



A Review of State Agency Procurement

A Report to the Mississippi Legislature
Report #672
September 13, 2022



PEER Committee

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Jerry Turner, Vice-Chair
Becky Currie, Secretary

Senators:

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Dean Kirby
Chad McMahan
Sollie Norwood
John Polk
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Representatives:

Richard Bennett
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Carolyn Crawford
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Executive Director:

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About PEER:

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 of the House 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, 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, the agency examined, and the general public.

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.



Joint Legislative Committee on Performance Evaluation and Expenditure Review

PEER Committee

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September 13, 2022

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

On September 13, 2022, the PEER Committee authorized release of the report titled *A Review of State Agency Procurement*.

Representatives

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This report does not recommend increased funding or additional staff.

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CONCLUSION: From January 2018 to June 2022, 23 out of 123 personal services procurements were not approved (e.g., withdrawn by the agency or recommended for disapproval by PPRB staff) due to best practices violations. The two most common reasons for a procurement not being approved were blind scoring violations and violations against public notice or publication of documents. Procurements that were not approved cost an estimated \$271,188 to the procuring agencies (e.g., staff salaries, fringe benefits).



BACKGROUND

Prior to 1997, state agencies in Mississippi had freedom to select contractors for personal services with minimal oversight. In 1997, the Mississippi Legislature created the Personal Service Contract Review Board (PSCRB) to set standards for the procurement of personal service contracts. Some specific contracts were excluded from this oversight. In 2017, the Mississippi Legislature merged the functions of PSCRB with PPRB. The legislatively mandated procurement best practices began governing personal service contracting, which ensured a competitive selection process.

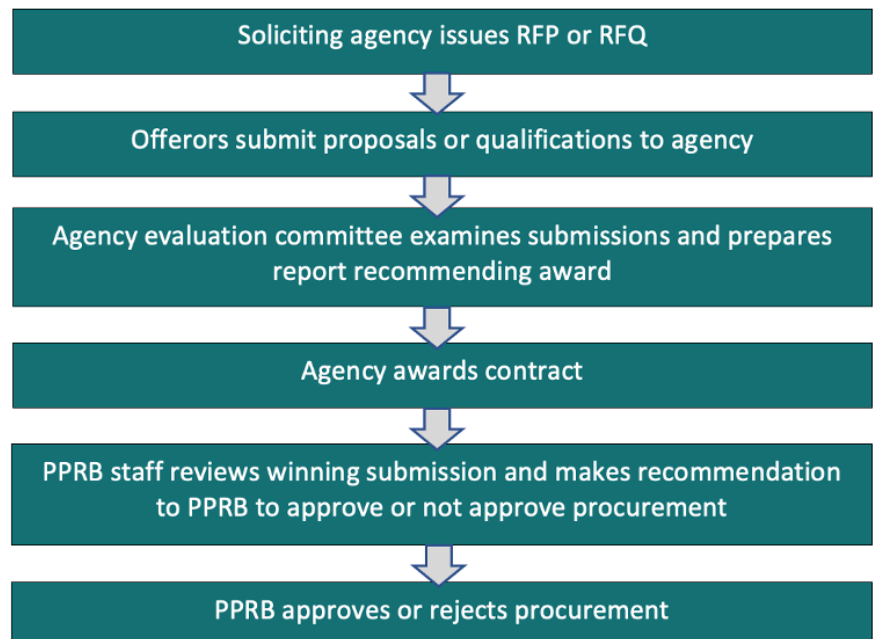
Codified in MISS. CODE ANN. Section 31-7-401 (1972) et seq., procurement best practices established all requirements for the process. The most relevant standards include:

- relief from competitive sealed bidding;
- content requirements for RFP/RFQ process;
- public notice and publication of documents;
- evaluation factors;
- evaluation committee requirements; and,
- blind scoring.

MOST COMMON METHODS OF PROCUREMENT

- **Competitive Sealed Bidding (CSB)** is the preferred method for state procurement in which bids are evaluated based on the lowest and best bid.
- **Request for Proposals (RFP)** is used when an agency is seeking a service that is complicated and will require evaluation of many factors other than price alone. Proposals are evaluated based on weighted criteria.
- **Request for Qualifications (RFQ)** is used when an agency knows the service it wants and wants to ensure that experienced and talented offerors are solicited for the contract. Qualifications are evaluated based on weighted criteria.

PROCUREMENT PROCESS FOR RFP OR RFQ



KEY FINDINGS

- **Have agencies had any issues with the best practices?**

From January 2018 to June 2022, the two most common reasons that a procurement was not approved were **blind scoring** violations and violations against **public notice or publication of documents**.

- **How many procurements have not been approved since 2018?**

Out of 123 procurements submitted to DFA since 2018, 91 were approved and 32 were not approved. Of the 32 that were not approved, 23 had best practices violations and 9 were not approved for other reasons.

- **What has been the impact of disqualified procurements?**

PEER estimated the cost of the 22* procurements that were not approved due to best practices violations to be \$271,188. Additionally, at least 9 emergency contracts resulted from those 22 procurements.

- **How is DFA addressing policy issues?**

- **Midpoint review:** In order to prevent procurements from not being approved because of errors such as blind scoring violations, DFA staff will begin implementing a midpoint review. A soliciting agency will be able to submit its procurement(s) to DFA before the evaluation committee begins its scoring process. DFA would be able to catch errors before the procurement has been evaluated and scored.
- **Secondary evaluation committee:** An alternative solution suggested by DFA staff to mitigate unnecessary disapproved procurements—particularly resulting from blind scoring violations—is to create a secondary evaluation committee. If DFA staff discovers a blind scoring violation after the procurement has already been evaluated by the soliciting agency’s initial evaluation committee, DFA staff could send the procurement back to the agency. The agency could then correct the error and submit the corrected procurement to a new evaluation committee.

