



#664
December 15, 2021

Report to the Mississippi Legislature

State Government Purchasing: A Biennial Review of State Procurement



PEER: The Mississippi Legislature's Oversight Agency

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

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

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

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

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

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) www.peer.ms.gov

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review
PEER Committee

SENATORS

KEVIN BLACKWELL
Vice Chair
CHARLES YOUNGER
Secretary
LYDIA CHASSANIOL
DEAN KIRBY
CHAD McMAHAN
SOLLIE NORWOOD
JOHN POLK

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420



Post Office Box 1204
Jackson, Mississippi 39215-1204

James F. (Ted) Booth
Executive Director

www.peer.ms.gov

REPRESENTATIVES

TIMMY LADNER
Chair
RICHARD BENNETT
CEDRIC BURNETT
CAROLYN CRAWFORD
BECKY CURRIE
JERRY TURNER
PERCY WATSON

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

December 15, 2021

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

On December 15, 2021, the PEER Committee authorized release of the report titled ***State Government Purchasing: A Biennial Review of State Procurement.***

A handwritten signature in black ink, appearing to read "Timmy Ladner".

Representative Timmy Ladner, Chair

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittal	i
Report Highlights	v
Introduction.....	1
Authority.....	1
Scope and Purpose	1
Method.....	1
PEER’s Previous Statutorily Required Biennial Procurement Reviews.....	2
Overview of Mississippi’s Procurement Environment.....	3
Oversight of State Government Procurement in Mississippi	3
Amendments to Procurement Law During the Legislature’s 2020 and 2021 Regular Sessions.....	6
Average Length of Time for a State Agency to Complete the Procurement Process for Commodities, Technology, and Personal Services, as Reported by the Oversight Authorities.....	7
Emergency Procurement in Mississippi	10
Definition of an “Emergency” as Defined by State Law.....	10
Rules and Regulations Governing Emergency Procurement in Mississippi	11
Overview of the Suspension of Rules and Regulations in Response to the Governor’s Emergency Declaration of the COVID-19 Emergency in March 2020.....	13
Emergency Procurement Contracts from July 1, 2018, to September 16, 2021	15
Emergency Procurement Observations Made by PEER	19
Best Practices for Emergency Procurement	23
A Case Study: MDE Emergency Procurement Contracts	28
MDE’s Emergency Declaration in Response to the Receipt of Federal COVID-19 Relief Funds.....	28
MDE’s Request to the ITS Board to Temporarily Suspend the One-year Restriction on Contracts Resulting from an Emergency Declaration.....	34
MDE’s Emergency Declaration for a Professional Services Contract and Subsequent Request to PPRB to Temporarily Suspend the One-year Restriction on Emergency Contracts	36
Conclusion	38
Recommendations	40
Appendix A: Total Emergency Procurement Contracts from July 1, 2018, to September 16, 2021, by State Agency	41
Department of Information Technology Services Agency Response	42
Department of Education Agency Response	43

List of Exhibits

Exhibit 1: Statutory Authority and Responsibilities of Mississippi’s Procurement Oversight Authorities	4
Exhibit 2: Average Length of Time for a State Agency to Process Procurement for Commodities, Technology Products, and Personal Services, by Type of Procurement	9
Exhibit 3: Total Number of Emergency Procurement Contracts from FY 2019 to FY 2022	16
Exhibit 4: Total Amount of Emergency Procurement Contracts from FY 2019 to FY 2022, by Funding Source	17
Exhibit 5: Top Ten State Agencies with the Largest Total Amount of Emergency Procurement Contracts from July 1, 2018, to September 16, 2021.....	18
Exhibit 6: Total Number of Emergency Procurement Contracts with Emergency Declaration Letters Filed in Transparency Mississippi, by Fiscal Year	20
Exhibit 7: Mississippi’s Total ESSER Funding, the Minimum Allocation to Local School Districts, and the Maximum Amount that can be Reserved by MDE	29
Exhibit 8: Timeline for MDE to Award and Obligate ESSER Funding	30
Exhibit 9: Description and Estimated Costs for Technology Projects Included in MDE’s Current Emergency Declaration	32

State Government Purchasing: A Biennial Review of State Procurement

Purpose of the Review: As required by state law, PEER conducted its fourth biennial review of state procurement. This review provided an overview of Mississippi's procurement environment and emergency procurement process, specifically during the COVID-19 pandemic. In addition, PEER addressed legislators' concerns regarding the Mississippi Department of Education's (MDE) emergency declaration regarding the procurement of technology products and professional services, and subsequent requests to suspend the one-year restriction on contract(s) awarded from an emergency declaration.

Background

MISS. CODE ANN. Section 5-3-72 (1972) requires PEER to evaluate on a biennial basis the procurement process used by all state agencies, including, but not limited to, the contract review, reporting, record keeping, and bid requirements in state law. Upon completion of its review, PEER is required to submit a report to the Legislature with its recommendations for improving the procurement process.

The Governor's Emergency Declaration of the COVID-19 Emergency in March 2020

On March 14, 2020, in response to the pandemic, Governor Tate Reeves issued a proclamation declaring a state of emergency in Mississippi. This proclamation allowed state agencies to temporarily suspend or modify rules, regulations, or orders if compliance with such provisions would prevent, hinder, or delay action necessary to cope with COVID-19.

Procurement Oversight Authorities

- Mississippi state law governs the processes for procurement of commodities, services, and technology, and delegates oversight responsibility to the Department of Finance and Administration (DFA) and the Department of Information Technology Services (ITS).
- DFA and ITS have worked together to create procurement rules and regulations to provide consistency across state government.
- The procurement process is complex, and the average length of time for a state agency to procure varies by agency and by the type and amount of goods and services needed.

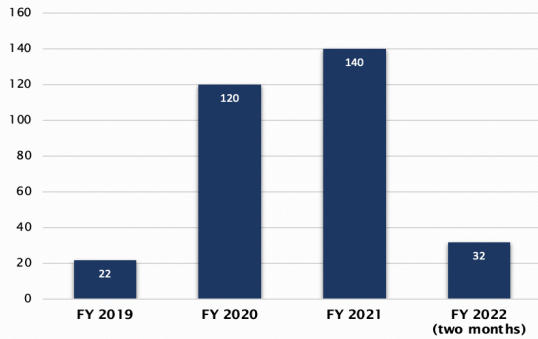
Overview of Emergency Procurement in Mississippi

- An "emergency" is defined as an unexpected circumstance that creates a threat to health, safety, or the preservation of public property.
- The executive director or board of a state agency has the authority to declare that an emergency exists, and an emergency purchase is necessary.
- State agencies are not required to obtain prior approval from an oversight authority to make an emergency purchase if the emergency threatens health, safety, or the preservation of property. Proper documentation is required to be filed with the appropriate oversight authority after the purchase is made.
- Emergency purchases determined to be in the "best interest of the state" do require prior approval from an oversight authority.
- State law does not require DFA and ITS to conduct an analysis to determine the validity of an emergency declaration.
- Procurement rules and regulations prohibit emergency contracts exceeding one year in duration.

MDE's Emergency Declaration and Request to ITS to Temporarily Suspend Rules and Regulations

- In September 2021, MDE declared that an emergency existed for the department in the procurement of technology products and services. MDE stated that the emergency existed because the delay in undertaking a competitive procurement would threaten health, safety, or the preservation of property.
- On September 16, 2021, under the authority of the Governor's Proclamation on March 14, 2020, the ITS Board approved MDE's request to temporarily suspend the ITS regulation restricting emergency contracts to one-year for six technology products totaling \$89 million.

Emergency Procurement Contracts from FY 2019 to FY 2022



SOURCE: PEER analysis of emergency procurement contract data reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 15, 2021.

- There were 314 emergency procurement contracts, totaling approximately \$469.6 million from July 1, 2018, to September 16, 2021. As shown in the chart above, the majority of emergency contracts were during FY 2020 and FY 2021. According to DFA and ITS, the increase in emergency procurement contracts can be attributed to the COVID-19 pandemic.

- As shown in the chart below, approximately **154 or 49%** of the total emergency procurement contracts reviewed by PEER did not have an emergency declaration letter as required by state law. According to DFA, it is common for state agencies to proceed with an emergency purchase without an emergency declaration letter, even prior to the pandemic.

Emergency Declaration Letter	Number of Emergency Procurement Contracts from FY 2019 to FY 2022	Percentage
Yes	160	51%
No	154	49%

SOURCE: PEER analysis of emergency procurement contract data and documentation reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 16, 2021.

Report Conclusions

1. State agencies claim emergencies threaten health, safety, or property even when the agency made the emergency procurement to correct a procedural error.
2. MDE's emergency declaration allows the department to use federal COVID-19 relief funds to procure the products and services prior to the award deadline.
3. While MDE's emergency declaration does not appear to threaten health, safety, or property, MDE is within the bounds of the state emergency procurement law.
4. The ITS Board is within its authority to temporarily suspend the one-year restriction because it is an ITS rule and not state law, and the Governor's Proclamation on March 14, 2020, allowing the suspension of rules and regulations.
5. An emergency procurement plan, as recommended by best practices, would help the state navigate procurement during an emergency situation, such as the pandemic.

Report Recommendations

1. The State Auditor should annually conduct a random sample and audit of emergency procurement contracts made without prior approval from DFA or ITS, to determine if emergencies in the sample did threaten health, safety, or property.
2. DFA and ITS should amend their rules and regulations to require procedural errors to be submitted as in the "best interest of the state" emergencies, which require prior approval.
3. DFA, ITS, and Mississippi Emergency Management Agency should build on preexisting inter-agency relationships to prepare an Emergency Procurement Response Plan, focused on ensuring documentation and continued operations.
4. The Legislature should consider amending state law to:
 - limit any IT-related contract awarded in response to an emergency to a term not to exceed one year;
 - include emergency contracts for personal or professional services;
 - prevent any part of the emergency procurement process from being suspended during an emergency; and,
 - require DFA and ITS to evaluate jointly on a biennial basis the procurement process utilized by all state agencies and repeal state law that currently requires PEER to conduct such review.

State Government Purchasing: A Biennial Review of State Procurement

Introduction

Authority

MISS. CODE ANN. Section 5-3-72 (1972) 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. Upon completion of its evaluation, the PEER Committee shall submit a report to the Legislature with its recommendations for improving the procurement process.

The PEER Committee conducted this review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-51 (1972) et seq.

Scope and Purpose

In conducting this review, PEER sought to:

- provide an overview of Mississippi's procurement environment for state agencies;
- identify any amendments to state procurement laws during the Legislature's 2020 and 2021 Regular Sessions;
- describe the emergency procurement process; and,
- determine the impact of the Governor's Declaration of the COVID-19 Emergency in March 2020, on the laws governing the procurement of commodities, technology products and services, and personal services.

Also, PEER addressed legislators' concerns regarding the Mississippi Department of Education's (MDE) emergency declaration regarding the procurement of technology products and services, and subsequent request to the Department of Information Technology Services (ITS), to suspend the one-year restriction on contract(s) awarded from an emergency declaration.

Method

To conduct this analysis, PEER reviewed:

- the Department of Finance and Administration's (DFA) *Mississippi Procurement Manual* as of January 18, 2020;
- ITS's *Procurement Handbook* as of November 2017;
- the Public Procurement Review Board's (PPRB) *Office of Personal Service Contract Review Rules and Regulations* as of May 2, 2018;
- applicable state laws;

- data reported in the state’s accounting system, Mississippi’s Accountability System for Government Information and Collaboration (MAGIC);
- emergency contract data reported in Transparency Mississippi (i.e., the state’s website for promoting transparency in government and in spending);
- the National Association of State Procurement Officials’ (NASPO) *Emergency Preparedness Guide* for best practices in other states;
- reports and information provided by the National Conference of State Legislatures (NCSL) on emergency procurement and federal funding provided to states in response to the COVID-19 pandemic; and,
- documentation provided from DFA and ITS.

PEER also:

- interviewed staff of DFA, ITS, and MDE; and,
- surveyed procurement staff in Alabama, Arkansas, Louisiana, and Tennessee regarding each state’s response to the suspension of procurement rules and regulations during the pandemic.

PEER’s Previous Statutorily Required Biennial Procurement Reviews

Following passage of S.B. 2400 and H.B. 825 during the 2015 Regular Session, 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 was required to produce such a study.

In 2017, PEER published its second biennial review, *State Government Purchasing: A Review of Recent Statutory Changes and a Case Study* (PEER Report #611). The report determined the impact of procurement statutory changes on emergency and sole-source procurements. PEER also identified changes to the state’s procurement laws and included a case study regarding various MDE procurements for personal services and information technology services.

In 2019, PEER published its third biennial review, *State Government Purchasing: A Review of Recent Statutory Changes* (PEER Report #642). The report determined what impact H.B. 1106 and H.B. 1109, passed during the 2017 Regular Session, had on procurement in the state. PEER also provided an overview of reverse auctions and their use within Mississippi.

