



PEER
MISSISSIPPI

Joint Legislative Committee on Performance
Evaluation and Expenditure Review



Opportunities for Implementing Increased Centralization in Procurement



MISSISSIPPI DEPARTMENT OF CORRECTIONS

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PEER Committee

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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.



BACKGROUND

History of Centralized Purchasing

In an article¹ regarding governmental purchasing published in 1924, the authors noted that discussions of centralized purchasing have dated back to the founding of United States. Treasury Secretary Alexander Hamilton advocated for a centralized purchasing regimen for military supplies in 1792.

According to the article, by the early twentieth century, advocates for centralized purchasing argued that just as centralized management benefitted growing government programs, centralized purchasing could also benefit the same programs by providing resources more efficiently than decentralized systems.

At the time the article was written, 36 states of the union and several municipalities and Canadian provinces had adopted centralized procurement for commodity items.

Purpose of Issue Brief

This issue brief addresses the question: Would increasing centralization in procurement offer increased efficiency to Mississippi state government?

Specifically, this issue brief addresses the following matters:

- What is centralized purchasing?
- To what extent have other states adopted centralized purchasing?
- How has purchasing management and oversight in Mississippi evolved?
- What opportunities are there for increased efficiency through increased centralization of purchasing?
- What actions can the Legislature take to enable the state to take advantages of more centralization in procurement?

What is centralized purchasing?

Centralized purchasing or centralized procurement is a system where a single team or a department handles all the purchasing or procurement for the organization.

PEER Report #672, *A Review of State Agency Procurement*

In September, PEER released a report that discussed procurement in Mississippi. This report documented instances in which agencies procuring personal services contacts failed to comply with procurement laws and regulations incurred financial losses due to non-compliance.

¹ "Centralized Purchasing in Governments of United States and Canada." Author(s): Russell Forbes, *The Annals of the American Academy of Political and Social Science*, Vol. 113, Competency and Economy in Public Expenditures (May, 1924), pp. 272-286.

Advantages of Central Purchasing

According to the Chief Procurement Officer of Maine, central purchasing encourages responsibility with state funds and inspires public confidence in state purchasing efforts.

The most succinct recent statement regarding the advantages of centralized purchasing was published by the state of Maine. According to Maine's Chief Procurement Officer:

When functioning properly, a central procurement program reduces the cost of government by:

- *Eliminating inconsistent practices and procedures that confuse vendors and discourage them from competing.*
- *Reducing the need for duplicative resources by developing capability and expertise that most other agencies cannot afford to develop.*
- *Inspiring public confidence in government by placing someone in charge of a system that spends vast amounts of public funds.*
- *Serving as the government's meaningful link to the business community.*

Central purchasing programs such as the Maine Division of Purchases generate substantial savings for all of a state's public entities by reducing administrative costs and lowering prices. Costs are lowered by leveraging the consolidated needs of all state public entities and allowing industry to benefit from the accompanying economies of scale. The State's overall administrative costs are lowered by reducing the number of competitive processes conducted. The savings that result should substantially exceed what any individual entity could achieve, but success depends both on an agency's commitment to use these contracts and on active participation in their development.

In addition, a strong central procurement office facilitates participation in a competitive process (public or private) that often involves a significant financial investment on behalf of the private sector. The business community's willingness to risk that investment depends on its confidence in the fairness of a competitive process that stems largely from a well-developed set of rules administered by a strong central procurement entity.²

In summary, central purchasing creates savings by eliminating inconsistent practices and duplicative purchases. It also supports public confidence in state purchasing efforts.

Central Purchasing and Procurement in Other States

All states have a central procurement office, but authority of each office varies based on its enabling legislation. In most states, judicial and legislative branches as well as university systems are exempt from the oversight of the central procurement office. According to the National Association of State Procurement Officials, 34 jurisdictions have statutory or regulatory authority to delegate portions of their authority to other state agencies.

² Division of Procurement Services Website, State of Maine.

This section discusses the following three 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 procurement practices varies based on the breadth of their enabling legislation.

While all states have a central procurement office, the authority granted to these offices varies greatly depending on the types of procurements included within their enabling statutes. As detailed in *The Survey of State Procurement Practices* for 2016³, 2018⁴, and 2020⁵, 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 1 on page 3, since 2016, the prevailing trend among states has been a transition to a procurement model under which all areas of procurement within a state fall under the jurisdiction of a single central procurement office. In its most recent survey, only 14%, or 5, of the responding jurisdictions reported having a central procurement office that lacked authority over all areas of procurement within a state.

Exhibit 1: State Central Procurement Office Authority

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

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

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

As outlined in the 2018 NASPO Survey, the judicial and legislative branches, and university systems in most states are exempt from central procurement office authority and oversight (judiciary exempt in 28 jurisdictions, legislative exempt in 30 jurisdictions, and universities exempt in 26 jurisdictions). Additionally, as of the 2020 NASPO Survey, 13 states reported having transportation being exempt from central

³ 2016: 47 total respondent jurisdictions, 5 non-respondent jurisdictions.