** PEER analyzed 22 of the 23 procurements that were not approved due to best practices violations. PEER did not analyze financial data from Medicaid’s attempted procurement with MedImpact Healthcare System because this procurement is currently the subject of administrative review.*



RECOMMENDATIONS

1. DFA should implement its midpoint review and the secondary evaluation committee as a means of corrective action for policy issues noted in this report (e.g., blind scoring violations); and evaluate the success of the midpoint review, and if successful, return to the Legislature during the 2024 Regular Legislative Session to update the PEER Committee and the Senate and House Accountability, Efficiency, and Transparency Chairmen on its progress.
2. DFA should build a series of information quick reference guides and make them easily accessible on its website which detail:
 - a. a step-by-step guide to the RFP/RFQ process;
 - b. important RFP/RFQ requirements; and,
 - c. a general Frequently Asked Questions section for the RFP/RFQ process.

A Review of State Agency Procurement

Introduction

Authority

In response to a legislative request, the PEER Committee reviewed the procurement best practices codified in MISS. CODE ANN. Section 31-7-401 (1972) et seq.

The PEER Committee conducted this review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 (1972) et seq.

Scope and Purpose

The primary purpose of this review is to:

- describe the procurement process in the state of Mississippi;
- explain procurement best practices in state law and describe how well they work;
- analyze reasons for and the impact of procurements that have not been approved;
- describe procurement governance in other states; and,
- describe next steps for the Department of Finance and Administration (DFA).

In conducting this review, PEER sought to answer the following questions:

- How has procurement in Mississippi changed over time?
- What is the procurement process?
- What requirements are included in Mississippi's procurement best practices?
- How has the Public Procurement Review Board integrated procurement best practices into its rules and regulations?
- How well have the procurement best practices worked?
- With which best practices have agencies had trouble complying?
- What has been the impact of procurements that have not been approved?
- Over what procurements do other states' central procurement offices have authority and oversight?
- What types of procurements are exempt from central procurement office authority in other states?
- Do central procurement offices in other states delegate authority to state agencies during the procurement process?
- How is DFA addressing policy issues?
- What does PEER recommend?

Method

To conduct this analysis, PEER reviewed:

- previous PEER reports on the topic of procurement;
- relevant sections of state law;
- Mississippi State Personnel Board rules and regulations;
- Public Procurement Review Board rules and regulations;
- the 2000 Model Procurement Code published by the American Bar Association; and,
- reports published by the National Association of State Procurement Officials.

PEER also:

- interviewed staff members of DFA;
- interviewed staff of and analyzed data provided by certain agencies that submitted procurements to DFA between January 2018 and June 2022; and,
- analyzed data maintained by DFA.

Scope Limitation

This report focuses only on personal services contracts and the request for proposals/request for qualifications (RFP/RFQ) process. Issues regarding commodities, equipment, and technology purchases are not examined.

Procurement Process in Mississippi

This chapter sought to answer the following questions:

- How has procurement in Mississippi changed over time?
- What is the procurement process?

How has procurement in Mississippi changed over time?

Over the past 25 years, state agency personal services contracting has changed from being largely unregulated to being the subject of several contracting best practices overseen by the state's Public Procurement Review Board.

Prior to 1997, state agencies had considerable freedom in their ability to select contractors to perform personal services. Agencies hiring personal services contractors only had to obtain approval from the director of the State Personnel Board (SPB). The director only had the authority to disapprove contracts when the requesting agency had staff that could reasonably be expected to be able to perform the functions of the contractor. PEER criticized this limited oversight in its 1994 report, *A Performance Evaluation and Expenditure Review of the State Personnel Board* (Report 313). This report raised concerns that agencies were not required to make any use of competitive procedures for the selection of personal services contractors.

In 1997, the Legislature enacted Chapter 608, *Laws of 1997*, which created the Personal Services Contract Review Board (PSCRB). PSCRB, consisting of five state agency directors, had the authority to set standards for the procurement of certain personal services. Excluded from review were contracts for the Mississippi Department of Transportation and any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian, and utility rate expert services. PSCRB was housed within SPB, and the director of SPB served as PSCRB chair.

In 2017, the Legislature merged the functions of PSCRB with the Public Procurement Review Board and mandated that personal services contracting be governed by a set of legislatively mandated best practices (for more information on best practices, see page 6). These steps were taken to ensure consistent application of competitive selection processes.

Timeline of Oversight of Personal Services Contracting

Before 1997

Agencies had freedom to select contractors for personal services with minimal oversight.

1997

The Legislature created PSCRB to set standards for the procurement of personal services contracts.

Some specific contracts were excluded from this oversight.

2017

The Legislature merged the functions of PSCRB with the Public Procurement Review Board. Legislatively mandated best practices began governing personal services contracting. This ensured a competitive selection process.

What is the procurement process?

RFPs and RFQs are alternative methods of state procurement. The procurement process for RFPs and RFQs is dictated by the best practices found in MISS. CODE ANN. Section 31-7-401 (1972) et seq. Statute dictates that the procuring agency must complete all aspects of the process. Failure to adhere to this process often results in the Public Procurement Review Board rejecting the procurement.