Overview of Mississippi's Procurement Environment

This chapter includes discussions of:

- the oversight of state government procurement in Mississippi;
- amendments to procurement law during the Legislature's 2020 and 2021 Regular Sessions; and,
- the average length of time for a state agency to complete the procurement process for commodities, technology, and personal services, as reported by the oversight authorities.

Oversight of State Government Procurement in Mississippi

DFA and ITS are responsible for the administration and oversight of the procurement of commodities and services in Mississippi.

MISS. CODE ANN. Sections 25-1-77, 31-7-9, 27-104-7, 31-11-3 to 31-11-35, and 25-53-5 (1972) govern state agency processes for procurement of commodities and services, and delegate oversight responsibility to the following state agencies and boards:

- DFA, within which are the Office of Purchasing, Travel and Fleet Management (OPTFM), the Bureau of Building, Grounds and Real Property Management (BoB), and the Public Procurement Review Board (PPRB);
- the Office of Personal Service Contract Review (OPSCR);
- the Public Procurement Review Board (PPRB);¹ and,
- ITS and the ITS Board.

In an effort to strengthen oversight, during the 2017 Regular Session, the Legislature passed H.B. 1109,² which repealed the Personal Service Contract Review Board and transferred its authority, effective January 2018, to PPRB. These actions minimized the role of the State Personnel Board in prescribing the general policies by which the state personnel system is administered, increased DFA's role in procurement oversight, and expanded PPRB.

As the procurement oversight authorities, DFA and ITS are responsible for creating rules and regulations regarding contracting for commodities and services within their jurisdictions. 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 the rules and regulations.

Exhibit 1 on page 4 provides the statutory authority for such governance and the responsibilities of each oversight authority.

¹ DFA's OPSCR staff provides all administrative support to PPRB in relation to personal and professional services.

² The passage of H.B. 1109 (2017 Regular Session) amended MISS. CODE ANN. Section 25-9-120 (1972) to abolish the Personal Service Contract Review Board and transfer its duties, powers, and resources to PPRB, effective January 2018, codified as MISS. CODE ANN. Section 25-9-120 (2).

Exhibit 1: Statutory Authority and Responsibilities of Mississippi's Procurement Oversight Authorities

DFA: Office of Purchasing, Travel and Fleet Management (OPTFM)
MISS. CODE ANN. Sections 25-1-77 and 31-7-9 <ul style="list-style-type: none">• 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.• Promulgates and maintains the <i>Mississippi Procurement Manual</i> and its regulations that govern commodity purchases in the state.• Approves purchases in excess of \$50,000 made by state agencies and sole-source and emergency purchases made in excess of \$5,000.• Approves state contracts for commodities at an agreed-upon price or discount (i.e., statewide contracts).
DFA: Bureau of Building, Grounds and Real Property Management (BoB)
MISS. CODE ANN. Sections 31-11-3 to 31-11-35 <ul style="list-style-type: none">• Develops and maintains the <i>BoB Procedure Manual</i> to govern the procurement of construction-related projects.• 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.• Approves construction purchases in excess of \$50,000 made by state agencies and sole source and emergency purchases made in excess of \$5,000.
DFA: Office of Personal Service Contract Review (OPSCR)
<ul style="list-style-type: none">• Governs the procurement of personal and professional services contracts.• Develops and maintains the <i>Office of Personal Service Contract Review Rules and Regulations</i> and its regulations, which govern personal and professional contracts in the state.• Reviews personal and certain professional contracts in excess of \$75,000 made by state agencies, except those services exempt by statute.• 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 obtaining prior approval from PPRB.
Public Procurement Review Board (PPRB)
MISS. CODE ANN. Section 27-104-7 <ul style="list-style-type: none">• Approves OPTFM regulations governing the purchase or lease of commodities and equipment by state agencies.• Monitors purchases made by state agencies and local governing authorities as defined in MISS. CODE ANN. Section 31-7-1 (1972).• Reviews and rules on any purchase that exceeds \$500,000 for commodities, goods, merchandise, furniture, equipment, automotive, or other personal property.• Hears protests of solicitations or awards of contracts.• Approves agency construction contracts of \$5,000,000 and above.• Approves personal and certain professional contracts in excess of \$75,000 made by state agencies, except those services exempt by statute.
Department of Information Technology Services (ITS) and the ITS Board
MISS. CODE ANN. Section 25-53-5 <ul style="list-style-type: none">• 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.• Develops and maintains the <i>ITS Procurement Handbook</i> and its regulations, which govern information technology purchases in the state.• Conducts information technology procurements for purchases in excess of \$50,000 made by state agencies.• Conducts procurements to award and purchase for the Express Products List, which includes vendors who agree to sell certain technology products at a not-to-exceed price.

SOURCE: PEER analysis of MISS. CODE ANN. Sections 25-1-77, 31-7-9, 31-11-3 to 31-11-35, 27-104-7, and 25-53-5 as of July 1, 2021.

Local Governing Authorities

During the 2017 Regular Session, the Legislature passed H.B. 1106 and H.B. 1109 to amend MISS. CODE ANN. Section 31-7-13 (1972) to make reverse auctions³ the default method used by all agencies and governing authorities (excluding state institutions of higher learning) for procuring commodities and certain other items or services when such procurements exceed \$50,000. As a result of these bills, local governing authorities (e.g., board of supervisors, municipal boards, school districts) are under PPRB's purview and must submit reverse auction exemption requests to PPRB for approval. Prior to the passage of this legislation, while local entities were required to adhere to state procurement laws, rules, and regulations, they were not required to obtain prior authorization from any state-level oversight authority regarding procurement. Local entities obtained approval from their specific oversight body to make procurements in the manner in which they determined to be the most advantageous for their entity. As discussed on page 7, S.B. 2024, passed during the Legislature's 2021 Regular Session, amended MISS. CODE ANN. Section 31-7-13 (c) (2) to exempt term contracts from the reverse auction requirement. This limited the number of reverse auction exemption requests made by local governing authorities to PPRB.

Procurement Approval Oversight Provided in MAGIC

The state's accounting system, MAGIC, facilitates oversight in the procurement process for state agencies, by routing procurements to the state's oversight authorities, DFA and ITS. In addition, MAGIC also routes legal contracts to the Office of the Attorney General and the State Personnel Board. 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.

During PEER's second biennial review of procurement in 2017 (PEER Report #611), PEER found that a state agency could enter into multiple contracts with the same vendor that would exceed the dollar threshold when combined without MAGIC routing the contracts to an oversight authority. This occurred if each contract fell below the dollar threshold and the agency assigned each contract a different National Institute of Governmental Purchasing Code (NIGP).⁴ According to DFA staff, to ensure proper oversight and accountability, DFA added an edit to MAGIC that aggregates contracts with the same vendor, agency product, category, and fiscal year. Once the combined contracts reach a dollar amount

³ Reverse auctions are transactions in which a single buyer receives decreasing offers or bids from potential sellers for a single item or lot of items. These auctions have the potential to provide cost savings to public purchasing entities by having vendors compete against each other, in real-time, for the final contract award.

⁴ The NIGP Code is a universal taxonomy for identifying commodities and services in procurement systems.

over the threshold, it then routes the contracts to the appropriate oversight authority for review. According to DFA staff, no edits have been made to purchase orders.

Amendments to Procurement Law During the Legislature's 2020 and 2021 Regular Sessions

During 2020 and 2021, amendments to the state procurement law provided accelerated procurement options for distance-learning- and technology-related purchases due to COVID-19 and the alteration of term contract utilization.

During the 2020 and 2021 Regular Sessions, the Legislature amended MISS. CODE ANN. Section 31-7-13 (1972) to allow for expedited COVID-19 emergency spending related to distance learning and removing the reverse auction requirement for purchasing authorities when utilizing a term contract.

2020 Regular Session: S.B. 3044

S.B. 3044, passed during the Legislature's 2020 Regular Session, modified emergency procurement procedure law in response to the COVID-19 pandemic. The senate bill amended MISS. CODE ANN. Section 31-7-13 (j) and (k),⁵ to allow both MDE and local school districts to declare certain distance learning and technology purchases necessitated because of the pandemic as emergency purchases. Specifically, the amendment states:

Purchases under the grant program established under Section 37-68-7⁶ in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be an emergency purchase...

This procurement process modification transforms an entire class of purchases, i.e., distance learning and related technology purchases, from standard procurements into an emergency. While this modification allowed for faster, more flexible purchases for remote learning development plans, the oversight authorities, specifically ITS, did not provide oversight or advice for the technology purchases due to the emergency declaration. DFA only acted as the processor of the funds, i.e., transferring funds to MDE to be used or provided to the school districts for funding distance learning plans, and facilitating safe classroom and remote instruction.

MDE states that as a part of this plan the department distributed more than 325,000 devices to school districts across the state and provided virtual professional development for teachers focused on integration of technology.

⁵ Purchases made by MDE and the local school districts utilizing the Elementary and Secondary School Emergency Relief (ESSER) funds (discussed beginning on page 28) are not included in this legislation.

⁶ Established the Equity in Distance Learning Grant Program, to be administered by MDE, for the purpose of reimbursing schools for eligible expenses incurred in funding their distance learning plans, and in facilitating safe classroom and remote instruction.

2021 Regular Session: S.B. 2024

S.B. 2024, passed during the Legislature's 2021 Regular Session, altered the primacy of reverse auctions in the state regarding the use of term contracts. As of July 1, 2021, the senate bill amended MISS. CODE ANN. Section 31-7-13 (c) (2) (1972) to exempt term contracts from the reverse auction requirement. Purchasing authorities (i.e., state agencies or local governing authorities) entering into a term contract may proceed by utilizing any other approved state procurement method without obtaining PPRB permission.

Term contracts are purchase agreements wherein the buyer and vendor agree to contract for a good or service at a set price, for a determined time period, but at an undetermined quantity. These contract types are usually for goods or services that will be needed at unknown times or in unknown quantities due to changes in funding, weather, or need. A common example provided for a term contract is road salt. The Mississippi Department of Transportation (MDOT) and local governing authorities will contract for road salt at a set price and term, but will not purchase any road salt until it is needed.

Prior to the changes in S.B. 2024, when a purchasing authority wanted to make use of a term contract, that purchasing authority would first be required to conduct a reverse auction to satisfy the requirements of MISS. CODE ANN. Section 31-7-13 (c) (2). However, reverse auctions are less effective when contract factors are unknown, and term contracts lack a definitive quantity for vendors to calculate into bid tactics. This limitation has caused several purchasing authorities to present Petitions for Relief from a reverse auction to PPRB on the grounds that no vendors participated in the reverse auction for the term contract. This resulted in purchasing authorities estimating the amount of goods or services that may be needed in a given year and pursuing set quantity contracts, or proceeding with a reverse auction only as a formality, with no intention of actually identifying a winning bidder. According to DFA staff, because of this, the reverse auction requirement for term contracts often added several months to the procurement process. However, the senate bill's amendment should alleviate some of the issues purchasing authorities have experienced.

According to DFA staff, the department has not received a Petition for Relief from a reverse auction from local governing authorities and state agencies (e.g., MDOT) since July 1, 2021, when S.B. 2024 became effective.

Average Length of Time for a State Agency to Complete the Procurement Process for Commodities, Technology, and Personal Services, as Reported by the Oversight Authorities

The procurement process is complex, and the average length of time for a state agency to procure commodities, technology products, and personal services varies by agency and by the type and amount of goods and services needed.

The average length of time for a state agency to complete the procurement process varies by agency and the type and amount of goods and services to be procured. For example, a state agency can purchase from the state contract⁷ in a minimum of one day. However, if a state agency needs to enter into a contract that requires a Request for Proposal (RFP), i.e., the solicitation for vendor bids, the process could take:

- a minimum of 150 days for personal or professional service contracts approved by PPRB; and,
- an average of 46 weeks for IT service contracts.

PEER notes that the times provided by DFA and ITS differ for RFPs because DFA does not conduct procurements on behalf of state agencies and is unable to estimate the length of time for the work that occurs at the agency level prior to receipt of the request by DFA.

Exhibit 2 on page 9 provides the average length of time for a state agency to complete the procurement process for commodities, technology products, and personal services by type of procurement, as reported by the oversight authorities. PEER notes that the average amount of time reported by DFA and ITS could be much less than the actual time to complete the procurement process.

The process times provided by DFA for both OPTFM and PPRB/OPSCR do not factor in the:

- complexity of the procurement;
- development of requirements or specifications;
- contract negotiations (where applicable);
- protest or debriefing process;
- requests for public records related to the procurement;
- review and approval of DFA where required, in some cases;
- approval of an agency regulatory board where required; or,
- delivery time of the goods.

