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Report to the Mississippi Legislature

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

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Executive Summary

Introduction and Background

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

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

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

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

orders to the three oversight authorities for review and approval.

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

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

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

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

Oversight authorities noted other effects, including an increase in the use of brand preference¹ in bid specifications and the statutory approval of 325 contracts in FY 2016 without the benefit of Personal Service Contract Review Board review.

Training and Certification Requirements Established by State Law and DFA Regulations

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

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

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

Procurement Review Board. Given such, training classes are currently halted.

2017 Amendments to Procurement Laws and Regulations

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

- establish procurement best practices;
- abolish the Personal Service Contract Review Board and transfer its authority and responsibilities for personal services to the Public Procurement Review Board;
- make reverse auctions² the preferred method of procurement (excluding individual state institutions of higher learning) for commodities and certain other items or services designated in Section 31-7-13 when such procurements exceed \$50,000;
- restrict any agency emergency procurement for the purchase of any commodities or repair contracts to a contract period not to exceed one year; and
- require third-party vendors seeking a protective order for contract information to provide the reasons for the order to any entity or individual requesting these records in accordance with the Mississippi Rules of Civil Procedure. In addition to notice required by the Rules of Civil Procedure, a third party seeking a protective order from the chancery court must also post notice and reasons for seeking the remedy on the state procurement portal at least seven days before filing a petition in chancery court.

Case Study: Mississippi Department of Education

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

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

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

²See page 22 for a description of reverse auctions.

actions raise concerns of whether the most competitive price was obtained for the services provided.

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

Recommendations

1. In view of the considerable changes made in procurement laws in 2015 and 2017, the Legislature should consider allowing the Department of Finance and Administration, the Department of Information Technology Services, and the several state agencies making procurements to develop experience implementing the changes before considering any major revisions of CODE provisions dealing with competitive procurements. The statutorily mandated PEER procurement report scheduled for 2019 will offer the Legislature a comprehensive review of the effects of changes to law in 2015 and 2017 and will offer recommendations for legislative amendment if the Committee considers amendments to be beneficial to the efficiency and effectiveness of the state's procurement system.
2. To ensure that the three MAGIC business owners continue to oversee the MAGIC system, the Legislature should amend MISS. CODE ANN. Section 7-7-3(5) to remove all references to the Mississippi Management and Reporting System Revolving Fund and to set out specific duties that the Mississippi Management and Reporting System Steering Committee³ shall have related to the continuing oversight, management, and potential modifications to the MAGIC system.
3. Because operational deficiencies in MAGIC allowed procurements to be made without proper accountability during the review period, the Procurement Business Owners⁴ should review the following and consider

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

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

making recommendations to the Department of Finance and Administration to enable MAGIC:

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

For more information or clarification, contact:

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