month period. Such purchases should be routed to the appropriate oversight agency for review.
4. In light of the problems with oversight highlighted in this report's case study that were a result of inconsistent coding of contracts in MAGIC, the Procurement Business Owners should ensure that state agencies employing multiple procurement officials
  - a. understand that inconsistent coding of contracts in MAGIC is a problem because it affects state-level oversight;
  - b. ensure that procurement officials are aware of the problem and implement an internal strategy to alleviate the problem (e.g., through training or by adopting a policy or practice whereby multiple procurement officials are involved in coding decisions of contracts that are not immediately apparent) and report such strategies to the MMRS Steering Committee; and
  - c. collaborate with the MMRS Steering Committee when contract coding decisions are unclear.
5. The Office of the State Auditor should review the findings in this report relative to the personal contracting practices of the Mississippi Department of Education to determine whether department staff acted contrary to state purchasing rules and regulations when procuring the contracts detailed in this report or engaged in contracting practices that are inefficient.



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## Appendix: House Bill 1109 and Procurement Best Practices

The following summarizes the procurement best practices provisions of H.B. 1109, Regular Session, 2017.

### Section 1, Scope of Best Practices:

The best practices sections of the legislation, Sections 1 through 12, apply to procurements for commodities, supplies, equipment, construction, technology, personal and professional services, any type of state agency employee benefits, and state agency supplemental insurance and cafeteria plans.

### Section 2, Competitive Bidding:

Section 2 provides that competitive bidding is the preferred method of procurement except when not advantageous or practicable. This section gives guidance on the meaning of these terms.

### Section 3. Use of RFPs and RFQs:

Section 3 provides that requests for proposal (RFPs) and requests for qualifications (RFQs) may be used when competitive bidding is not advantageous or practicable. RFPs and RFQs must include the following:

- a description of what is being procured,
- evaluation standards,
- timelines for the procurement,
- provision for discussions with offerors to answer questions, and
- weighing of evaluation factors used in selecting a successful proposal.

### Section 4, Public Notice of a Procurement:

This section requires that an agency's Chief Procurement Officer shall place a notice of a procurement solicitation on the state procurement portal. The portal notice must include:

- due date for meetings and submissions,
- address and telephone number of the procurement officer/agency, and
- guidance on how to obtain a copy of the solicitation.

Other methods of notice may also be used.

#### Section 5, Pre-Proposal Conferences:

This section authorizes the procuring agency to conduct pre-proposal conferences with interested parties. Such conferences

- may be used if needed to explain the procurement;

- must be discussed in a prominent place in the RFP/RFQ, with time, place, and date of meetings included;

- should be held at least 14 days after issuance of the RFP/RFQ;

- be chaired by the agency's Chief Procurement Officer; and

- must have meeting minutes transcribed and provided to the participants.

#### Section 6, Drafting the RFP/RFQ:

This section gives guidance on how to draft an RFP/RFQ. The section sets out certain requirements for subjects to be included:

- information on conferences with offerors,

- the method for delivering a price when it is a factor for consideration,

- the evaluation factors to be used and their weights, and

- a provision that the substance of the request shall constitute the contract.

#### Section 7, Evaluation Factors for RFP/RFQs:

This section sets out how evaluation standards should be delivered. As the use of an RFP/RFQ must be approved in advance by the Public Procurement Review Board, the section sets out several things that must be done prior to the board's approval of the use of an RFP/RFQ. As to content, the RFP/RFQ must include the following:

- the board-approved evaluation factors,

- the relative weight for the factors, and

- price must be weighted and not be less than 35% of the total evaluation weights.

Further, the evaluation committee must use the approved factors and weights, and the factors/standards used must be all-inclusive.

#### Section 8, Evaluation Committee:

The use of an evaluation committee is mandated in this section. To serve on the committee, a person must

- have relevant experience;

- have no personal, financial, or family interests in the matter;



not disclose membership of the committee until after the evaluation report is completed; and  
file a mandatory conflict of interest statement.

Additionally, committee members may  
work individually or in groups, and  
use advisers without conflicts of interest.

Final reports must either recommend a successful proposal or recommend the rejection of all proposals.

#### Section 9, Agency Receipt of RFP/RFQ:

Section 9 requires that there be a designated person for the receipt of proposals. These should be date-stamped and held until such time as an evaluation register showing all who have submitted proposals can be prepared. Staff assigned the responsibility of receiving proposals may not discuss the proposals or disclose the identities of any proposer.

#### Section 10, Evaluation of Proposals:

This section reiterates that submissions will be evaluated on the basis of preapproved factors and weights.

#### Section 11, Best and Final Offer:

The Chief Procurement Office must set a date certain for the receipt of a best and final offer. Only one such may be submitted by a proposer. The Chief Procurement Officer may, if in the best interests of the state, have further discussions with proposers, and set a deadline for a further best and final offer.

#### Section 12, Award:

The evaluation committee shall prepare a report that  
awards a contract,  
sets out the reasons for the selection of a proposal,  
or the rejection of all, and  
provides a summary of the committee's decision and  
places it on state portal and the agency website.



STATE OF MISSISSIPPI  
GOVERNOR PHIL BRYANT

DEPARTMENT OF FINANCE AND ADMINISTRATION  
LAURA D. JACKSON  
EXECUTIVE DIRECTOR



August 31, 2017

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

Dear Mr. Barber:

Thank you for the opportunity to review the draft PEER Report entitled *State Government Purchasing: A Review of Recent Statutory Changes and a Case Study*. As you know, the Department of Finance and Administration (DFA) has many responsibilities regarding state agency purchasing, which spread across multiple offices at DFA. In addition to establishing the *Mississippi Procurement Manual*, which serves as the foundational rules governing commodity purchasing and contracting, DFA's MAGIC system provides the mechanisms for oversight of procurement practices.