While DFA is a procurement oversight authority, it does not conduct procurements on behalf of state agencies and therefore, would not be able to estimate the length of time for the work that occurs at the state agency level prior to DFA's receipt of the request, without cooperation from the purchasing agency.

ITS does conduct technology-related procurements on behalf of state agencies. Therefore, according to ITS staff, its calculations are based on a random selection of 10 procurements for each type of procurement process. ITS did not use any criteria when conducting the random sample. ITS staff stated that the department is researching the best commercial off-the-shelf system that can

⁷ The state contract is an online list of vendor contracts managed by DFA and associated with the operations of state government.

provide standard tracking for the procurement process, from initial request to contract execution.

Exhibit 2: Average Length of Time for a State Agency to Process Procurement for Commodities, Technology Products, and Personal Services, by Type of Procurement

OPTFM	PPRB/OPSCR	ITS
Reverse Auction (Preferred Procurement Method)		
<ul style="list-style-type: none"> The minimum number of days to procure would be 15 days. The reverse auction could be as short as 20 minutes or last for several days. If an entity requests exemption from the reverse auction process, it could take at least 4 months. 	N/A	N/A
State Contract, Express Products List (EPL), or Preferred Vendor List		
<ul style="list-style-type: none"> The minimum length of time to procure commodities off of the state contract is 1 day. The process could be longer depending on the time it takes to receive quotes or negotiate price. 	<ul style="list-style-type: none"> Contracts from the preferred vendor list take a minimum of 30 days to be reviewed and approved by the DFA staff. 	<ul style="list-style-type: none"> State agencies may purchase IT hardware and software from ITS's EPL, i.e., ITS's statewide contract for technology products, at any time up to a dollar threshold without prior approval of ITS. EPL purchases that exceed the dollar threshold are reviewed and approved by ITS within an average of 2 weeks.
Sealed Bids/Invitations for Bids (IFBs)		
<ul style="list-style-type: none"> The minimum number of days to procure would be 19 days. 	<ul style="list-style-type: none"> Take a minimum of 90 days to facilitate and be reviewed. 	<ul style="list-style-type: none"> ITS processes IFBs in an average of 24 weeks.
Sole Source Procurement		
<ul style="list-style-type: none"> Unless there is an objection from a vendor, the minimum number of days to procure would be 15 days. 	<ul style="list-style-type: none"> Takes a minimum of 45 days for the agency to solicit and obtain approval. 	<ul style="list-style-type: none"> ITS processes sole source procurements in an average of 19 weeks.
Emergency Declaration (see discussion beginning on page 10)		
<ul style="list-style-type: none"> Health, safety, or preservation of property emergencies require no approval or oversight. Emergency purchases in the best interest of the state require approval from the State Fiscal Officer and will take a minimum of 2 days for procurement. 	<ul style="list-style-type: none"> State agencies enter into emergency contracts without oversight. 	<ul style="list-style-type: none"> For health, safety, or preservation of property emergencies require no approval or oversight. According to ITS staff, it has not had a request for an emergency purchase in the best interest of the state.
Requests for Applications (RFA)		
N/A	<ul style="list-style-type: none"> Contracts take a minimum of 45 days for the agency to solicit and obtain approval. 	N/A
Requests for Proposals (RFPs) and Qualifications		
<ul style="list-style-type: none"> Contracts take a minimum of 150 days for the agency to conduct and be approved by OPTFM. 	<ul style="list-style-type: none"> Contracts take a minimum of 150 days for the agency to conduct and be approved by OPSCR and PPRB. 	<ul style="list-style-type: none"> ITS processes Requests for Proposals (RFPs) in an average of 46 weeks.
Letters of Configuration (LOCs)		
N/A	N/A	<ul style="list-style-type: none"> ITS processes Letters of Configuration (LOCs) in an average of 26 weeks.
Statutory or Regulatory Exemptions		
<ul style="list-style-type: none"> Procurements that involve statutory or regulatory exemptions are normally processed by OPTFM staff within 2 days. 	<ul style="list-style-type: none"> Contracts that involve statutory or regulatory exemptions do not require oversight. 	N/A

SOURCE: PEER analysis of information provided by DFA and ITS.

Emergency Procurement in Mississippi

This chapter provides:

- the definition of an “emergency” as defined by state law;
- the rules and regulations governing emergency procurement in Mississippi;
- an overview of the suspension of procurement rules and regulations in response to the Governor’s Emergency Declaration of the COVID-19 emergency in March 2020;
- total emergency procurement contracts from July 1, 2018, to September 16, 2021;
- emergency procurement observations made by PEER; and,
- best practices for emergency procurement.

Definition of an “Emergency” as Defined by State Law

An “emergency” is defined as an unexpected circumstance that creates a threat to health, safety, or the preservation and protection of public property.

MISS. CODE ANN. Section 31-7-1 (f) (1972) defines an “emergency” as any circumstances caused:

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

As discussed in the next section, beginning on page 11, a situation requiring an agency or local governing authority to seek an emergency procurement should meet one of the “emergency” conditions listed in MISS. CODE ANN. Section 31-7-1 (f).

Rules and Regulations Governing Emergency Procurement in Mississippi

MISS. CODE ANN. Section 31-7-13 (j) (1972) and DFA, PPRB, and ITS rules and regulations govern emergency procurement procedures in the state. If the executive director/governing board of a state agency determines an emergency threatens the health or safety of a person, or the preservation of property, the agency can make the emergency purchase without prior approval from an oversight authority. However, emergency purchases determined by the executive director/governing board to be in the best interest of the state require prior approval from DFA or ITS. For either type of emergency, in no event can the emergency contract exceed a term of one year.

MISS. CODE ANN. Section 31-7-13 (j) (1972) governs state agency emergency procurement procedures for commodities and repair contracts, which fall under the oversight of DFA's OPTFM and DFA's BoB. Mississippi's procurement law does not address emergency purchases for personal or professional services or technology-related (e.g., software, hardware) purchases and services. However, DFA and ITS, as the procurement oversight authorities, have adopted rules and regulations governing purchases resulting from an emergency situation, consistent with state emergency procurement law. Refer to Exhibit 1 on page 4 for statutory rule-making authority governing the oversight responsibilities of these two agencies.

Pursuant to MISS. CODE ANN. Section 31-7-13 (j) and DFA and ITS rules and regulations, the executive director/governing board of a state agency has the authority to determine if an emergency exists necessitating an emergency purchase. The executive director/governing board is responsible for determining if the emergency purchase:

- is necessary because the emergency threatens the health or safety of a person, or the preservation of property; or,
- is in the best interest of the state.

Procurement rules and regulations prohibit emergency contracts exceeding one year in duration. If a state agency needs the products or services beyond the term of the emergency contract, it should take the necessary steps to competitively procure before the emergency contract expires.

The following section provides a brief overview of the statutory authority and the rules and regulations adopted by the oversight authorities for each type of emergency.

Executive Director/Governing Board Determines that the Emergency Threatens the Health or Safety of a Person, or the Preservation of Property

Once a state agency's executive director/governing board determines that an emergency exists and to delay the purchase by following state procurement law (e.g., competitive bidding process) would threaten a person's health or safety, or the preservation of property, the state agency is not required to obtain prior approval from an oversight authority. As long as total purchases made are for the purpose of meeting the needs created by the emergency situation, staff with purchasing authority for the state agency can approve the purchase. While prior authorization is not required,

the state agency must file proper documentation with the appropriate oversight authority. Further, oversight authorities make no determination regarding the validity of an emergency declaration.

For commodity and repair emergency purchases, documentation should be filed with DFA and include:

- an emergency declaration letter on letterhead and signed by the executive director (or designee) of the state agency;
- a description of the commodity or repair;
- the purchase price; and,
- the nature of the emergency.

Section 3.110 of the *Mississippi Procurement Manual*, states that the justification letter:

Should be written in sufficient detail so that a person not familiar with the situation could be expected to understand the need to forego the normal purchasing procedure.

MISS. CODE ANN. Section 31-7-13 (j) does not refer to technology-related (e.g., hardware, software) purchases made in response to emergencies. However, ITS adopted rules and regulations based on the state procurement law and to be consistent with DFA. While ITS does require documentation to be submitted after the purchase, it does not require an emergency declaration letter. In accordance with state statute, ITS developed an Emergency Purchase Request Form for state agencies to use as documentation for any type of emergency procurement. ITS's *Procurement Handbook* states that:

An emergency applies only to events that could not have been reasonably anticipated. Failure to plan or to act in a timely and proactive manner to replace or upgrade equipment or other products does not fall within the statutory definition of an emergency.

PPRB governs emergency contracts for personal or professional services. Pursuant to Section 3-207 of PPRB's Rules and Regulations, PPRB does not approve emergency contracts. A state agency is required to submit a signed written determination of the conditions and circumstances of the emergency. At each PPRB meeting, if applicable, DFA staff provides a list of emergency contracts, but no action or vote is required by the Board.

Emergency contracts for personal and professional services can only be entered into if the executive director of a state agency determines undertaking a competitive procurement would threaten the health or safety of any person, or the preservation of property.

Emergency Purchase in the Best Interest of the State

Emergency purchases determined by the executive director/governing board to be in the best interest of the state require prior approval from an oversight authority. DFA's rules and regulations require a state agency to file documentation, including

an emergency declaration letter, with the OPTFM. In addition to the requirements for health, safety, or property emergencies, state agencies must also:

- clearly explain the conditions and circumstances of the emergency and provide a detailed description of the events leading up to the situation; and,
- the negative impact to the state agency if the purchase is made following Mississippi's procurement laws.

Once the letter has been filed with DFA, the state fiscal officer (or designee) may authorize the emergency purchase or repair without compliance with competitive bidding requirements. All documentation is required to be maintained in the contract file and filed with DFA. According to DFA staff, the department rarely receives emergency procurement requests from state agencies that are in the best interest of the state.

For technology products and services, ITS requires a state agency to submit documentation (e.g., Emergency Purchase Request Form) to obtain prior approval. However, according to ITS staff, prior to the COVID-19 pandemic, emergency purchases of any type were rare, and the department is not aware of any best interest of the state emergency purchases for technology products or services.

Statutory Authority and Rules for Governing Authorities

MISS. CODE ANN. Section 31-7-13 (k) (1972) governs emergency purchases for commodities or repair contracts for local governing authorities. Local governing authorities have the authority to make emergency purchases regarding any commodity or repair contracts without compliance to competitive bidding, if the local governing authority determines that the time to undertake competitive bidding would be detrimental to the interest of the governing authority. At the next board meeting following the emergency purchase or repair contract, documentation of the purchase, including a description of the commodity purchased, the price, and the nature of the emergency is required to be presented to the board and must be placed on the minutes of the board of such governing authority.

As discussed on page 6, purchases under the grant program established in MISS. CODE ANN. Section 37-68-7 (1972) in response to the COVID-19 pandemic and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase.

Overview of the Suspension of Rules and Regulations in Response to the Governor's Emergency Declaration of the COVID-19 Emergency in March 2020

The Governor's proclamation on March 14, 2020, enabled state agencies to temporarily suspend or modify any relevant statute, rules, regulations, or orders if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the COVID-19 pandemic. This proclamation allowed the procurement oversight authorities to suspend the rules and regulations governing procurement, specifically emergency procurement.

MISS. CODE ANN. Section 33-15-11 (b) (17) (1972) provides the Governor with the authority to proclaim a state of emergency when he finds the existence of conditions of disaster or extreme peril to the safety of persons and property within a county or municipality. On March 14, 2020, in response to the worldwide COVID-19 pandemic, Governor Tate Reeves issued a proclamation declaring a state of emergency in Mississippi, under the authority of MISS. CODE ANN. Section 33-15-11 (b) (17). The proclamation states:

Pursuant to MISS. CODE ANN. Section 33-15-11 (c) (1) the provisions of state statutes, rules, regulations or orders may be temporarily suspended or modified if compliance with such provisions would prevent, hinder, or delay action necessary to cope with this outbreak.

In addition to the proclamation, from March 16, 2020, to October 15, 2021, the Governor has issued over 75 executive orders addressing the COVID-19 pandemic. Mississippi's State of Emergency expired on November 20, 2021.

The following sections provide a brief overview of DFA's and ITS's responses to the Governor's initial emergency proclamation and the executive orders that followed.

DFA's Response to the Governor's Proclamation and Executive Orders

Pursuant to the Governor's March 14, 2020, Emergency Proclamation, Executive Order 1458 (March 16, 2020), and Executive Order 1466 (April 1, 2020), the Executive Director of DFA declared an emergency on behalf of the department. As a result of that declaration, DFA's Executive Director suspended its normal procurement procedures for:

- emergency procurement; and,
- procurement submissions to PPRB for approval.