The procurement process for RFPs and RFQs is dictated by the best practices found in MISS. CODE ANN. Section 31-7-401 (1972) et seq. In order to participate in this process, state agencies must follow these steps:

- A state agency should use **competitive sealed bidding** (CSB; i.e., the preferred method for state procurement) unless the agency determines that CSB is not **practicable or advantageous**.
 - If something is not practicable or advantageous to a state agency, it cannot be accomplished and/or it is not in the best interest of the agency or the state.
- The state agency submits a **Petition for Relief**. The petition requests that an agency be able to procure a contract through means of a **Request for Proposals** or **Request for Qualifications**.
 - A request for proposals (RFP) is the process of requesting and obtaining proposals¹ from competing sources in response to advertised competitive specifications. Offerors are scored according to evaluation criteria, and the highest scoring offeror is awarded the contract. RFPs are utilized mainly when an agency is seeking a service that is complicated and will require the evaluation of many factors, not solely price. During the RFP process, it may be necessary to screen offerors for their qualifications.
 - A request for qualifications (RFQ) is the process of requesting and obtaining qualifications from competing sources. Offerors are scored according to evaluation criteria, and the highest scoring offeror is contracted to perform the desired services. RFQs are used by agencies requiring specific services to ensure that offerors who are experienced and qualified in delivering the requested service are the ones solicited for the contract.
- When an agency submits its petition, it must include a list of **evaluation factors** (i.e., a list of criteria by which offerors can be scored). These factors include technical, management, and cost factors.
 - Evaluation factors are weighted to show relative importance of each requirement.

Price must be given the highest individual weight, but an agency may decide that other factors combined together may be more important than price alone.

¹ A proposal is the document submitted by the offeror (in response to a request for proposals) to be used as the basis for negotiations or entering into a contract.

- Statute requires that price—as an individual evaluation factor—be given the highest weight.
- **Public Procurement Review Board (PPRB)** must approve the petition in order for the agency to begin the RFP or RFQ process.
 - PPRB is the sole oversight agency for procurement not related to information technology. It is tasked with enforcing procurement rules and regulations to ensure the state procures quality contracts for personal and professional services.
- Once the petition is approved by PPRB, the agency issues an RFP or RFQ. The agency must then give offerors at least 30 days to prepare submissions. A public notice should be posted on the agency's website.
- After proposals/qualifications are submitted, the agency designates a person to prepare a register of submitted responses.
 - This designee must assign an ID to each submission so that the names of the offerors remain confidential.
- An **evaluation committee** convenes and examines the submissions.
 - Members of the evaluation committee should not have any personal, financial, or familial interest in any of the contract offerors.
- The evaluation committee uses the process of **blind scoring**.
 - During blind scoring, committee members judge submissions without knowing the names of the offerors.
 - If the names of offerors are revealed, the entire procurement process must be terminated and restarted.
- After all factors have been scored, the evaluation committee may have meetings with the offerors.
- The evaluation committee prepares a report recommending the award. The report must be made available to the public 48 hours before the contract is awarded. The agency must make notice on its website and the Mississippi procurement portal.
- The **Office of Personal Service Contract Review (OPSCR)** performs an evaluation of the contract.
 - OPSCR reviews the winning submission before it proceeds to PPRB and makes a recommendation whether or not PPRB should approve the contract.
- PPRB votes whether or not to award the contract to the offeror.

If confidential offeror information is revealed before the blind scoring process ends, the agency withdraws the procurement or PPRB staff recommends that PPRB disapprove the procurement.

Statute dictates that the procuring agency must complete all aspects of the process. Failure to adhere to this process often results in either the procurement not being approved by PPRB or the procuring agency withdrawing the procurement. If the agency withdraws the procurement it may either restart the process or enter an emergency procurement declaration.

Procurement Best Practices

This chapter sought to answer the following questions:

- What requirements are included in Mississippi's procurement best practices?
- How has PPRB integrated procurement best practices into its rules and regulations?
- How well have the procurement best practices worked?

What requirements are included in Mississippi's procurement best practices?

The best practices for the procurement process create the expectations which oversight agencies are required to enforce.

Codified in MISS. CODE ANN. Section 31-7-401 (1972) et seq., procurement best practices establish all requirements for the process. The most relevant standards include:

- relief from competitive sealed bidding (CSB);
- content requirements for the RFP/RFQ process;
- public notice and publication of documents;
- evaluation factors;
- evaluation committee requirements and operating ethics; and,
- blind scoring.

Each of these standards have been adapted into PPRB's rules and regulations.

Relief from Competitive Sealed Bidding

In order to receive relief from CSB, an agency must provide evidence that CSB is neither practicable nor advantageous. The best practices listed in MISS. CODE ANN. Section 31-7-403 (1972) describe the factors that determine whether or not an agency may receive relief from CSB.

Factors determining whether CSB is practicable

According to statute, when determining whether CSB is practicable, an agency must consider the following factors:

A fixed-price contract is the only kind of contract that can be used in CSB.

- whether the contract needs to be a contract other than a fixed-price contract;²
- whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;³
- whether or not offerors might need the opportunity to revise their proposals;
- whether or not the proposals might need to be evaluated on comparative elements beyond price; and,
- whether or not the primary consideration is price (although price must be the single highest weighted evaluation factor—and must be weighted at least 35%—procuring agencies may determine that a combination of other factors, which together are weighted more than 35%, are more important than price).⁴

Factors determining whether CSB is advantageous

When determining whether CSB is advantageous, an agency must consider the following factors:

- need for flexibility;⁵
- types of evaluation needed;⁶
- whether evaluation factors include an offeror's ability to perform technical skills;
- whether evaluation factors include a need to weigh artistic or aesthetic quality;
- whether or not types of supplies, services, or construction are determining factors; and,
- precedent established by previous procurements for the agency.