As with any policy or regulation, the first safeguard for the integrity of the process is the state agency. It is incumbent upon state agency personnel to read and follow all DFA guidelines regarding procurement. As mentioned in the report, DFA certifies all agency procurement agents to enable them to perform the essential functions of their job. Furthermore, each agency is required to perform an annual internal control assessment on forms provided by DFA pursuant to Section 7-7-3(6) of the Mississippi Code and in accordance with the Mississippi Agency Accounting Policies and Procedures (MAAPP) Manual. This assessment includes a thorough section on Procurement and Accounts Payable, and requires agencies to certify compliance with all purchasing laws and regulations.

We appreciate your recommendations regarding improving our processes for procurement oversight. As we have discussed throughout PEER's investigation, we maintain that the Case Study included in this report regarding expenditures of the Mississippi Department of Education (MDE) revealed no "operational deficiencies" in

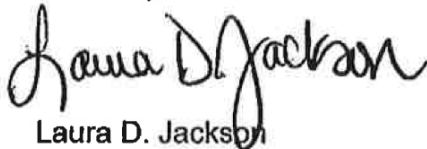
James A. Barber  
August 31, 2017  
Page 2

MAGIC. Agencies such as MDE are responsible for utilizing the proper National Institute for Government Procurement (NIGP) code when releasing contracts in MAGIC for oversight. Because MDE utilized NIGP codes that routed to the Mississippi State Personnel Board (SPB) for procurements that were clearly under the purview of the Mississippi Department of Information Technology Services (ITS), MDE bypassed the system edits put in place by the Procurement Business Owner and avoided the statutorily required oversight for such procurements. That is not a system deficiency, but rather an agency error. As was mentioned in the report, ITS is the contracting agency for all IT-related commodity and service acquisitions, and MDE had no authority to contract for IT-related acquisitions without ITS's approval.

Again, we appreciate the opportunity to review the report and provide feedback. We remain committed to the promotion of efficient and effective procurement that is transparent and follows all applicable rules and regulations. We will ensure the MAGIC system remains a successful tool in our oversight of state purchasing, to include any recommended enhancements requested by the Procurement Business Owners, DFA, ITS, and SPB.

If we may be of any assistance to you and the Committee, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Laura D. Jackson". The signature is written in a cursive style with a large, prominent initial "L".

Laura D. Jackson

June 26, 2017

Mr. James A. Barber, Executive Director  
PEER Committee  
Post Office Box 1204  
Jackson, Mississippi 39215-1204

Dear Mr. Barber,

Thank you for the opportunity to provide information for your consideration during the preparation of the PPER Report entitled *State Government Purchasing: A Review of Recent Statutory Changes and a Case Study*. Integrity-based procurement is one of the chief ways government organizations maintain the trust of the people they serve. It is my sincere hope that the recent procurement reform efforts by the Mississippi State Legislature and Governor assist in re-establishing the trust of Mississippi citizens in the procurement, contracting, and purchasing activities of Mississippi state government.

ITS, as the state agency responsible for facilitating the open and competitive procurement of technology hardware, software, and services, will continue to refine our procurement sourcing methods to not only meet the letter and intent of the law, but to also provide opportunities for collaboration and cooperation in implementing technology initiatives for state government.

As always, my staff and I remain available to assist in any way possible.

Sincerely,



Craig P. Orgeron



## MISSISSIPPI DEPARTMENT OF EDUCATION

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

June 29, 2017

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

Dear Mr. Barber:

The Mississippi Department of Education (MDE) is in receipt of the June 16, 2017, letter from the Joint Committee on Performance Evaluation and Expenditure Review regarding a case study chapter related to certain procurement of personal and information technology services. As requested, we are providing a written response to the case study and the additional questions regarding the MDE's procurement of personal and information technology services.

Our responses to the case study are denoted below:

**Area of Concern:** Multiple contracts within one fiscal year with one vendor could be considered inefficient.

**Response:** While it may appear to a layperson that the contracts in question are similar in the scope of services, it is the position of the MDE that these contracts are distinctly different in scope. These contracts involved multiple program offices with different project managers, timelines, and schedules for deliverables. The contractors were engaged to provide services that were outside the existing capacity of agency staff and/or resources, and in some cases the contractor provided services that required the engagement of an independent agent. All of the contracts in question were in line with the strategic goals of the Board and were either directly approved by the Board, were executed as a result of Board action, or both.

**Area of Concern:** Operational deficiencies in MAGIC.

**Response:** We concur with your concerns related to the deficiencies in MAGIC.

**Area of Concern:** The use of different product/service category codes.

**Response:** As you noted in your study, there are over 7,000 five-digit codes and 262 three-digit product/service category class codes of which 76 are for consulting services. The MDE has more than one staff person assigned to procurement services for contracts. It is possible for staff to have different assessments of which of the hundreds of codes to select for services. In this case, the agency only used three different codes, all of which were for consulting services.

**Area of Concern:** Payments to the Kyles Company without a contract.

**Response:** We were unable to locate a contract or quotes to support The Kyles Company purchases made in FY 2015. The director of the program office that procured the goods and services and authorized payment for them is no longer with the agency. The responsibility of all technical purchases by any program office has been placed under the auspices of the Office of Technology and Strategic Services to process according to ITS rules and regulations. In addition, the Purchasing Office staff will continue to ensure that procurement rules and regulations are followed.

Please note all contracts were executed within Mississippi State Board of Education policies and State Procurement Rules and Regulations.

In addition to these responses to the case study, please see attached for our responses to the PEER Committee members' additional questions.

Should you have questions regarding our responses, please contact me at 601-359-3512.

Sincerely,



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

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# PEER Committee Staff

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Matthew Holmes  
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