In order to decrease the time necessary to accomplish emergency procurements, on March 24, 2020, DFA temporarily lifted any oversight approval requirements on emergency procurement. Prior to the pandemic, for emergency contracts, DFA contract analysts were required to hit enter in MAGIC to process an agency's emergency in the system. In response to the pandemic and in order to streamline the emergency contracting procedure, MAGIC technicians suspended the contract analyst step, to allow all emergency contracts to be automatically routed through MAGIC. In addition, an email from DFA, on behalf of DFA and ITS, provided to state agencies provided guidance on emergency procurement during the pandemic. The email suggested that state agencies indicate in the internal note field in MAGIC the reason for the emergency purchase and reference COVID-19. Further, DFA added a request type field in MAGIC, "Emergency COVID-19" to help identify pandemic-related emergencies.

While certain procurement procedures were suspended by DFA during the pandemic, according to DFA staff, documentation for emergency procurement was still required. According to DFA staff, DFA and ITS planned to conduct weekly post-audit reviews of

emergency procurement to ensure state agencies provided proper documentation. DFA staff stated that the department's OPSCR staff began conducting these audits in July 2020 by submitting a list of missing documents to some agencies. However, according to DFA staff it is up to each agency to provide the proper documentation after receiving the email from OPSCR staff. DFA staff also noted that these audits did not constitute every emergency procurement entered into MAGIC during the pandemic.

In regards to PPRB, from May 6, 2020, through August 5, 2020, all procurement submissions requiring Board approval were processed by essential DFA staff, allowing state agencies to move forward without Board action or oversight.

ITS's Response to the Governor's Emergency Proclamation and Executive Orders

As discussed further on page 34, in response to the Governor's Emergency Declaration, the ITS Board, during its regularly scheduled September 2021 meeting, at the request of MDE, voted to temporarily suspend ITS's regulation prohibiting emergency contracts for a period of more than one year. The Board's action only applies to MDE regarding federal COVID-19 funds and six projects presented during the meeting. According to ITS staff, the department and the Board did not suspend any other procurement rules or regulations in response to the pandemic and the Governor's declaration.

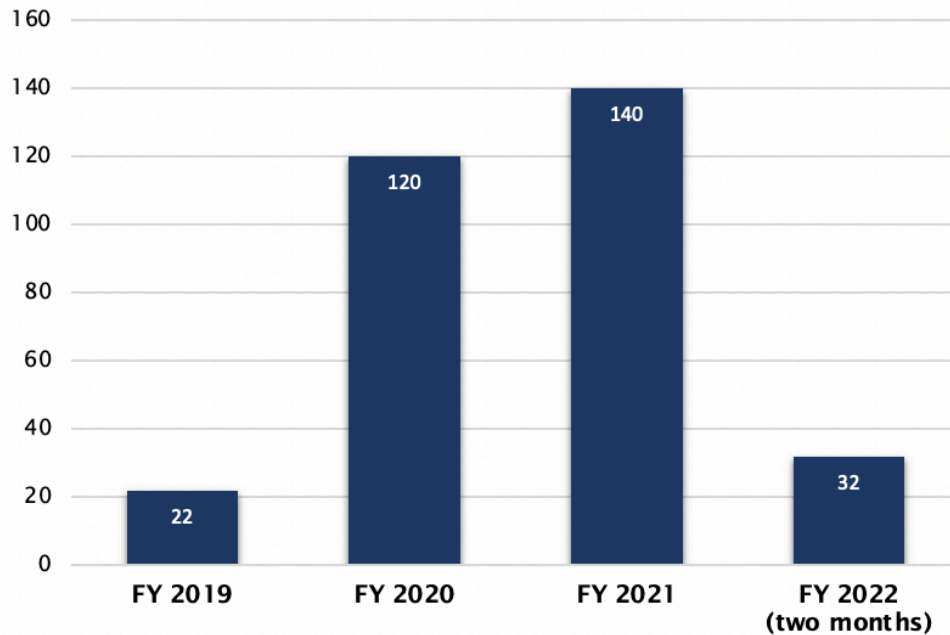
Emergency Procurement Contracts from July 1, 2018, to September 16, 2021

From July 1, 2018, to September 16, 2021, there were 314 emergency procurement contracts, totaling approximately \$469.6 million. Over 90% of emergency procurements have occurred during the COVID-19 pandemic. The Mississippi Emergency Management Agency (MEMA), the Mississippi Department of Corrections (MDOC), and the Mississippi State Department of Health (MSDH) had the largest number of emergency procurements, accounting for 72% of total emergency contracts.

PEER analyzed emergency procurement contract data reported by state agencies in MAGIC and available on Transparency Mississippi from July 1, 2018, to September 16, 2021. This data encompasses fiscal years 2019, 2020, and 2021, and the first two months of FY 2022.

Total Number of Emergency Procurement Contracts

There were 314 emergency procurement contracts reported in Transparency Mississippi from July 1, 2018, to September 16, 2021. Exhibit 3 on page 16 provides the total number of emergency procurement contracts from FY 2019 to FY 2022. As shown in the exhibit, emergency procurements increased from only 22 in FY 2019, to 120 in FY 2020, and 140 in FY 2021. According to the oversight authorities, the increase in emergency procurements can be attributed to the COVID-19 pandemic.

Exhibit 3: Total Number of Emergency Procurement Contracts from FY 2019 to FY 2022

SOURCE: PEER analysis of emergency procurement contract data reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 16, 2021.

To determine how many of the emergency procurement contracts were due to the COVID-19 pandemic, PEER used data reported in MAGIC and documentation provided in Transparency Mississippi, i.e., emergency declaration letters and contracts. From FY 2020 to FY 2022, PEER determined that 179 or 61% of the emergency procurement contracts were reported by state agencies as COVID-19-related emergencies. While DFA added an “Emergency COVID-19” request type field in MAGIC, it is apparent that not all state agencies utilized the new field when entering information into the system. Further, as discussed on page 19, not all agencies provided enough documentation to determine the reason for the emergency. Therefore, PEER notes that the number of emergency procurement contracts attributed to the pandemic is potentially higher than 179.

Total Dollar Amount for Emergency Procurement Contracts as Reported by State Agencies in MAGIC

From July 1, 2018, to September 16, 2021, emergency procurement contracts, as reported by state agencies in MAGIC, totaled approximately \$469.6 million. Exhibit 4 on page 17 shows the total amount spent on emergency procurements each fiscal year, broken out by funding source, i.e., state, federal, and other. As shown in the exhibit, the amount spent on emergency procurement contracts has increased, from approximately \$7.3 million in FY 2019 to approximately \$193.4 million in FY 2021.

Exhibit 4: Total Amount of Emergency Procurement Contracts from FY 2019 to FY 2022, by Funding Source

Funding Source	FY 2019	FY 2020	FY 2021	FY 2022**
State	\$5,084,466.03	\$47,135,648.01	\$134,791,166.37*	\$4,373,329.49
Federal	\$2,199,090.35	\$43,581,373.90	\$43,789,073.81	\$160,761,322.88
Other	\$0.00	\$9,162,184.36	\$14,771,247.71	\$3,984,911.50
Total Contract Amount	\$7,283,556.38	\$99,879,206.27	\$193,351,487.89	\$169,119,563.87

*According to DFA, state agencies are responsible for entering funding source information in MAGIC for emergency procurement contracts. In FY 2021, the Legislature appropriated federal funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act in state agency appropriation bills. As a result, some agencies may have included CARES Act funding as state funds instead of federal funds for FY 2021.

**Includes data for the first two months of FY 2022.

SOURCE: PEER analysis of emergency procurement contract data reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 16, 2021.

DFA and ITS reported that the increase in emergency contracts is due to the COVID-19 pandemic. From March 2020, when the pandemic began affecting the normal operations of government, to September 16, 2021, emergency procurement contracts totaled approximately \$423.8 million. This accounts for 90% of total emergency procurement contracts reported from FY 2019 to the first few months in FY 2022. Examples of common items and services procured using COVID-19 as the reason for the emergency include:

- cleaning supplies and services, such as deep cleaning of office space, weekly janitorial services, and disinfectants;
- temporary staffing services, such as physicians, nurses, and staff to assist with unemployment claims;
- COVID-19 testing kits, laboratory testing services, and vaccination support;
- safety supplies, such as face masks, hand sanitizer, touchless sinks, temperature check kiosks;
- technology support to assist staff working from home, such as laptops, desktop computers, software, and wireless headsets; and,
- cameras and technology to allow students to safely return to the classroom.

During FY 2020 and FY 2021, federal funding for emergency procurements totaled \$87.4 million, approximately 30% of total emergency procurement funding for both fiscal years combined. In addition, in the first two months of FY 2022, emergency procurement contracts totaled approximately \$169.1 million. PEER

notes that 95% of emergency procurements in FY 2022 have been funded by federal funds.

Emergency Procurement Contracts by State Agency

From July 1, 2018, to September 16, 2021, 35 state agencies had at least one emergency procurement contract. Exhibit 5 on page 18 lists the top ten state agencies with the largest total amount of emergency procurement contracts.

Exhibit 5: Top Ten State Agencies with the Largest Total Amount of Emergency Procurement Contracts from July 1, 2018, to September 16, 2021

State Agency	Emergency Procurement Contracts	
	Total Number	Total Amount
Emergency Management Agency	21	\$173,577,562.94
Department of Corrections	20	\$110,066,866.74
Department of Health	29	\$54,165,656.38
Department of Employment Security	49	\$29,637,028.57
Department of Human Services	22	\$24,523,973.70
Veterans Affairs	21	\$20,067,712.06
East Mississippi State Hospital	10	\$10,723,500.00
Department of Revenue	9	\$10,021,551.84
Division of Medicaid	3	\$7,388,267.67
Department of Education	18	\$6,816,723.76
Total	202	\$446,988,843.66

SOURCE: PEER analysis of emergency procurement contract data reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 16, 2021.

As shown in the exhibit, MEMA had the largest amount of emergency procurement contracts, totaling approximately \$173.6 million (37% of total emergency procurement contracts). MDOC had the next largest number of emergency procurement contracts, accounting for 23% of total contracts, followed by MSDH, accounting for 12% of total emergency contracts.

Examples of emergency procurement contracts for these three state agencies include:

- of the \$173.6 million, MEMA expended approximately \$144 million (all federal funds) on six contracts for professional medical staffing for statewide hospitals in response to the COVID-19 pandemic;
- of the \$110 million, MDOC expended approximately \$61.9 million (all state funds) to provide correctional healthcare services; and,
- of the \$54.2 million, MSDH expended approximately \$53 million (90% federal funds) on 22 contracts for COVID-19-related expenses, including testing, staffing, vaccination operations, etc.

Refer to Appendix A on page 41 for a list of the 35 state agencies with emergency procurement contracts from July 1, 2018, to September 16, 2021.

Emergency Procurement Observations Made by PEER

From July 1, 2018, to September 16, 2021, approximately 49% of emergency purchase contracts did not have the proper documentation in Transparency Mississippi, as required by state law. Additionally, state law and rules and regulations give the executive director/governing board sole discretion to declare an emergency threatening the health or safety of a person or the preservation of property. This allows state agencies to make an emergency purchase without prior approval from DFA or ITS. Further, because of the discretion given to the executive director/governing board, DFA and ITS do not currently conduct analysis to validate an agency's claim that the emergency actually existed.

While there were more emergency contracts as a result of the pandemic, issues with oversight and the emergency procurement law existed prior to the pandemic. For example, Mississippi's emergency procurement law does not specifically address IT-related purchases and personal service contracts. Based on a review of contract data provided in Transparency Mississippi and discussions with staff of DFA and ITS, PEER made several observations regarding emergency procurement contracts:

- state agencies do not always provide proper documentation and explanation of emergencies, e.g., emergency declaration letters, as required by state law;
- state agencies claim that emergencies threaten the health or safety of a person or the preservation of property, even when the agency made the emergency purchase to correct a procedural error;
- emergency procurement contracts are not always routed to the correct oversight authority for review; and,
- neither DFA nor ITS conduct an analysis of emergency procurement contracts to determine that the emergency did threaten the health or safety of a person, or the preservation of property.

The following section provides a brief summary and examples of the observations made by PEER.

Proper Documentation not Provided in Transparency Mississippi

As discussed on page 12, MISS. CODE ANN. Section 31-7-13 (j) requires state agencies to submit an emergency declaration letter clearly justifying the need for an emergency purchase. State agencies are required to file the letter after the emergency purchase for health or property emergencies and prior to making the emergency purchase for best interest of the state emergencies. As discussed on page 14, the oversight authorities did not suspend their rules and regulations requiring proper documentation for emergency procurements. While the reporting rules and regulations for emergency procurement were not suspended, DFA staff stated that it is up to each state agency to interpret the Governor's Emergency Proclamation on March 14, 2020. DFA states

that the extent and bounds of the Emergency Proclamation are to be determined by each state agency. However, both oversight authorities have encouraged agencies to evaluate their documentation in MAGIC for sufficiency, and the department expects that state agencies will be supplementing emergency procurement documentation, especially since the State of Emergency has ended.