Content Requirements for the RFP/RFQ Process

MISS. CODE ANN. Section 31-7-405 (1972) dictates the required content each RFP/RFQ must contain in order to receive PPRB approval. All RFPs and RFQs must include:

² Fixed-price contracts require a firm price, or a price that may be adjusted only in accordance with contract clauses providing for revision of the contract price under stated circumstances.

³ Negotiations during which the offeror and an agency may alter or change the conditions, terms, and price of the proposed contract are not permissible in connection with CSBs.

⁴ This weighted price factor utilizes a scaling formula to determine the percentage of the price score each submission receives.

⁵ While there is little flexibility in creating a contract after CSB, the RFP/RFQ process allows for revision and/or corrections of proposal requirements after a proposal has been submitted.

⁶ A CSB is evaluated based on the lowest and best bidder meeting the specifications of the CSB. Proposals and qualifications submitted by offerors in response to an agency's RFP or RFQ are evaluated based on weighted criteria.

- instructions for submission;
- purchase description, evaluation factors, delivery or performance schedule, and any inspection requirements;
- contract terms and conditions;
- statement informing offerors of optional offeror discussions; and,
- a statement of when and how price should be submitted.

Agencies must provide a minimum of 30 days for submissions unless a shorter period is required for a particular procurement (e.g., in the case of an emergency procurement). The agency must document the need for a shorter submission window in writing.

Public Notice and Publication of Documents

MISS. CODE ANN. Section 31-7-407 (1972) requires an agency to post a public notification on its website and on the Mississippi procurement portal when it has issued an RFP or RFQ. The public notice shall include the due date for responses, the name and phone number of the officer conducting the procurement, and the means of obtaining the solicitation.

Further, MISS. CODE ANN. Section 31-7-409 (1972) requires an agency to put recordings as well as questions and answers from the pre-proposal conference into writing and send them to the offerors who received an RFP or RFQ and to also post them on the Mississippi procurement portal and the soliciting agency’s website.

Evaluation Factors

Evaluation factors are criteria utilized in the review of submitted proposals or qualifications. They should be weighted to illustrate relative importance.

MISS. CODE ANN. Section 31-7-413 (1972) establishes the required components of the evaluation factors, but weight of importance of the individual factors—except for price which must be weighted at least 35%—is left to the determination of the agency. Required components include:

- **Technical Factors:** Technical factors determine the offeror’s technical ability to perform the service.
- **Management Factors:** Management factors determine the offeror’s past performance of the service.
- **Cost Factors:** Cost factors determine the offeror’s financial ability to perform the service. These factors may include price as an individual factor.
 - **Price Factor:** Price as an individual evaluation factor shall be given the highest criteria weighting, more than any other individual factor and at least thirty-five percent (35%) out of the one hundred percent (100%) total weight of all the other individual evaluation factors.

Blind scoring methods must be used for technical and cost factors. An agency may request in its Petition for Relief from CSB to reveal offeror identities prior to judging cost factors.

Technical and cost factors must be judged blind (i.e., without the knowledge of the identity of the offeror), but management factors may be scored with knowledge of the offeror's identity. An agency may request in its petition for relief from CSB to reveal the identity of the offeror prior to judging cost factors. In order to maintain confidentiality, factors that require blind scoring must be submitted separately from those that do not.

Prior to beginning the RFP/RFQ process, an agency must include evaluation factors for the planned procurement in its petition for relief from CSB. According to MISS. CODE ANN. Section 31-7-419 (1972), the evaluation committee should assess offeror responses utilizing the approved evaluation factors. Upon completion of the procurement, the procuring agency must include the evaluation factor score sheets in the final report submitted to PPRB.

Evaluation Committee Requirements

While statute does not dictate the make-up of each evaluation committee, it does establish the principles by which agencies must abide when choosing and operating their evaluation committees.

The evaluation committee members are required to possess the expected experience and qualifications needed to evaluate procurements. Additionally, they must not have any "personal, financial or familial interest in any of the contract offerors or principals thereof."

Statute also dictates that the names of the committee are kept confidential until its evaluation report is issued.

Blind Scoring

Statutory best practices require blind scoring of some evaluation factors.

To ensure confidentiality, MISS. CODE ANN. Section 31-7-417 (1972) requires that submitted responses are only opened at the designated time of evaluation. Prior to this they must be time stamped, date stamped, and placed in a secure location.

An agency must then choose a designated employee to create a log of all submitted offerors and assign each offeror a unique ID. Names of offerors must remain confidential. No individual involved with the evaluation process should learn the identities of the offerors until factors that require blind scoring (technical and cost factors) have been judged.

Revelation of an offeror's identity during the blind scoring process constitutes a violation of MISS. CODE ANN. Section 31-7-417. Failures to maintain confidentiality at any point in the blind scoring process will result in the termination of the procurement. Once a procurement is terminated, agencies must restart the process.⁷

If blind scoring best practices are violated, the agency withdraws the procurement or PPRB staff recommends that PPRB disapprove the procurement.

⁷ PPRB is instituting a midpoint review and a secondary evaluation committee process. For a discussion of these efforts, see page 20.

How has PPRB integrated procurement best practices into its rules and regulations?

PPRB has integrated the best practices into its rules and regulations, expanding on them in numerous ways in order to inform agencies about the required aspects of the RFP/RFQ process.

The best practices serve as the general provisions for PPRB's rules and regulations regarding procurement procedure. PPRB has used statutory best practices to inform its manual, the *Office of Personal Service Contract Review Rules and Regulations, 2020 Edition*.

Petition for Relief

PPRB's petition for relief form utilizes the factors determining whether a CSB is practicable or advantageous that are established in the best practices.