⁴ 2018: 48 total respondent jurisdictions, 3 non-respondent jurisdictions.

⁵ 2020: 36 total respondent jurisdictions, 37 complete or partially complete respondent, and 2 portion responses.

procurement office authority, and eight states have exemptions for procurements made by political and constitutional offices.

As shown in Exhibit 2 on page 4, 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. This, again, is a function of the enabling statutes granting authority to the central procurement office. In instances where stand-alone jurisdiction is not granted to the central procurement office, states will 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 central procurement office oversight and delegation to the requesting agency.

Exhibit 2: Statutory Procurement Authority and Oversight

Purchasing Category	Number of Central Procurement Offices with Authority and Oversight (2016)	Number of Central Procurement Offices with Authority and Oversight (2018)	Number of Central Procurement Offices with Authority and Oversight (2020)
Non-Technology Goods	42	40	34
Non-Technology Services	36	35	34
IT Goods	26	28	21
IT Services	26	27	19
Higher Education	10	5	8
Building Construction	9	7	9
Highway Construction	4	3	1

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

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

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 levels or unlimited 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, and a statewide contract and an expectation that it be used by state agencies. According to NASPO’s 2020 *Survey*, 34 jurisdictions have statutory or regulatory authority to delegate portions of their authority to other state agencies.

Evolution of Procurement Oversight in Mississippi

Mississippi has evolved from a highly decentralized state with limited restrictions on procurements to one with a central authority empowered to adopt procurement rules and policies that agencies must follow to procure commodities.

Commodities

Mississippi passed its first laws addressing procurement standards for commodities in 1922. These new laws created a decentralized system with limited legal requirements. Each agency was required to obtain bids for supplies, and selections were to be made on the basis on the lowest price. No state agency was empowered to oversee agency procurements, and services were not addressed by these procurement laws.⁶

The practice of completely decentralized procurement environment was changed in 1962 with the adoption of Chapter 497, *Laws of 1962*. This legislation, a direct forerunner of our current laws on commodities procurement, mandated:

- the Commission on Budget and Accounting establish commodities procurement rules for state agencies;
- the adoption of a broad definition of commodities to embrace not only supplies, but also equipment, furniture, and automobiles; and,
- the assignment of dollar value thresholds as triggers for mandatory bidding.

The legislation also authorized the Commission on Budget and Accounting to enter into state contracts for commodities.

Currently, DFA oversees agency procurement of commodities by establishing rules and regulations. DFA also establishes contracts for certain agencies procuring commodities.

The 1962 legislation created a structure similar to the one Mississippi uses today. It included rules, bid requirements, state contracting and a broad definition of commodities that remains in force and effect today. At present, the Department of Finance and Administration (DFA) is charged with the

responsibility of overseeing the procurement of agency commodities. This is done through establishing rules and regulations governing procurements, and through the establishment of state contracts for certain commodities from which agencies obtain many of the commodities they require. Special rules are in place for vehicle procurements to ensure that agencies obtain only the vehicles they need. Each agency is required to understand the procurement laws and regulations and to know what types of procurements require competitive bids or quotes prior to making a procurement.

Procurement of commodities (including information technology equipment) requires a considerable amount of state resources. According to DFA, the total amount of state resources expended by agencies for commodities procurements in excess of \$50,000.00 for the fiscal years FYs 2018 through 2022 was \$773,887,753.75

Information Technology and Communications

Mississippi has established a system that authorizes the Department of Information Technology Services (ITS) to manage the process by which agencies procure IT equipment and services.

In 1968, the Legislature enacted Chapter 498, *Laws of 1968*, to establish the Central Data Processing Authority (CDPA). Governed by its Board, this agency was responsible for:

- planning for the state's data processing and telecommunications needs;
- overseeing agency procurement of information technology (IT) equipment and services; and,

⁶ Chapter 248, *Laws of 1922*. See also Section 6061, *Mississippi Code of 1930*.

- developing cooperative agreements between agencies regarding the joint use of computer systems.

In 1968, large mainframe computers were expensive forms of equipment compared to modern computers. Sharing arrangements had the potential to assist agencies in keeping their data processing costs down.

Over time, the CDPA has evolved into ITS. ITS continues to control agency IT equipment and services procurement by overseeing the development of requests for proposals and other documents. Since its inception, however, the agency has altered its strategy somewhat in overseeing IT procurements. Significant changes have included:

- the development of express products lists (EPLs) from which agencies may procure system hardware and software; and,
- procurement thresholds for obtaining quotes and bids which match those used by DFA for commodities procurement.