PEER notes that there has been confusion regarding what documentation should be provided for emergency procurements during the pandemic. However, because DFA and ITS did not suspend its requirement for proper documentation during the pandemic and planned a post-audit to ensure compliance, state agencies should have provided emergency declaration letters in MAGIC and Transparency Mississippi. Additionally, the same is true for agencies making emergency purchases for technology products and services because ITS did not suspend any of its procurement rules and regulations during the pandemic.

Of the 314 emergency purchase contracts reviewed by PEER, 154 (49%) did not have proper documentation in Transparency Mississippi. PEER notes that the number identified only includes files without emergency declaration letters. There were several agencies that did not include any documentation in the file, including the finalized emergency contract.

Exhibit 6 on page 20 provides the number of emergency purchase contracts with emergency declaration letters in the contract file, by fiscal year. As shown in the exhibit, the lack of proper documentation for emergency contracts existed prior to the COVID-19 pandemic. For example, while there were only 22 emergency contracts in FY 2019, 55% of the files lacked the required documentation.

ITS created its own form for agencies to fill out to document emergency procurement requests and does not require emergency declaration letters. Only five agencies submitted emergency declaration letters for IT-related emergency purchases. While ITS requires state agencies to fill out a form, those forms were not filed in Transparency Mississippi as supporting documentation.

Exhibit 6: Total Number of Emergency Procurement Contracts with Emergency Declaration Letters Filed in Transparency Mississippi, by Fiscal Year

Emergency Declaration Letter Provided in Transparency Mississippi	FY 2019	FY 2020	FY 2021	FY 2022*
Yes	10	52	80	18
No	12	68	60	14
Total	22	120	140	32

*Includes data for the first two months of FY 2022.

SOURCE: PEER analysis of emergency procurement contract data and documentation reported in MAGIC and available on the Transparency Mississippi website from July 1, 2018, to September 16, 2021.

In addition, during COVID-19, several state agencies filed one letter for all emergency purchases during the pandemic. In some cases, PEER could clearly conclude that the agency made the emergency purchase in response to the pandemic. However, there were several instances in which PEER could not determine why the contract would be needed to respond to the pandemic. For example, at MDOC, its COVID-19 emergency declaration letter stated the following:

The Mississippi Department of Corrections (MDOC) has taken numerous steps to mitigate the spread of COVID-19 in our facilities and office throughout the state. In our effort to continue to provide a safe environment for our offenders and staff, I am declaring an emergency to make additional purchases for necessary expenditures incurred due to the public health emergency...

The contract accompanying this emergency declaration letter stated that services would be provided for information technology consultation and project management services. The scope of work did not mention COVID-19. Additionally, MDOC entered into another emergency contract with the same vendor immediately after the first emergency contract expired. The second emergency declaration letter did not mention COVID-19 as the reason for the emergency. However, the scope of work for both emergency contracts was identical.

Further, several of the emergency declaration letters did not clearly describe the emergency situation. According to Section 3.110 of the *Mississippi Procurement Manual*, the letters provided should have sufficient detail describing the emergency situation, so that anyone unfamiliar with the situation could understand the reason to forego the normal purchasing procedure. A few examples include:

- not stating the type of emergency, e.g., health or safety of a person or preservation of property;
- stating both types of emergencies; and,
- only copying Section 3.110 of the *Mississippi Procurement Manual* without providing any other information, including items purchased, total costs, and emergency situation.

According to DFA staff, it is common for state agencies not to provide an emergency declaration letter as required by state law. While the issue is persistent, it is usually the same state agencies that do not comply with the requirement. DFA does not currently have a process to reconcile what state agencies submit in MAGIC and what actually occurred during the procurement process. Only a post-audit review would identify such an issue.

Questionable Claims that Emergencies Threaten the Health or Safety of a Person or the Preservation of Property

MISS. CODE ANN. Section 31-7-13 (j) does not define “health or safety of any person, or the preservation of property.” As discussed on page 11, once declared by the executive director of the state agency, these types of emergencies do not need approval by any

oversight authority. It is apparent to PEER that state agencies use “the threat to health, safety, or property” for most emergency procurement contracts, whether or not the emergency actually threatens health, safety, or property. The following are examples of procedural issues that agencies claimed to threaten health, safety, or property:

- attempting to competitively procure services but failing to post the necessary documents on the procurement portal;
- technical errors causing disqualification during the award process;
- not having enough time for the procurement process;
- miscalculation of time required for processing a reverse auction; and,
- allowing items to go overlooked due to staff resignations and terminations and the COVID-19 pandemic.

Other questionable emergency purchases made using the reason of health, safety, or property include a contractor to provide marketing and outreach services, software support (without explanation of emergency), a surveillance system, and IT consulting contracts.

PEER conducted a survey of Mississippi’s four contiguous states (i.e., Alabama, Arkansas, Louisiana, and Tennessee) to determine how each state defines emergencies threatening the health or safety of a person or the preservation of property. PEER found that the four states have varying definitions and requirements for emergency procurement. Examples of information collected from the survey include:

- in Alabama, emergencies not defined as related to public health and safety must complete the traditional procurement processes of the state with no exceptions;
- Arkansas state law defines a critical emergency as an emergency in which human life or health is imminently endangered;
- Louisiana categorizes emergencies as either usual (i.e., pertaining to public health, welfare, and public property) or catastrophic (i.e., statewide emergencies in which the Governor issued an emergency declaration);
- also in Louisiana, written quotations and other documentation are required for all usual emergency procurements; and,
- in Tennessee, emergencies are identified as either actual or non-actual, and actual emergencies are declared by the Governor.

Emergency Procurement Contracts do not Always get Routed to the Correct State Agency for Review

When entering emergency procurement contracts in MAGIC, state agencies are required to select a NIGP code that will route the

contract to either DFA or ITS. Coding is dependent on the state agency submitting the request, and DFA can only review and attempt to make corrections. According to DFA staff, there is no systematic process that DFA is aware of that can be implemented to ensure the agency selected the correct code. In addition, for IT personal service contracts, DFA and ITS staff are required to consult each other to determine which agency is responsible for oversight.

Oversight Authorities do not Conduct Analysis to Determine if an Emergency Existed

Once an emergency that threatens the health or safety of a person, or the preservation of property is declared by a state agency, Mississippi state law and DFA and ITS regulations allow the agency to make the emergency purchase to address the emergency, without any oversight. The only type of emergency purchases that require oversight are those that are determined to be in the best interest of the state. Both oversight authorities say that those types of emergency purchases are rare. According to ITS staff, it does have a process to facilitate post-purchase follow-up with agencies on emergency purchases to ensure documentation is provided. This includes purchase order(s), invoice(s), and acknowledgment of receipt of products and/or services.

Both oversight authorities acknowledged that review processes have been delayed during the pandemic. Both DFA and ITS are currently working to reestablish resources to provide follow-up on emergency purchases. However, these processes will not include the validation that an emergency existed.

Best Practices for Emergency Procurement

NASPO established an *Emergency Preparedness Guide* to help procurement officials navigate procurement during an emergency situation. The guide recommends developing emergency plans, continuing to follow policies and procedures for all funding sources, ensuring reasonable costs, and providing proper documentation.

While utilizing best practices consistently during emergency situations can be difficult, NASPO has established an *Emergency Preparedness Guide* to assist procurement officials in navigating procurement during an emergency. This guide discusses core issues states must prepare for when performing procurement tasks during an emergency. PEER determined that the following four points in the guide were the most applicable to Mississippi:

- states must develop a plan to ensure all government functions continue under all conditions;
- when utilizing federal funds, a state must ensure all policies and procedures are followed;
- purchases should always incur “reasonable costs,” not exceeding what is necessary for the normal function of the state; and,
- procedures must be in place to ensure correct approval of documentation.

Each of these four points not only focuses on proper procurement practices, but also on ensuring that following best practices is possible during emergency declarations. The following section briefly discusses each of these points.

States Must Develop a Plan to Ensure All Government Functions Continue Under All Conditions

NASPO's *Emergency Preparedness Guide* states that:

Government entities need to develop plans that ensure essential government functions are performed under all conditions.

In the guide, this is identified as the Continuity of State Operations (COSO). This concept means that regardless of the difficulty states face during emergency situations, each state must continue to operate as close to normal as possible. To ensure this happens the guide suggests states implement the following:

- create satellite and at-home operation systems;
- ensure access to vital files and systems; and,
- create a planned timetable for completing essential functions.

When Utilizing Federal Funds, a State Must Ensure All Policies and Procedures are Followed

In regards to purchases made using federal funding, NASPO states that:

A state must follow the same policies and procedures it uses for procurements from its non-federal funds. The state must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

The guide establishes that federal funds should be spent in the same way that state funds would be spent. This not only ensures proper procedures but also ensures that funds are allocated in the best way to serve the emergency they are being used.

Purchases Should Always Incur “Reasonable Costs”

The guide discusses the importance of ensuring costs are reasonable. In the guide, “reasonable costs” are defined as:

...a cost that does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

The guide explains that not only should purchases be made with cost in mind, but that they should also be necessary and serve the emergency to which the state is responding. In order to ensure

“reasonable costs” are considered, the guide suggests considering the following questions:

- Is the cost generally recognized as necessary and ordinary to the functioning of the state or necessary for the efficient use of the federal award?
- Are the costs in bounds of the market prices for comparable goods and services in the geographic area?
- Did the individuals act with prudence in the circumstances during the time the costs were incurred?
- When incurring the costs did the individuals in question abide by the restraints and requirements outlined by federal and state laws?
- Did the entity deviate substantially from the established practices and policies normally followed when incurring this cost?

Procedures Must Be in Place to Ensure Proper Documentation

In the guide, NASPO explains that documentation is essential, even in the face of an emergency. The guide states that:

There must be a procedure in place to ensure correct approval of all necessary purchasing documents.

The guide maintains that though proper procedure can be very difficult during an emergency situation, documentation should receive as much oversight as possible. To ensure the continued operation of procurement procedures, the guide suggests creating a “Procurement Response Kit”, which includes:

- emergency-related contract templates;
- procurement office emergency contact information;
- other state and local government emergency contact information;
- other agency procurement staff contact information that can be used to supplement emergency procurement staff;
- commodity group/vendor emergency contact information; and,
- materials that can be used to establish and maintain a written log of activities.

PEER notes that while many of these points may only be fully possible in a best-case scenario, they are important goals procurement officials and states should focus to achieve during state emergency declarations.

NASPO’s Case Study on the Application of Best Practices

In order to illustrate the application of NASPO’s guidelines, NASPO conducted a best practices case study of FY 2020 emergency procurement in the states of Florida and Missouri because both of

these states use the NASPO guidelines. NASPO identified “Shared Measures for Success,” which are the ways Florida and Missouri succeeded in their COVID-19 emergency procurement procedures. The following is a brief overview of NASPO’s “Shared Measures for Success” and guidelines states could implement in order to be more effective during an emergency situation:

- **Clarify Responsibilities:** State procurement offices should establish roles and responsibilities while emphasizing the importance of communication.
- **Preparing and Sharing Resources:** States should have tools and teams ready for emergencies, with contracts and lists available in order to facilitate continued operations.
- **Staying on the Same Page:** States should establish supplier relations, along with clear expectations of performance and logistics, during non-emergency times.
- **Keeping Track:** Recordkeeping and accounting should be done by agencies to facilitate audits both during and after the emergency.

According to NASPO, Missouri’s and Florida’s implementation of these principles represents how diverse states can use the guidelines to find success. NASPO stated that the most important tenets are flexibility and ample planning, even when an emergency is not apparent.

Implementation of NASPO Principles Nationwide

Numerous states have implemented various NASPO guidelines. PEER surveyed ten states⁸ and identified five examples of implementation nationwide:

- Wyoming developed a continuity system built on staff training and accountability development due to the constant threats of wildfires and blizzards.
- Missouri provides for COSO within their emergency procurement guide, requiring that information is tracked as closely as possible to facilitate post-procurement audits and encourages agencies to seek prior approval where possible.
- Missouri also created an emergency procurement guide for both inter-agency and broader use which facilitates accountability and transparency, as well as clearly identifying expected reasonable costs and utilization.
- Texas provides numerous training courses on procurement for hazard mitigation and contracting in order to facilitate both COSO and accountability during its emergency procurements.

⁸ PEER surveyed the following states: Florida; Georgia; Kentucky; Maine; Missouri; North Carolina; Ohio; Texas; Virginia; and Wyoming.

- Ohio maintains a detailed COSO plan, including plans for temporary relocation of workers, distance working, and document maintenance.