Additionally, PPRB does not allow agencies to combine procurements contracted through RFP/RFQ with other procurements that are required to proceed through CSB.

Requirements and Specifications of RFPs/RFQs

PPRB dictates that agencies must include the following in all RFPs/RFQs:

- types of services required;
- a description of work involved;
- minimum qualifications required;
- an estimate of when and how long services will be required;
- type of contract to be used;
- a date by which RFPs/RFQs must be submitted;
- a statement that the proposals must be in writing;
- a statement that offerors may designate those portions of the proposals or qualifications which contain trade secrets or other proprietary data which may remain confidential;
- a statement of minimum information the proposal must contain;
- factors to be used in evaluation and selection process; and,
- a statement that the RFP or RFQ, its amendments, the offeror's proposal or qualification, and the agency's best and final offer shall constitute the contract.

This list represents the minimum requirements. Procuring agencies may provide more information if desired.

PPRB notes that these are the minimum requirements, and that procuring agencies may include more information if so desired.

Blind Scoring

To uphold requirements of concealing the identities of offerors laid out in MISS. CODE ANN. Section 31-7-417, PPRB's requirements for evaluation factors and evaluation committees are more detailed than those of the best practices.

In addition to choosing a designated person to compile the register of proposals or qualifications, PPRB also specifies the information agencies must conceal in order to adhere to PPRB's rules and regulations for blind scoring. PPRB lists the following factors as prohibited information:

- prior, current, or future names or addresses of the offeror;
- names of incumbent staff;
- prior, current, or future logos;
- watermarks;
- company colors; and,
- any information which identifies the offeror as an incumbent.

PPRB reinforces the best practices assertion that in the event this identifying information is revealed, the procurement will be terminated and agencies are then required to resolicit the RFP/RFQ and restart the entirety of the process. In addition to this, PPRB notes that the designated person to whom identifying information has been revealed cannot, under any circumstance, serve on the evaluation committee.

How well have the procurement best practices worked?

The statutory nature of the best practices has been problematic because PPRB staff does not have discretion to recommend approval of procurements with best practices violations. For example, in instances of some blind scoring violations, the procurement is often not recommended for approval even if, in spite of the violations, the procurement would have been competitive.

DFA staff noted that while the best practices themselves have worked well, the statutory nature of the best practices has been problematic. Because the best practices are mandated in state law, PPRB staff does not recommend approval for procurements with best practices violations, even if, in spite of the violations, the procurement would have been competitive.

From January 2018 through June 2022, the three most common violations made against the best practices statute were:

- blind scoring violations;
- violations against public notice or publication of documents; and,
- instances in which an agency failed to obtain petition for relief from competitive sealed bidding from PPRB.

Notably, instances of failure to receive petition for relief have not occurred since June 2020. Therefore, the remaining discussion will address only issues with blind scoring and requirements regarding public notice and publication of documents.

Blind Scoring

Procurements have not been approved (e.g., withdrawn or recommended for disapproval) due to blind scoring violations more often than for any other best practice violation.

MISS. CODE ANN. § 31-7-417 (2) states in part:

If the designated person reveals the names of the offerers and the corresponding identifying information before such time [as factors not requiring knowledge of the name of the offerer have been evaluated and scored], the procurement process shall be terminated and the proposals or qualifications resolicited.

OPSCR staff notes that responses to RFPs/RFQs often include substantial amounts of information. Due to blind scoring requirements, vendors or agencies are required to redact all references to their identity. According to OPSCR staff, if even one identifying factor is revealed to the evaluation committee during the blind scoring phase, OPSCR staff cannot recommend approval to PPRB.

Public Notice and Publication of Documents

Violations against requirements of public notice or the publication of documents is the second most common reason that a procurement is not approved.

OPSCR staff notes that in cases where a soliciting agency submits a public notice but includes an email address of the officer conducting the procurement rather than a phone number, DFA staff, as part of its responsibility to “monitor agency websites and the Mississippi procurement portal to ensure that the agencies are posting the required notice” under MISS. CODE ANN. Section 31-7-407 (4), has notified the agency of the missing information. In those cases, the agency had time to re-advertise and avoided having to withdraw its procurement. However, DFA often performs this monitoring after it receives the procurement from the agency, and because of this, these violations are not always identified prior to submission for approval.

In other cases where a soliciting agency neglects to post a certain document (such as a pre-proposal conference document) to the Mississippi procurement portal, those procurements will not be recommended for approval.

Policy Issues

This chapter sought to answer the following questions:

- With which best practices have agencies had trouble complying?
- What has been the impact of procurements which were not approved?

With which best practices have agencies had trouble complying?

Between January 2018 and June 2022, 23 of the 32 procurements that were not approved were due to best practices violations. The most common types of best practices violations were blind scoring violations, violations against public notice or publication of documents, and failure to obtain a petition for relief from CSB from PPRB.

As shown in Exhibit 1 on page 13, according to DFA staff, between January 2018 and June 2022, 123 personal or professional services procurements were submitted to DFA, and 91 (or 74%) of those were approved by PPRB. Of the 32 procurements (26%) that PPRB did not approve 23 were not approved because of procurement best practices violations and 9 because of other violations unrelated to best practices. Over the 4.5-year period, 23 out of 123 procurements (19%) were not approved as a result of best practices violations.

PEER did not analyze financial data from Medicaid's attempted procurement with MedImpact Healthcare System because this procurement is currently the subject of administrative review. Therefore, although Exhibits 1 and 2 reflect 23 procurements, that were not approved, Exhibit 3 reflects only 22.