Additionally, the agency has also provided other services to agencies, including:

- state-provided computer services (an early service originally provided by CDPA);
- data centers that agencies may use (and in some cases may be required to use) with central servers managed by ITS; and,
- telecommunications services, which were transferred to ITS from CDPA in the 1984 as required by Chapter 488, *Laws of 1984*.

Procurement of Personal Services

Initially, the process for procurement of personal services was highly decentralized with little regulation and oversight. Currently, individual agencies must prepare their procurements in conformity with state laws and rules developed by the Public Procurement Review Board. 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 (PPRB).

Prior to 1997, state agencies had considerable latitude in their ability to select contractors to perform personal services. Agencies hiring state service personnel only had to obtain approval from the state personnel director, for such contracts, with the latter only having the authority to disapprove contracts when the agency had staff who could reasonably be expected to be able to perform the functions of the contractor. This limited oversight was criticized by PEER in its 1994 report to the State Personnel Board.⁷ The 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. This board, consisting of five state agency directors, had the authority to set standards or the procurement of certain personal for revives. 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. The board was housed with the State Personnel Board, and the State Personnel Director served as the chair of the board.

⁷ A Performance Evaluation and Expenditure Review of the State Personnel Board, September 14, 1994. (Report #313)

In 2017, the Legislature gave the duties of the Personnel Services Contract Review Board to PPRB and required that personal services contracting be governed by a set of legislatively mandated best practices to ensure competitive processes in contractor selection. See Chapter 400, Laws of 2017. These steps were taken to make the process of review more efficient and further to ensure consistent application of competitive selection processes. Personal services contracts with a value in excess of \$75,000 must be approved by PPRB prior to their becoming effective. Agencies are required to follow the mandatory best practices as a precondition to completing a procurement of services. Thus, Mississippi has established authority for central oversight of agency personal services contracting from most agencies in instances where the value of the contract exceeds \$75,000.⁸

PPRB must approve all personal services contracts costing more than \$75,000.

According to DFA, personal services contracting has a considerable impact on state resources. For the most recently completed fiscal year (i.e., FY 2022), state agencies spent approximately \$16,760,000,000 on personal services contracts exceeding \$75,000.

What opportunities are there for increased efficiency through increasing centralization of procurement?

Increased centralization in personal services contract procurement could result in more efficient control over the procurement process thereby saving agency funds, and eliminating delays in contract approval.

As noted previously, the Legislature has placed the responsibility of reviewing and approving agency requests for personal services contracts exceeding \$75,000 with PPRB. PPRB has policies and procedures governing its approvals.

MISS. CODE ANN. Section 31-7-401 et seq., sets out best practices for requesting agencies. Currently, individual agencies must develop bid documents, requests for proposals, or requests for qualifications in accordance with these best practices in order to have requests approved by PPRB.

A recent PEER report, *A Review of State Agency Procurement*, (Report #672, September 13, 2022), points out inefficiencies pertaining to agency application of and compliance with personal services contracting best practices and other legal standards governing the procurement of such services. Specifically, the report noted that of the 123 personal or professional services procurements submitted to the PPRB for approval between January 2018 and June 2022, 91 were approved and 32 were disapproved. Of those disapproved, 23 were disapproved because of best practices violations, and nine for other violations.⁹

When a request is disapproved, the agency must respond by investing additional funds to correct the errors. In PEER Report #672, PEER staff estimated that procurements that were not approved cost an estimated \$271,188 to the procuring agency (e.g., staff salaries, fringe benefits).

Additionally, DFA found that in 9 instances in which best practices violations were found, the agencies responded by converting the procurements to emergency procurements. Due to the nature of the

⁸ Exempted are state government agencies and entities that hire exclusively non-state services personnel. This effectively removes the personal services contracting of the Legislative and judicial branches from the scope of these requirements.

⁹ In these other cases agencies could not establish that they were accepting the lowest and best offeror, or made some error in publishing notice.

emergency procurement process, these procurements are often procured with an expedited timeframe and little oversight from PPRB or other agencies. As reported in PEER Report #672, one such emergency procurement resulted in a \$1.2 million per year increase in cost.

Increased centralization in personal services contract procurement could result in more efficient control over the procurement process thereby saving agency funds, and eliminating delays in contract approval.

Recommendation

The Legislature should amend MISS. CODE ANN. Section 27-104-7 (1972) to provide that PPRB shall require that the staff of DFA shall do all things necessary to conduct personal services contracting solicitations in excess of \$75,000.00 for the Department of Marine Resources; the Department of Wildlife, Fisheries, and Parks; the Mississippi Emergency Management Agency; the Department of Public Safety; and the Mississippi Development Authority with assistance from the departments set out above. The authority to perform these functions shall become effective on July 1, 2024. Additionally, the Appropriations Committees should give consideration to DFA's requests for any additional resources necessary to carry out these functions.

Additionally, the Legislature should ensure that all vendors with an office in the state of Mississippi may compete for personal services and other contracts without regard to the office's location in the state.

Agency Response

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

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