These examples only represent some of the ways in which states utilize the NASPO guidelines. However, the variation in emergency type and application shows that these guidelines can be used by a variety of states to ensure proper accountability, transparency, and execution of emergency procurement. In order to understand the practical emergency procurement issues in the state, the following case study on MDE provides examples of areas where the application of NASPO's best practices could have mitigated some of the state's emergency procurement problems.

A Case Study: MDE Emergency Procurement Contracts

This chapter addresses MDE's declaration of an emergency in regards to the procurement of IT products and other related professional services, and subsequent request to the ITS Board and PPRB to temporarily suspend regulations limiting emergency contracts to one-year.

MDE's Emergency Declaration in Response to the Receipt of Federal COVID-19 Relief Funds

On September 2, 2021, the Mississippi State Board of Education (MSBE) approved the State Superintendent's declaration that an emergency exists for MDE in the procurement of technology products and other professional services. MDE stated that the emergency exists because the delay in following the state's competitive bidding process would threaten the health or safety of any person, or the preservation of property. However, the emergency's threat to health, safety, or property is not apparent. MDE's emergency declaration allows the department to utilize federal COVID-19 relief funds to procure the products and services prior to the award deadline set by the U.S. Department of Education.

In September 2021, the Mississippi State Superintendent of Education declared that an emergency exists in the procurement of technology products and other professional services due to the impact of the COVID-19 pandemic on K-12 student learning in Mississippi, and the timeline in which MDE is required to award and obligate Elementary and Secondary School Emergency Relief (ESSER) funds provided to Mississippi to respond to the pandemic.

The next sections provide:

- a general overview of Elementary and Secondary School Emergency Relief (ESSER) funding and Mississippi's timeline to award and obligate such funds;
- an explanation of MSBE's approval of MDE's emergency declaration; and,
- MDE's reduction of projects and funds that were included in the department's initial emergency declaration.

Elementary and Secondary School Emergency Relief (ESSER) Funds Provided to Mississippi in Response to the Pandemic

During 2020 and 2021, Congress passed three relief packages that provided approximately \$190.5 billion in total funding to the Elementary and Secondary School Relief (ESSER) Fund to be distributed to each state. The relief packages included:

- The Coronavirus Aid, Relief and Economic Security (CARES) Act,⁹ passed on March 27, 2020, provided \$13.5 billion to the ESSER Fund;
- The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA),¹⁰ passed on December

⁹ Section 18003 of Division B of the CARES Act.

¹⁰ Section 313 of the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA).

27, 2020, provided \$54.3 billion in supplemental ESSER funding, known as the ESSER II Fund; and,

- The American Rescue Plan (ARP) Act, passed on March 11, 2021,¹¹ provided \$122.7 billion in supplemental ESSER funding, known as the ESSER III Fund.

States are required to distribute at least 90% of the funding to Local Education Agencies (LEAs), e.g., local school districts. The State Education Agency (SEA) has the option to reserve up to 10% of its total ESSER allocation for emergency needs as determined by the SEA to address issues in responding to the COVID-19 pandemic. Exhibit 7 on page 29 shows Mississippi’s total ESSER funding, the minimum allocation required to be awarded to local school districts, and the maximum amount that can be reserved by MDE, as Mississippi’s SEA. As shown in the exhibit, Mississippi received approximately \$2.5 billion in ESSER funding, with at least \$2.3 billion required to be allocated to school districts.

Exhibit 7: Mississippi’s Total ESSER Funding, the Minimum Allocation to Local School Districts, and the Maximum Amount that can be Reserved by MDE

Type of ESSER Fund and Date Passed by Congress	Mississippi’s Total ESSER Allocation	Minimum Allocation to Local School Districts	Maximum Amount that can be Reserved by MDE
ESSER I (March 27, 2020)	\$169,883,002	\$152,894,702	\$16,988,300
ESSER II (December 27, 2020)	\$724,532,847	\$652,079,562	\$72,453,285
ESSER III (March 11, 2021)	\$1,627,197,854	\$1,464,478,069	\$162,719,785
Total	\$2,521,613,703	\$2,269,452,333	\$252,161,370

SOURCE: Data reported by NCSL as of June 23, 2021.

According to MDE staff, it reserved 9.5% of ESSER funding to provide direct support to local school districts. In its ESSER implementation plan, submitted to the U.S. Department of Education, MDE stated that it intends to use the reserve allocation to support remote learning within school districts through activities such as:

- adding technological capacity and access, including hardware and software, connectivity, and instructional expertise;
- development and deployment of guidance and professional learning opportunities for teachers focused on best practices in instructional technology integration, distance learning instructional approaches, and learning management systems; and,

¹¹ Section 2001 of the American Rescue Plan (ARP) Act.
PEER Report #664

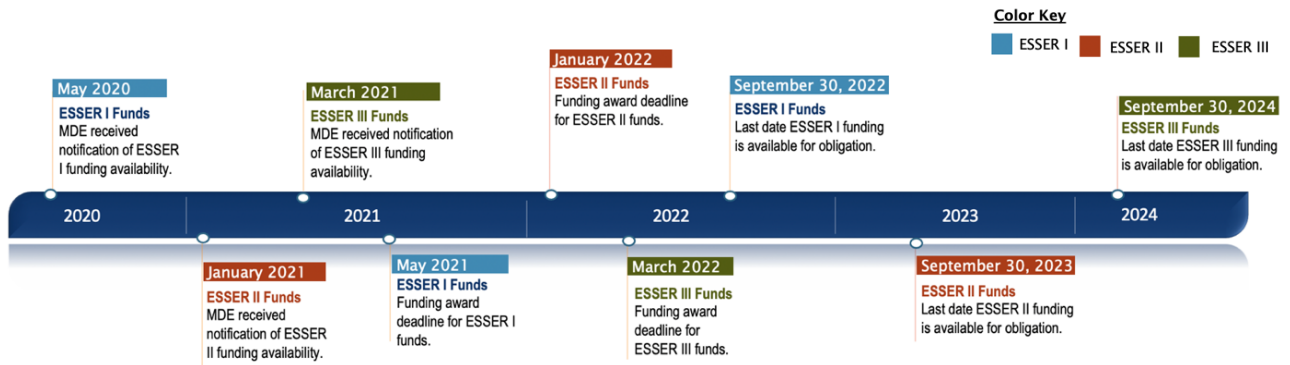
- developing new informational and academic resources and expanding awareness of, and access to, best practices and innovations in remote learning and support for students, families, and educators.

Additionally, the ARP Act requires MDE to use ESSER III funding to address learning loss and provide afterschool and summer enrichment programs.

The U.S. Department of Education set a quick timeline for MDE to award¹² the 9.5%¹³ reserved ESSER funds as contracts and grants. Exhibit 8 on page 30 provides the funding timeline for awarding and obligating ESSER funds. As shown in Exhibit 8, MDE received notification of ESSER funding availability in May 2020 (ESSER I), January 2021 (ESSER II), and March 2021 (ESSER III). MDE staff stated that the department has not received ESSER II and ESSER III funding yet but will be reimbursed by the federal government for allowable expenses.

Also, as shown in the exhibit, MDE is required to award ESSER II funds by January 5, 2022, and demonstrate that the funds are obligated through September 30, 2023. Further, MDE must award ESSER III funds by March 11, 2022, and demonstrate that the funds are obligated through September 30, 2024. Any funds that MDE fails to award by the one-year deadline will be reallocated by the U.S. Department of Education consistent with the CARES Act. According to MDE staff, as soon as the department became aware of the ESSER funds, staff began conversations on how the state should spend the available reserve amount and which projects would provide the most support to the local school districts.

Exhibit 8: Timeline for MDE to Award and Obligate ESSER Funding



SOURCE: PEER analysis of information provided by MDE.

¹² According to the U.S. Department of Education, funds are considered to be awarded when the SEA subgrants the funds to the school district, or the SEA enters into a subgrant or contract with a subrecipient. ESSER funds are obligated when the subrecipient commits those funds to specific purposes consistent with 34 C.F.R. Section 76.707. For example, when the SEA awards a contract from the SEA reserve, that is an obligation.

¹³ Under ESSER guidelines, MDE may reserve up to ½ of 1%, or \$12.6 million, of its total ESSER allocation for administrative costs, including direct and indirect administrative costs. See PEER Report #655, *A Review of Mississippi School Districts' Revenue Sources and Expenditures for Fiscal Years 2016 through 2020*, for additional details regarding ESSER funding received by MDE.

Approval of MDE's Emergency Declaration by MSBE

According to MSBE's unofficial board meeting minutes, on September 2, 2021, MSBE, in a special-called teleconference meeting, approved¹⁴ the declaration by the State Superintendent of Education, that an emergency exists in the procurement of technology products and other professional services. An attachment to the board meeting minutes on the department's website, stated that MDE's request totaled over \$230 million, the full amount of MDE's ESSER II and ESSER III funding reserve. According to the attachment, MDE requested approval of the emergency declaration because undertaking a competitive procurement would cause a delay that would threaten the health or safety of any persons, or the preservation or protection of property. The attachment also stated that the emergency procurement was also in the best interest of the state. PEER notes that pursuant to MISS. CODE ANN. Section 31-7-13 (j), emergency procurement contracts determined to be in the best interest of the state require prior approval from an oversight authority, i.e., DFA or ITS. While MDE does plan to obtain prior approval from MSBE for contracts and grants that are \$50,000 or more, MDE is not required to obtain approval from either DFA or ITS prior to entering into the contracts or grants. This is the result of MDE's declaration that the emergency threatens health, safety, or property.

According to the board meeting minutes, MSBE also granted authority to the State Superintendent of Education to request approval from the oversight authorities to suspend the one-year durational limit on emergency contracts. In order to obligate ESSER funds, MDE needs the contracts under the emergency declaration to extend for a period of up to three years, which exceeds the one-year limit for emergency procurement.

Reduction of Projects and Funds in MDE's Initial Emergency Declaration

MDE's initial emergency declaration to MSBE totaled over \$230 million. According to MDE staff, the department chose to include the full amount of ESSER funding in its initial request to MSBE to ensure that the department would not need to return to the Board for additional approval. After the MSBE meeting, according to MDE staff, the department reduced the number of projects and total dollar amount included in the emergency declaration by determining that many of the projects presented to MSBE could be procured prior to the award deadline utilizing the state's competitive bidding process.

According to MDE staff, as of September 9, 2021, the total number of projects in the emergency declaration request were reduced from over 40 projects for various items and services to only six technology projects, totaling an estimated \$89 million. PEER notes that MDE did not provide a list of the projects included in its initial request to MSBE. According to MDE staff, this is because the department is still working to competitively procure the projects, and all the contracts have not been presented to MSBE for approval. MDE staff stated that it anticipates presenting many of the projects

¹⁴ MSBE approved the emergency declaration by a vote of six to one.

being procured through the competitive bidding process to MSBE in December 2021.

Exhibit 9 on page 32 provides a list of the six technology projects included in MDE's current emergency declaration. The exhibit includes a brief description of the projects provided by MDE and the estimated cost of each.

Exhibit 9: Description and Estimated Costs for Technology Projects Included in MDE's Current Emergency Declaration

Technology Products and Services	Project Description	Estimated Costs
Supplemental Digital Content	Supplemental digital content to support grade K-8 mathematics, grade 2-12 English Language Arts (ELA), and multiple content areas, e.g., science, social emotional learning.	\$49,500,000
Mississippi Student Information System (MSIS) Modernization	Modernization of MSIS to include cloud compute time, data storage, network utilization and services; support services; third party tools and software licenses; consulting, staffing, and project management; and data consulting.	\$14,653,000
School Safety Platform	A statewide school safety platform to provide consistent and equitable development and implementation of crisis management plans and response to a crisis.	\$14,026,600
Mississippi Educator Career Continuum Archive (MECCA) System	Includes five modules: strategic talent recruitment/vacancies; licensure (with educator prep); professional growth system; educator misconduct; and accreditation.	\$9,300,000
College and Career Readiness (CCR) Platform	College and career planning platform with an e-transcript feature. The college and career planning platform aims to help students make more informed and better educational and career choices - to design and follow the best pathway to achieving postsecondary goals.	\$1,000,000
Independent Verification and Validation	Independent Verification and Validation vendor to test and validate MSIS 2.0 and MECCA system.	\$500,000

Total \$88,979,600

Note: MDE staff stated that the department could not provide a breakout of estimated costs by ESSER II or ESSER III funds for the six projects. This is due to MDE's flexibility to allocate funds from project to project.

SOURCE: PEER analysis of documentation provided MDE to ITS as of September 9, 2021.

PEER notes that one of the projects in MDE's request is for the modernization of the Mississippi Student Information System (MSIS) at an estimated cost of \$14.7 million. MSIS, which is over 20 years old, is MDE's current system that provides for the electronic collection and storage of comprehensive detailed data about teachers, administrators, pre-K through grade 12 students, and school board members. The system also acts as a student tracking

system by allowing for the electronic transfer of student records from one school district to another.