Exhibit 1: Number of Personal Services Procurements Not Approved as a Result of Procurement Best Practices Violations, January 2018 through June 2022

Procurement Method	Submitted	Approved by PPRB	Not approved because of:	
			Best Practices	Other
RFP	94	72	17	5
RFQ	29	19	6	4
Total	123	91	23	9

SOURCE: Department of Finance and Administration.

As shown in Exhibit 2 on page 14, the most common best practices violation resulting in procurements not being approved was violations against the blind scoring statute (MISS. CODE ANN. Section 31-7-417 (2)).

The petition for relief rule went into effect in January 2018. Some agencies may not have known about the rule or may have misinterpreted the rule. There has not been a Petition for Relief violation since June 2020.

The second and third most common best practices violations were violations pertaining to public notice or publication of documents (MISS. CODE ANN. Section 31-7-407 and Section 31-7-423), and agency failure to obtain a petition for relief from CSB from PPRB (MISS. CODE ANN. Section 31-7-403). DFA staff explained that because the best practices statute did not go into effect until January 1, 2018, some agencies may not have known about the new rule requiring a

petition for relief from competitive sealed bidding from PPRB, or may have misinterpreted the rule. As stated on page 12, instances of this violation have not occurred since June 2020.

Exhibit 2: Best Practices Violations, January 2018 through June 2022

Best Practices Violation	Number of procurements
Blind scoring violation	12*
Violation pertaining to public notice, publication of documents, etc.	7
Agency failed to obtain petition for relief from competitive sealed bidding from PPRB	5
Violation involving evaluator certification or conflict of interest affidavit	2
Violation pertaining to evaluation factors	2
Violation pertaining to price factor	2
Violation pertaining to the register of proposals	1
Fair and equal treatment violation	1
Specified language missing from RFQ	1

*This includes the Division of Medicaid's attempted procurement.

NOTE: The best practices violations in this exhibit may overlap among procurements. For example, a single agency's disapproved procurement may have contained violations in more than one category.

SOURCE: Department of Finance and Administration.

What has been the impact of procurements that have not been approved?

The procurements that were not approved due to best practices violations represent an estimated cost of \$271,188 to procuring agencies, with \$224,155 (or 83%) of the cost associated with blind scoring violations. Additionally, DFA identified at least nine out of 22 instances in which procurements not approved due to best practices violations turned into emergency procurements.

PEER analyzed financial data from 13 state agencies⁸ that failed to procure 22⁹ contracts due to one or more best practices violations from January 2018 to June 2022. PEER requested the following information:

- number of staff who worked on the procurement;
- salaries of staff;
- estimated time the agency spent on issuing the procurement; and,
- average time each staff member spent working on the procurement.

PEER utilized the information pertaining to staff, salaries, and work hours provided by the agencies to estimate the costs related to these procurements that were not approved. PEER estimated the total cost of these 22 procurements to be \$271,188.

Of these 22 procurements, some contained multiple violations, creating multi-layered costs for some types of violations. For example, a single procurement may have had blind scoring violations, violations against public notice/publication of documents, and other miscellaneous violations. Exhibit 3 on page 15 represents the total monetary cost of all best practices violations analyzed.

Exhibit 3: Cost of Best Practices Violations of Surveyed Agencies

Reason for Terminated Procurement	Cost
Blind Scoring	\$132,715
Public Notice/Publication of Documents	\$36,094
Petition for Relief	\$10,651
Other Violations	\$288
Blind Scoring and Other Violations	\$54,382
Blind Scoring, Public Notice/Publication of Documents, and Other Violations	\$37,058
Total	\$271,188

SOURCE: PEER survey data.

⁸ Of the 13 agencies PEER contacted, eight provided financial information. For the other five, PEER estimated financial information. See Appendix A for detailed estimation methodology.

⁹ The 22 procurements that were not approved do not include Medicaid's attempted procurement.

Eleven of these procurements were not approved due to blind scoring violations, resulting in a cost of \$224,155. This cost includes:

- blind scoring violations only: \$132,715;
- blind scoring violations and other violations: \$54,382; and,
- blind scoring violations, public notice/publication of documents violations, and other violations: \$37,058.

Seven of the 22 procurements were not approved due to public notice/publication of documents violations, resulting in a cost of \$73,152. This cost includes:

- public notice/publication of documents violations: \$36,094; and,
- blind scoring violations, public notice/publication of documents violations, and other violations: \$37,058.

Five of the 22 procurements were not approved for failure to have a petition for relief submitted or approved, resulting in a cost of \$10,651.

Notably, PEER has counted the costs of some procurements in more than one category. For example, PEER counts a single procurement that was not approved for having blind scoring violations and violations of public notice/publication of documents as applicable in both categories.

While these estimations do not represent verifiable expenditures agencies incurred when soliciting these procurements, they do represent projected costs associated with best practices violations. The estimated costs were unavoidable once DFA received the procurements for review. Further, the re-solicitation of procurements that are not approved resulted in added procurement costs to agencies that might have been avoided if DFA had the authority to make judgments regarding minor errors.

Emergency Procurements

Many of the procurements that receive a recommendation of disapproval by OPSCR staff due to best practices violations turn into emergency procurements. When these procurements are not approved, they sometimes result in a potential loss of necessary or depended-upon services, and in turn the procuring agency often issues an emergency procurement instead of restarting the RFP/RFQ process. Due to the nature of the emergency procurement process, these procurements are often procured with an expedited timeframe and little oversight from PPRB or other agencies. DFA identified at least nine emergency contracts that resulted from technical violations. One such procurement resulted in a \$1.2 million per year increase in cost.

