

CONCLUSION: MISS. CODE ANN. Section 5-3-72 (1972) requires PEER to evaluate on a biennial basis the procurement process used by all state agencies. During a review of state agencies to determine the impact of H.B. 540, which are currently inconclusive, PEER became aware of an issue regarding WFP's use of Paylt as an alternate payment processor since it was not approved by DFA. Currently there is no final ruling on whether WFP has the authority to continue utilizing Paylt, as neither DFA nor EOC have granted Paylt as an authorized alternative. WFP has informed PEER that it has decided to cease using Paylt as its alternate payment processor and will instead use Tyler Technologies, the state's approved payment processor. PEER maintains that clarity in the roles and rules of each entity (DFA, ITS, and EOC) is needed on which entity currently has, or should have, the final approval or disapproval when an agency requests to use an alternate payment processor.

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. Upon completion of this evaluation, the PEER Committee shall submit a report to the Legislature with its recommendations for improving the procurement process. To conduct this review, PEER interviewed staff from DFA, DMR, MDA, ITS, and WFP, reviewed sections of state and federal law, and reviewed policies maintained by DFA and ITS.

This review focuses on the efficiency and effectiveness of H.B. 540 which was passed during the 2023 Regular Legislative Session involving four pilot state agencies. While looking at these agencies, PEER became aware of an issue regarding WFP's use of an alternate payment processor, which was not approved by DFA, for the sales of licenses (e.g., hunting and fishing) through its recreational licensing system.

KEY FINDINGS

Efficiency and Effectiveness of H.B. 540

- **In 2022, PEER found inefficiencies in the state's procurement process. Therefore, in 2023, PEER recommended that the Legislature amend state law.** Inefficiencies pertained to expenditures made by agencies to correct errors when their procurements were disapproved and in instances wherein agencies converted procurements into emergency contracts when procurement best practices violations were found.
- **During the 2023 Regular Legislative Session, the Mississippi Legislature amended state law via H.B. 540 to provide that DFA conduct personal and professional services solicitations for four pilot agencies.** DFA established the Office of Statewide Strategic Sourcing to administer the solicitation process for the four agencies. Serving primarily as a project manager, the goal of this office is to make the procurement process more efficient by eliminating delays caused by technical deficiencies. As of the time of PEER's review, DFA reported that it had not canceled or re-solicited any procurements due to technical, legal, or regulatory deficiencies for the four agencies.
- **DFA created the Office of Statewide Strategic Sourcing to serve as the project manager and provide oversight during the procurement process for the four pilot agencies.** This would ensure that solicitations meet the technical requirements of Mississippi procurement law. The intent of this office is to help make the procurement process more efficient by eliminating delays caused by technical deficiencies.
- **Because H.B. 540 was not implemented until July 1, 2024, PEER determined that only three procurements met the criteria eligible for review—one from DMR and two from MDA.** PEER sought to compare the cost efficiency and duration of the three procurements that occurred after the implementation of H.B. 540 to those prior to its implementation. However, the results of PEER's analysis were varied and showed no clear pattern due to the limited number of procurements and lack of available data (e.g., the number of hours agency staff worked on individual procurements). Therefore, the results on the impact of H.B. 540 on the efficiency and effectiveness of the procurement process are currently inconclusive.

Concerns with WFP's Alternate Payment Processor

- After executing its contract for a recreational licensing system, WFP sought to have its contractor (i.e., S3/Paylt) build the licensing system using an alternate payment processor (i.e., Paylt) despite the contract requiring that it use the state's approved payment processor (i.e., Tyler Technologies).

WFP did not adhere to DFA policies requiring that an agency submit a request to use an alternate payment processor prior to entering into the procurement process. WFP then submitted a request after the procurement process had been completed, but DFA did not approve the request. Subsequently, WFP executed an emergency contract with Paylt as the alternate payment processor for its recreational licensing system.

- The improper use of EOC fees can potentially jeopardize WFP's federal funding.

Federal and state law require that revenue received through the sale of hunting and fishing licenses be used for conservation; however, EOC fees are being applied to these licenses and are therefore being used to support Tyler. Although WFP is not using Tyler as its payment processor it is still supporting Tyler through EOC fees because Tyler's contract with the State of Mississippi requires that it be compensated based on EOC fees collected. PEER contends that using Paylt worsens the potential jeopardization of WFP's federal funding because in this scenario the EOC fees WFP's customers pay for the purchase of recreational licenses do not benefit conservation efforts in the state.

- DFA's administrative rules are inconsistent and outdated.

Currently DFA has the official final authority on such approvals. However, DFA maintains two sets of policies for agencies' use of electronic payments. Although an official version of DFA's policies exists as part of the Mississippi Management Reporting System, it has been using an older version of those policies, both of which are outdated. These outdated policies have resulted in confusion among agencies, particularly in instances where practices differ from what is stated in policy. Further, these issues are exacerbated by the loss of staff with technological expertise on electronic payments within DFA and an agency's ability to bypass competitive bid requirements under ITS emergency procurement rules.

- WFP appears to have made improper use of an emergency contract.

WFP did not have the prior approval to use Paylt as its alternate payment processor and therefore it used the emergency purchase procedure through ITS in lieu of the proper procurement process, which is against the intent of the administrative code established by DFA. PEER questions the validity of the emergency contract as it does not appear to qualify as an "emergency" as defined by MISS. CODE ANN. Section 31-7-1(f) (1972).

- The use of an unauthorized payment processor creates potential weaknesses in data security.

The use of an unauthorized alternate payment processor lacks the security assurances that are provided by the state's approved payment processor. Although DFA requires that an agency seeking to use an alternate payment processor submit the appropriate PCI-DSS Attestation of Compliance documentation to DFA, DFA does not have staff knowledgeable of PCI-DSS matters.

RECOMMENDATIONS

- DFA should monitor cost and time data for OSSS staff to determine the effectiveness and efficiency of H.B. 540. DFA should also require that each agency for which it oversees the procurement process submit its own cost and time data to DFA.
- To address the procurement and security issues set out in this report, the Legislature should amend Sections 25-53-5 and 27-104-33, to vest sole authority in the Department of Information Technology to review and approve all procurements and related contracts for electronic payments by credit, charge or debit cards and related services.
- The Department of Wildlife, Fisheries, and Parks should cease using Paylt for processing transactions and instead use the state's approved payment processor, Tyler Technologies.