PEER reviewed MDE's budget requests for FY 2017 through FY 2023. For each of those fiscal years, the department requested funding from the Legislature to modernize MSIS. Funding requested by MDE for upgrades and replacement of MSIS ranged from \$2 million to \$5 million. While the Legislature appropriated funds to maintain the current system, it did not provide MDE funds to modernize the system until its 2021 Regular Session.

During the 2021 Regular Session, the Legislature appropriated \$7.6 million in state support special funds (e.g., the Education Enhancement Fund) to MDE for MSIS. According to MDE staff, the \$7.6 million in state funding is in addition to the \$14.7 million in ESSER funding, and is not included in the emergency request to ITS. The department plans to use the state funding, during FY 2022, to hire contract staff to assist in MSIS implementation. MDE staff stated that it may not use the entire \$7.6 million appropriated by the Legislature, but would not know until the department has completed the competitive procurement process for the services.

While MSIS is probably due to be upgraded or replaced to ensure its usefulness to local school districts, PEER questions MDE's emergency declaration to procure the system. An "emergency" as defined on page 10, is an unexpected circumstance that creates a threat to health, safety, or the preservation and protection of public property. As proven by MDE's budget request, the modernization of MSIS has been a request by MDE to the Legislature for many years. In addition, in January 2021, MDE entered into a contract with Crocus LLC.,¹⁵ for an amount not to exceed \$1.5 million to provide independent consultant services for MSIS modernization, i.e., phase I of MSIS 2.0.

While it is understandable that MDE would want to utilize federal funding to update the system, it is clear that this is not an unexpected circumstance that creates a threat to health, safety, or the preservation and protection of property. A reasonable person could conclude that the desire to use federal funds to procure the technology products and services would not be a threat to health, safety, or property, but at most would be in the "best interest of the state." As discussed on page 12, an emergency procurement determined by the state agency to be in the best interest of the state requires approval from an oversight authority, in this case, ITS.

PEER notes that because the descriptions for the other five projects were not as specific as the MSIS information provided by MDE, PEER did not review MDE's budget request or appropriation bills to determine if funding had been requested prior to the pandemic. However, because MDE declared the emergency to utilize ESSER funding, it is likely that these projects fit within the "best interest of the state" reason, rather than a threat to health, safety, or property.

¹⁵ Crocus LLC., is a technology consulting firm based out of Washington, D.C.

MDE's Request to the ITS Board to Temporarily Suspend the One-year Restriction on Contracts Resulting from an Emergency Declaration

On September 16, 2021, under the authority of the Governor's Proclamation on March 14, 2020, the ITS Board approved MDE's request to temporarily suspend the ITS regulation restricting emergency contracts to one-year for six technology products.

As discussed on page 31, MSBE granted MDE staff authority to submit a request to DFA and ITS to temporarily suspend the one-year maximum term of contracts procured under MSBE's emergency declaration. As late as September 9, 2021, because the department planned to procure through the state's competitive bidding process all but six of the projects (see Exhibit 9 on page 32) in the initial request, MDE did not anticipate the need for DFA or PPRB to suspend its rules or regulations regarding the one-year restriction on emergency contracts. However, as discussed on page 36, MDE did submit a request to PPRB on November 23, 2021, to in fact suspend the time limit on emergency contracts.

The ITS Board's Approval of the Temporary Suspension of the One-year Restriction on Emergency Contracts

On September 9, 2021, MDE submitted a request to ITS and the ITS Board to temporarily suspend the one-year maximum term of contracts procured under MSBE's emergency declaration. MDE submitted the request in order to meet the fund obligation requirement (discussed on page 30) for ESSER funding provided to MDE by the federal government in response to the COVID-19 pandemic. According to MDE staff, the department is required to demonstrate to the federal government that the funds are obligated through September 30, 2023 (ESSER II), and September 30, 2024 (ESSER III). MDE stated that this requirement necessitates contracts for more than one year and is the reason for MDE's request to suspend the one-year restriction.

On September 16, 2021, the ITS Board approved¹⁶ MDE's request to temporarily suspend the ITS regulation restricting emergency contracts to one-year for the six MDE technology projects totaling approximately \$89 million. ITS staff found MDE's request to be reasonable and under the Board's authority. Therefore, the ITS Board approved the request:

- under the authority of the Governor's Proclamation on March 14, 2020 (refer to page 14), and;
- taking under consideration, that the one-year restriction for emergency IT contracts is an ITS regulation not a state law.¹⁷

During the board meeting, the ITS Board members, along with staff of ITS and MDE, discussed the request in length. The ITS Board noted that it had never received or approved a request to suspend the ITS procurement regulation on emergency procurement. There were several concerns expressed by ITS Board members regarding the request and MDE's emergency declaration, including:

¹⁶ The ITS Board approved the suspension of the one-year restriction by a vote of four to one.

¹⁷ As discussed on page 12, MISS. CODE ANN. Section 31-7-13 (j) does not specifically refer to IT products and services. However, ITS has implemented rules and regulations to be consistent with state law and DFA.

- the timeline in which MDE received the funds and began the procurement process;
- the inclusion of MSIS modernization as an emergency;
- the acceleration of the procurement process without receiving input from ITS staff to ensure the proper technical specifications of each project; and,
- the lack of a cost-benefit analysis, specifically for MSIS modernization, to show the long-term costs to the state that will occur once MDE has utilized all federal funds.

During the meeting, MDE staff addressed each concern. The following is a brief explanation of MDE's response to each concern:

- **Funding timeline:** MDE received notification of funds at the beginning of 2021 (discussed on page 30), and immediately began discussing the best use for the funds. In addition, MDE has already begun advertising for some projects and awarded grants to school districts. MDE does plan to advertise and procure the six projects competitively (where possible), but in a shortened time frame.
- **Inclusion of MSIS modernization:** Although MDE has been in discussions regarding MSIS modernization for many years and has even entered into Phase I of the process, the COVID-19 pandemic created a new set of requirements for the system.
- **Acceleration of the procurement process:** MDE and ITS have been working together on the technical specifications, and plan to continue to work together until the projects are complete.
- **Lack of a cost-benefit analysis and long-term costs to the state:** MDE has not conducted a cost-benefit analysis on the projects, including MSIS modernization, but the state is targeting the sustainability of the new MSIS system under the current parameters. The state should be able to fund MSIS at the current operating costs of the system, e.g., staffing, licensing.

To alleviate and address some of the concerns expressed during the meeting, the ITS Board approved the temporary suspension request, contingent upon continued cooperation with and input from ITS staff. Contracts issued for the six projects cannot exceed a term beyond September 2024. PEER notes that the ITS Board did not and will not need to approve the emergency procurement contracts because the State Superintendent and MSBE declared an emergency threatening the health or safety of a person, or the preservation of property.

MDE's Progress to Procure the Six Technology Projects

According to MDE staff, the procurements for the six technology projects are scheduled to be completed no later than February 2022. During the ITS Board meeting on September 16, 2021, MDE staff stated that while the department will not adhere to the state's competitive bidding process to procure the six projects included in

the emergency declaration, MDE intends to competitively bid the contracts using a shortened internal procurement method. However, MDE did note, during a meeting with PEER on October 27, 2021, that in some cases, due to the nature of the procurement and the scope of work, a competitive process may not be feasible. In addition, all contracts and grants \$50,000 or greater will require MSBE approval. Further, staff of both MDE and ITS reported to PEER that since ITS's board meeting the two agencies have conducted weekly meetings, and MDE has continued to provide ITS with updates on the procurement of the technology projects, as requested by the ITS Board.

MDE's Emergency Declaration for a Professional Services Contract and Subsequent Request to PPRB to Temporarily Suspend the One-year Restriction on Emergency Contracts

MDE initially determined that all contracts under OPSCR and PPRB's purview could be competitively bid and meet the ESSER funding timeline. However, due to unforeseen circumstances, including a vendor protest and a procedural error made by MDE, the department had to include one professional services contract in its emergency declaration to meet the funding deadline. This resulted in MDE's request to OPSCR and PPRB to suspend the one-year restriction on emergency contracts. On December 1, 2021, PPRB approved MDE's request.

On November 23, 2021, MDE submitted a request to OPSCR and PPRB to temporarily suspend the one-year maximum contract term for one professional services contract included in MSBE's initial emergency declaration on September 2, 2021. The contract is valued at approximately \$1.8 million and is for temporary staffing services at a call center to be used in MDE's Division of Educator Licensure.¹⁸ The contractor will respond to inquiries from prospective and currently licensed educators regarding licensure requirements. According to MDE, due to the record number of job losses in the state during the pandemic, the number of licensure applications and telephone inquiries to the division has increased. As a result, MDE stated that the contract is needed to ensure prospective and practicing educators have access to information pertinent to their licensing status.

MDE initially released a competitive solicitation to procure the services on September 8, 2021, and then readvertised on October 18, 2021, as required by state procurement law. While MDE received 18 proposals for the services, 14 proposals were rejected due to non-compliance with the requirements of the RFP. MDE evaluated and scored the remaining proposals, and selected the vendor with the lowest price. However, MDE received a letter protesting the solicitation process from one of the 14 rejected vendors. MDE staff stated that the protest, which could take months to resolve, made them unable to move forward with the competitive award process and necessitated the department's emergency declaration.

As discussed on page 30, in order to utilize ESSER funding, MDE is required to enter into a contract with a vendor by January 2022 for

¹⁸ The vendor awarded the contract is TempStaff, Inc., which is a staffing recruitment company with several offices in Mississippi, including Jackson, Canton, McComb, and Brookhaven.

ESSER II funds or March 2022 for ESSER III funds. Additionally, MDE is required to demonstrate to the federal government that the funds are obligated through September 30, 2023 (ESSER II), and September 30, 2024 (ESSER III). MDE stated in its letter to OPSCR and PPRB that the unforeseen protest and the federal funding timeline are the reasons for the department's request to suspend PPRB's rule limiting emergency contracts to one year.

PPRB's Approval of the Temporary Suspension of the One-year Restriction on Emergency Contracts

On December 1, 2021, PPRB approved MDE's request to temporarily suspend the OPSCR and PPRB regulation restricting emergency contracts to one-year for the professional services contract for a temporary staffing contract at the Educator Licensure Call Center.¹⁹ PPRB approved the request:

- based on OPSCR's staff recommendation that the specific circumstances surrounding MDE's request warranted approval of the exception to PPRB/OPSCR Rules and Regulations;²⁰
- based on the time constraints for MDE regarding the availability of federal funding; and,
- taking under consideration, that the one-year restriction for personal and professional service contracts is a PPRB/OPSCR regulation not state law.²¹

PEER notes that unlike the ITS Board, PPRB could not approve the request under the authority of the Governor's statewide emergency, which ended on November 20, 2021. During PPRB's meeting, the board members questioned if an emergency actually existed.

Additionally, OPSCR staff conducted a review of MDE's RFP for the temporary staffing services and the resulting contract. From this review, OPSCR determined that MDE evaluated cost factors openly without prior approval from PPRB as required by MISS. CODE ANN. Section 31-7-413 (2) (b) (iii). Therefore, due to MDE's procedural error, even if the vendor protest could be fully resolved prior to PPRB's December meeting, MDE would be required to cancel the solicitation and restart the procurement process due to technical errors made by MDE.

¹⁹ According to MDE's request, the emergency contract is needed for two years and nine months.

²⁰ OPSCR Rules and Regulations Sections 3-207.01 and 3-207.02.

²¹ As discussed on page 12, MISS. CODE ANN. Section 31-7-13 (j) does not specifically refer to IT products and services. However, DFA has implemented rules and regulations to be consistent with state law.

Conclusion

In conclusion, PEER determined that while MDE's emergency declaration for the six technology projects and one professional services contract does not appear to threaten the health or safety of any person, or the preservation of property, MDE is within the bounds of the state emergency procurement law. As discussed on page 11, MISS. CODE ANN. Section 31-7-13 (j) allows the executive director and/or the governing board of a state agency to determine if an emergency exists that threatens health, safety, or property, allowing the agency to purchase any commodities or enter into repair contracts without requiring approval from an oversight authority. Further, PEER found that the ITS Board was within its authority to temporarily suspend the one-year restriction on emergency procurement for MDE's emergency declaration for the following reasons:

- the Governor's Proclamation on March 14, 2020, which allows state agencies to temporarily suspend or modify state statutes, rules, regulations, or orders that would prevent, hinder, or delay action necessary to cope with the COVID-19 pandemic; and,
- state law does not currently limit emergency procurement contracts for IT-related products and services to one-year.

Further, PPRB was also within its authority to temporarily suspend the one-year restriction on emergency procurement contracts for personal or professional services because it is part of PPRB's rules and regulations and not included in state law.