DFA identified at least nine out of 22 instances in which procurements not approved due to best practices violations turned into emergency procurements.

For more information on the process for emergency procurements, see PEER's 2021 report *State Government Purchasing: A Biennial Review of State Procurement* (Report 664).

Central Procurement Offices in Other States

This chapter sought to answer the following questions:

- Over what procurements do other states' central procurement offices have authority and oversight?
- What types of procurements are exempt from central procurement office authority in other states?
- Do central procurement offices in other states delegate authority to state agencies during the procurement process?

Over what procurements do other states' central procurement offices have authority and oversight?

All states have adopted legislation creating a central procurement office, but the oversight and authority of those offices to regulate the procurement process vary based on the scope of their enabling legislation.

In order to address similar concerns to those discussed in this report, other states have chosen to centralize their procurement under a single authority. The following is a brief discussion on centralized procurement across the United States.

As detailed in *The Survey of State Procurement Practices* for 2016, 2018, and 2020, compiled by the National Association of State Procurement Officials (NASPO), the majority of states have central procurement offices with authority over all areas of procurement within the state. As shown in Exhibit 4 on page 18, since 2016, states have been transitioning to a procurement model under which all areas of state procurement fall under the jurisdiction of a single central procurement office. In its most recent survey, only five (14%) of the responding states (including Washington, D.C.) reported having a central procurement office that lacked authority over all areas of procurement within a state.

Exhibit 4: State Central Procurement Office Authority

Survey Year	Central Procurement Office	
	Authority Statewide (%)	Lacking Authority Across All Procurements Statewide (%)
2016	74%	26%
2018	75%	25%
2020	86%	14%

SOURCE: *The Survey of State Procurement Practices for 2016, 2018, and 2020*, National Association of State Procurement Officials.

What types of procurements are exempt from central procurement office authority in other states?

According to NASPO's 2020 survey, other states report exempting procurements made by the judicial and legislative branches, university systems, transportation offices, and political and constitutional offices, from the authority and oversight of a central procurement office.

Not all states grant central procurement offices authority over all types of procurement within their state. As outlined in the 2020 NASPO survey, the judicial and legislative branches and university systems in most states are exempt from central procurement office authority and oversight (the judicial branch is exempt in 28 states, the legislative branch is exempt in 30 states, and universities are exempt in 26 states). Additionally, as of the 2020 NASPO survey, 13 states reported transportation being exempt from central procurement office authority, and 8 states have exemptions for procurements made by political and constitutional offices.

As shown in Exhibit 5 on page 19, the purchasing category of the good or service being sought will dictate the level of authority and oversight a central procurement office will have on that purchase. In instances where stand-alone jurisdiction is not granted to the central procurement office, states employ other types of procurement authority over these purchases, such as joint authority with agencies (depending on the dollar value of the goods and services procured), or a combination of central procurement office oversight and delegation to the requesting agency.

Exhibit 5: Statutory Procurement Authority and Oversight

Purchasing Category	Percentage (%) of Central Procurement Offices with Authority and Oversight		
	2016	2018	2020
Non-technology Goods	89%	83%	94%
Non-technology Services	77%	73%	94%
IT Goods	55%	58%	58%
IT Services	55%	56%	53%
Higher Education	21%	10%	22%
Building Construction	19%	15%	25%
Highway Construction	9%	6%	3%

SOURCE: National Association of State Procurement Officials.

Do central procurement offices in other states delegate authority to state agencies during the procurement process?

According to NASPO's 2020 survey, 34 states have statutory or regulatory authority to delegate portions of their authority to other state agencies.

Procurement delegation outlines the power and ability of a state agency or entity to issue solicitations and make contract awards without the approval of that state's central procurement office. Defined in either statute or regulation, procurement delegation allows or requires the central procurement office to delegate portions of their authority to other state agencies during the procurement process. Some states allow for high or unlimited levels of delegation authority, but may require some level of review of bid documents and approval by the central procurement office. Generally, delegation authority is tied to dollar/value of the desired contract item or service, and will be dependent on the type of procurement, the agency delegation authority, a statewide contract, and an expectation that the contract be used by state agencies. According to NASPO's 2020 survey, 34 states have statutory or regulatory authority to delegate portions of their authority to other state agencies.

Next Steps and PEER Recommendations

This chapter sought to answer the following questions:

- How is DFA addressing policy issues?
- What does PEER recommend?

How is DFA addressing policy issues?

In order to address the causes of the procurements not approved due to best practices violations, OPSCR staff has initiated a midpoint review to detect technical violations before the agency evaluation committee scores the procurement. Alternatively, OPSCR staff is considering the utilization of a secondary agency evaluation committee in instances where OPSCR staff discovers a technical violation after the initial agency evaluation committee has already scored the procurement.

Midpoint Review

OPSCR staff noted that in order to prevent procurements from not being approved because of minor errors—such as certain blind scoring violations—it will begin implementing a midpoint review. A soliciting agency will be able to submit its procurement(s) to OPSCR before the evaluation committee begins its scoring process. OPSCR would be able to catch errors before the procurement has been evaluated and scored.

One consequence of this, however, is that it will potentially increase OPSCR’s workload because it could require OPSCR to review proposals multiple times. In addition to this, the midpoint review will be done on a rolling basis, meaning that DFA will have to perform midpoint reviews more often than it typically performs the final reviews. OPSCR staff noted that if an agency chose to take advantage of the midpoint review and stop its procurement to send documents to OPSCR for review before moving forward, it would affect the agency’s procurement timeline. However, because the midpoint review is a new experimental offering, no data exists on its efficiency or effectiveness at this time. OPSCR will initially implement the midpoint review on a trial-basis to determine how well it works.

Secondary Evaluation Committee

An alternative solution suggested by OPSCR staff to mitigate unnecessary disapproved procurements—particularly resulting from blind scoring violations—is to create a secondary evaluation committee. If OPSCR staff discovers a blind scoring violation after the procurement has already been evaluated by the soliciting agency’s initial evaluation committee, OPSCR staff could send the procurement back to the agency. The agency could then correct the error and submit the corrected procurement to a new evaluation committee. In situations where an agency does not have enough people to form a new evaluation committee, it could use individuals from other agencies who are knowledgeable about the subject matter.

What does PEER recommend?

1. DFA should:
 - a. implement the midpoint review and the secondary evaluation committee as means of corrective action for policy issues noted in this report (e.g., blind scoring violations); and,
 - b. evaluate the success of the midpoint review, and if successful, return to the Legislature during the 2024 Regular Legislative Session to update the PEER Committee and the Senate and House Accountability, Efficiency, and Transparency Chairmen on its progress.
2. DFA should build a series of information quick reference guides and make them easily accessible on its website which detail:
 - a. a step-by-step guide to the RFP/RFQ process;
 - b. important RFP/RFQ requirements; and,
 - c. a general Frequently Asked Questions section for the RFP/RFQ process.

Appendix A: Methodology Utilized to Estimate Survey Responses

The following agencies, and their responses, were utilized as models in order to estimate costs in an accurate, reliable manner:

1. Mississippi Department of Revenue;
2. Ellisville State School;
3. Boswell Regional Medical Center; and,
4. Mississippi State Hospital.

The following factors were considered in order to determine which model could be used to estimate an unresponsive agency's potential incurred cost:

1. Size of the agency;
2. Original value of the failed RFP/RFQ; and,
3. Type of contractor and services provided.

Once a determination was made on which model would be utilized, a comparative value was made between the value of the model response's original contract value and the value of the unresponsive agency's contract.

- For example: If the model agency's contract was valued at 4,000,000, and the unresponsive agency's contract was valued at 500,000, a comparative value of 12.5% was assumed.

Once the comparative value was found between the model and unresponsive agencies, other factors were adjusted as well.

- For example: If the model agency had an employee working on the contract for 100 hours, the unresponsive agency was assumed to have an employee working on their contract for 12.5% of that time, or 12.5 hours. For the sake of simplicity, all hour estimations were rounded to the nearest whole number, making 12.5 hours, 13 hours.

This methodology was utilized throughout the RFP/RFQ cost estimation in order to generate the estimated costs incurred by unresponsive agencies. The following assumptions were made throughout this process:

1. That the unresponsive agency did not encounter significant difficulties during the process.
2. That the unresponsive agency utilized the same number of staff as the model agency.
3. That the unresponsive agency operates under a similar pay scale to the model agency.
4. That the unresponsive agency's internal RFP/RFQ methodology did not differ from that of the model agency.

SOURCE: PEER analysis.

Appendix B: Cost of Procurements by Agency

Agency	Procurement(s)	Reason Not Approved or Withdrawn	Cost
Boswell Regional Center	OT Solutions, LLC	Failure to have Petition for Relief approved by	\$277
	Kristen Bevill, M.D.	Failure to have Petition for Relief approved by	\$277
	Wayne Powell, R. Ph.	Failure to have Petition for Relief approved by	\$277
Mississippi Department of Corrections*	Superior protection Services, Inc.	Failure to provide Petition for Relief to PPRB	\$9,007
East Mississippi State Hospital*	Rush Medical Foundation, Inc.	Failure to provide Petition for Relief to PPRB	\$813
	Healthcare Services Group, Inc.	Blind scoring violations Public notice/ Publication of documents violations	\$33,442
Mississippi Department of Education*	Elior, Inc.	Blind scoring violations	\$613
	TempStaff, Inc.	Blind scoring violations	\$3,127
	Teaching Lab	Public notice/ Publication of documents	\$2,850
	GradeSlam America, Inc.	Public notice/ Publication of documents	\$3,535
	GradeSlam America, Inc.	Public notice/ Publication of documents	\$3,535
Ellisville State School	HMP Nursing Services, Inc.	Blind scoring violations Public notice/ Publication of documents violations Multiple other violations	\$3,615
	Robert B. Culpepper*	Public notice/ Publication of documents	\$53
Mississippi Fair Commission*	Republic Services, Inc.	Public notice/ Publication of documents	\$26,122
Mississippi Department of Health	Issues & Answers Network, Inc.	Blind scoring violations	\$35,722
Mississippi Development Authority	Maris, West, & Baker, Inc.	Blind scoring violations	\$5,937
Mississippi State Hospital	Elior, Inc.	Blind scoring violations	\$6,126
	Republic Services, Inc.	Blind scoring violations	\$7,115
North Mississippi State Hospital*	Andrea Garrison, M.D.	Missing information in RFQ	\$288
Mississippi State Personnel Board	Kenning Consulting, Inc.	Blind scoring violations Multiple other violations	\$54,382
Mississippi Department of Revenue	Douglas Express Delivery, Inc.	Blind scoring violations	\$6,926
Mississippi Office of the State Treasurer	Amplify, Inc.	Blind scoring violations	\$67,149
TOTAL			\$271,188

NOTE: Agencies marked with an asterisk (*) are those which required PEER's estimation of costs.

SOURCE: PEER analysis of survey data.

Agency Response

The Department of Finance and Administration reviewed the report and elected not to provide a formal agency response, as it noted no issues with the report as written.

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