PEER notes that due to the suspension of laws under the Governor's Proclamation, and the wide latitude generally given under emergency declarations, MDE had discretion that the department would not ordinarily have. An emergency procurement plan, as recommended by NASPO best practices and discussed beginning on page 23, would help state agencies navigate procurement during an emergency situation, such as COVID. Additionally, an emergency plan would allow the oversight authorities to obtain better control of state agency spending as a result of a statewide emergency, and ensure that rules and regulations are being followed as recommended by NASPO.

PEER notes that if the state had utilized a detailed emergency procurement plan to ensure the continuity of state operations, the concerns surrounding MDE's emergency procurement could have been mitigated. An emergency procurement plan would have:

- required better documentation of the emergency procurement process for both MDE and the oversight authorities;
- increased accountability and transparency; and,
- allowed the state oversight authorities to track the details of MDE's emergency procurement in a more efficient, consistent manner throughout the pandemic, instead of reliance on an uncertain post-audit process and unclear chain of documentation.

Further, Mississippi's procurement law could be updated to ensure that state agencies are not abusing the threat to health, safety, or property when declaring an emergency. PEER notes that even with an emergency plan, if state law is not updated, an emergency purchase will continue to be at the discretion of the executive director/governing board, with little oversight from DFA and ITS, and validation that an emergency actually existed.

Recommendations

1. The Mississippi Office of the State Auditor should annually conduct a random sample and audit of emergency procurements made by the executive director/governing board at state agencies without prior approval from DFA or ITS to determine if emergencies in the sample did threaten the health or safety of any person, or the preservation or protection of property.
2. For procedural errors necessitating the need for an emergency purchase, DFA and ITS should amend their rules and regulations to require state agencies to file those types of emergencies as “best interest of the state,” which requires prior approval.
3. In order to ensure the consistency of emergency procurement rules and regulations, the Legislature should consider amending MISS. CODE ANN. Section 25-53-5 to mirror MISS. CODE ANN. Section 31-7-13 (j) of DFA’s procurement law and limit any IT-related contract awarded in response to an emergency to a term not to exceed one year.
4. In order to ensure consistency of emergency procurement rules and regulations, the Legislature should consider amending MISS. CODE ANN. Section 27-104-7 to mirror MISS. CODE ANN. Section 31-7-13 (j) of DFA’s procurement law and limit any professional or personal service contracts awarded in response to an emergency to a term not to exceed one year.
5. In order to aid with the continuity of state operations and accountability, the Legislature should consider amending MISS. CODE ANN. Section 33-15-14 (1972) to authorize DFA, ITS, and MEMA to develop an Emergency Procurement Response Plan, focused on ensuring documentation and continued operations. The plan should be mandatory for any procurements made during a statewide emergency.
6. The Legislature should consider amending MISS. CODE ANN. Section 27-104-7 and MISS. CODE ANN. Section 25-53-5 to require PPRB and ITS to evaluate jointly on a biennial basis the procurement process utilized by all state agencies. In addition, the Legislature should repeal MISS. CODE ANN. Section 5-3-72 that currently requires the Joint Legislative PEER Committee to conduct such a biennial review.

Appendix A: Total Emergency Procurement Contracts from July 1, 2018, to September 16, 2021, by State Agency

State Agency	Emergency Procurement Contracts	
	Total Number	Total Amount
Emergency Management Agency	21	\$173,577,562.94
Department of Corrections	20	\$110,066,866.74
Department of Health	29	\$54,165,656.38
Department of Employment Security	49	\$29,637,028.57
Department of Human Services	22	\$24,523,973.70
Veterans Affairs	21	\$20,067,712.06
East Mississippi State Hospital	10	\$10,723,500.00
Department of Revenue	9	\$10,021,551.84
Division of Medicaid	3	\$7,388,267.67
Department of Education	18	\$6,816,723.76
Finance and Administration	9	\$6,291,469.53
Development Authority	7	\$2,221,457.95
Mississippi State Hospital	10	\$2,103,111.50
Ellisville State School	6	\$1,803,224.00
Department of Agriculture and Commerce	4	\$1,786,765.00
Mississippi State University	9	\$1,562,486.00
Military Department	3	\$1,176,546.00
University of Southern Mississippi	8	\$764,103.12
Department of Environmental Quality	1	\$650,000.00
Office of State Aid Road Construction	1	\$600,000.00
Department of Transportation	11	\$570,212.44
Boswell Regional Center	3	\$517,200.00
University of Mississippi Medical Center	2	\$503,923.00
Rehabilitation Services	4	\$323,700.00
Community College Board	1	\$315,000.00
University of Mississippi	3	\$308,724.00
Mississippi Valley State University	8	\$291,315.18
Department of Archives and History	3	\$227,495.60
Delta State University	10	\$178,963.48
Department of Public Safety	3	\$152,040.00
Jackson State University	1	\$124,257.84
Department of Wildlife, Fisheries and Parks	1	\$100,000.00
Library Commission	1	\$32,250.90
University for Women	2	\$26,495.24
Office of the Secretary of State	1	\$14,229.97
Total	314	\$469,633,814.41

SOURCE: PEER analysis of emergency procurement contract data reported in MAGIC and available on Transparency Mississippi from July 1, 2018, to September 16, 2021.

Department of Information Technology Services

Agency Response



3771 Eastwood Drive
Jackson, MS 39211-6381
Phone: 601-432-8000
Fax: 601-713-6380
www.its.ms.gov

David C. Johnson, Executive Director

December 6, 2021

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

Dear Mr. Booth:

Thank you for the opportunity to review and provide feedback during the preparation of the PEER Report titled *State Government Purchasing: A Biennial Review of State Procurement*. The Mississippi Department of Information Technology Services (ITS) is responsible for establishing policies and procedures to allow for the successful management and oversight of Information Technology procurement as intended by law for state government and the Institutions of Higher Learning.

Due to the impact on all aspects of government activity, the COVID-19 pandemic has brought attention to emergency procurement. Emergency procurement laws and regulations are in place to alleviate the requirements for procurement and contracting during highly unusual circumstances. Time is the prevailing factor. ITS believes that there is sound logic in the current state law and regulations in regard to the authority by an agency to declare an emergency. Although the primary focus of emergency procurements has been COVID-19 related since March 2020, emergency laws and regulations must cover a wide variety of emergency situations such as natural disasters. As noted in the PEER observations, state law and rules and regulations give agency executive directors/governing boards sole discretion to declare an emergency threatening the health or safety of a person or preservation of property. ITS believes that it could be potentially detrimental to an emergency response by an agency if an oversight entity is responsible for conducting an analysis to determine if an emergency exists or if an emergency meets the criteria of threatening the health or safety of a person. The time spent gathering information and conducting an analysis in order to make a determination could potentially lead to an unfavorable outcome.

Documentation of emergency circumstances is the sole responsibility of the declaring agency when it threatens the health or safety of a person or the preservation of property. In this case, ITS regulations and procedures request that detailed documentation after an emergency purchase or contract is provided. ITS encourages and enables agencies to submit proper documentation. In the case of an emergency declaration that is determined to be in the best interest of the state, ITS is responsible for acquiring proper documentation prior to the purchase in order to make a determination of emergency in conjunction with the agency.

ITS takes the responsibility of Information Technology procurement very seriously and is dedicated to continuous improvement. ITS appreciates the recommendations and content of this *Report*. Considering the authority given to ITS at the time, we will work to include applicable recommendations during future revisions of procurement regulations.

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

Sincerely,

David C. Johnson
Executive Director

Board Members - J. Keith Van Camp, Chair • Bill Cook, Vice-Chair • Christa L. Alexander • Mark E. Henderson • Thomas A. Wicker
Legislative Advisors - Senator Scott DeLano • Representative Kent McCarty

Department of Education Agency Response



MISSISSIPPI DEPARTMENT OF EDUCATION

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

December 7, 2021

Ted Booth
Executive Director
Joint Committee on Performance Evaluation and Expenditure Review
PO Box 1204
Jackson, MS 39215-1204

Dear Mr. Booth:

The Mississippi Department of Education (MDE) has reviewed the PEER report, *State Government Purchasing: A Biennial Review of State Procurement*, and appreciates the opportunity to provide our response.

The MDE is in full agreement with the report's conclusion that the agency acted within the bounds of the state's emergency procurement law when it requested the Mississippi State Board of Education (SBE) approve my request to declare that an emergency exists for MDE in the procurement of technology products and other professional services. The MDE's emergency declaration was necessary to meet U.S. Department of Education (USED) deadlines for funds to be awarded and was consistent with USED requirements that funds address emergency needs arising from or exacerbated by the COVID-19 pandemic.

As stated in the report, the USED allocated more than \$252 million in pandemic-related funds to MDE to be awarded by March 2022. Of these funds, the MDE has or is currently engaging in a competitive process for products and services totaling approximately \$160 million under normal procurement procedures. An additional \$90 million will be competitively bid and allocated in accordance with the state's emergency procurement law to fund six technology projects and one professional services contract. Less than \$2 million in federal funds will be awarded through non-competitive contracts under the emergency procurement law. All products and services obtained with the \$252 million in federal pandemic-relief funds will address the social, emotional, mental and physical health, and academic needs of Mississippi students.

The PEER report noted the procurement timeline for IT service contracts averages 46 weeks. Given the state's procurement timeline for technology projects, the MDE had a number of discussions with the Mississippi Department of Information Technology Services (ITS) about completing our technology procurements within the required federal deadlines. In a meeting on August 30, 2021, ITS recommended the MDE consider declaring an emergency pursuant to Mississippi Code §31-7-13 (j) to expedite these procurements. Therefore, MDE requested approval from the Mississippi State Board of Education (SBE) during its September 2, 2021, special-called meeting to declare that an emergency exists for MDE in the procurement of technology products and other professional services.

POST OFFICE BOX 771 • JACKSON, MISSISSIPPI 39205 • (601) 359-3512



MISSISSIPPI DEPARTMENT OF EDUCATION

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

Other than the approximately \$2 million in IT-related procurements previously discussed with PEER, the MDE is requiring that all emergency procurements be obtained through competitive processes that are submitted, evaluated, and awarded using a shortened procurement timeline. The MDE is not obligated to utilize a competitive process for these emergency procurements; however, we are committed to obtaining the best products and services possible while being good stewards of these federal dollars. The MDE has assured the SBE and the ITS board that we would engage in a meaningful competitive process when possible, and we are following through on that commitment.

The MSIS project is included among the emergency procurements because new pandemic-related data requirements caused the MDE to expand the goals of the MSIS modernization.

As we stated to the SBE, the assistance and guidance provided by ITS have been invaluable in helping MDE meet the USDE deadlines. These federal relief funds provide Mississippi with a one-time opportunity to purchase necessary products and services to help our students and schools with immediate and long-term needs to recover from the pandemic.

Please note 14 of the 18 emergency contracts listed for MDE in Appendix A represent contracts to appoint a financial advisor or interim superintendent in districts where state law required MDE to take over, four no-cost contracts executed pursuant to Senate Bill 3044 of the 2020 Regular Legislative Session to purchase computer devices for Mississippi students and teachers, and contracts to purchase computer devices for MDE employees in April 2020 pursuant to the Governor's executive order concerning telework for staff.

Finally, the MDE disagrees with the report's determination that "a procedural error" contributed to MDE's decision to procure one professional services contract in its emergency declaration. The report erroneously says "MDE evaluated cost factors openly without prior approval from PPRB." However, upon completion of pre-review by the Office of Personal Services Contract Review (OPSCR) staff, the Public Procurement Review Board (PPRB) approved the Petition for Relief and the draft of the Request for Proposal (RFP). Subsequent to PPRB approval, OPSCR staff informed the MDE that the solicitation followed PPRB regulations and was approved for release.

Thank you for the opportunity to provide the MDE's response to PEER's biennial report on state procurement.

Sincerely,

A handwritten signature in blue ink that reads "Carey M. Wright".

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

POST OFFICE BOX 771 • JACKSON, MISSISSIPPI 39205 • (601) 359-3512

PEER Committee Staff

James F. (Ted) Booth, Executive Director

Legal and Reapportionment

Barton Norfleet, General Counsel
Ben Collins

Administration

Kirby Arinder
Stephanie Harris
Gale Taylor

Quality Assurance and Reporting

Tracy Bobo
Hannah Jane LeDuff

Performance Evaluation

Lonnie Edgar, Deputy Director
Jennifer Sebren, Deputy Director
David Pray, Principal Analyst
Matthew Holmes, Lead Analyst
Meri Clare Ringer, Lead Analyst
Ray Wright, Lead Analyst
Matthew Dry, Senior Analyst
Sarah Williamson, Senior Analyst
Julie Winkeljohn, Senior Analyst
Kim Cummins
Jordan Dillon
Drew Johnson
Billy Loper
Debra Monroe-Lax
Taylor Mullins