



PHIL BRYANT
GOVERNOR

June 26, 2015

**Task Force on Contracting and Procurement in the Mississippi Department of
Corrections**

Final Report to Governor Phil Bryant

**In Fulfillment of the Charge of Executive Order 1346 of November 7, 2014,
and Governor Phil Bryant's Directive Letter of November 14, 2014**

The Task Force on Contracting and Procurement in the Mississippi Department of Corrections (the "Task Force") submits this final report of its work, and final recommendations.

The Task Force was formed by virtue of the authorities identified above, and officially named by Governor Phil Bryant on November 21, 2014. Members of the Task Force are Co-Chairmen Andy Taggart and Robert Gibbs, Bill Crawford, Constance Slaughter-Harvey and Mike Moore.

The Task Force held three meetings in December of last year, resulting in the publication of its preliminary recommendations on December 31, 2014. The Task Force has since met on January 9, January 23, February 6, May 1, June 4, June 19 and June 26, and at each meeting heard from public officials or agency directors concerning the manner in which contracting and procurement had been and is now being conducted. In addition to those working meetings, the Task Force held public hearings on March 7 and March 20, during which many citizens raised a wide range of concerns, focused primarily on family members who were inmates. Comments

were also provided during the public hearings by current and prospective vendors of products and services to MDOC, as well as by organizations concerned with a wide range of corrections policy issues.

Though many of the challenges about which public comment was offered caused grave concern among members of the Task Force, the scope of the work given the Task Force in its original commission required a careful focus on contract and procurement related issues. From start to finish in its work, the Task Force fixed its goals as providing enhanced safeguards for taxpayer dollars, and fostering significant movement toward restoring the confidence of the people of Mississippi in the operations of their state government.

Governor Bryant also sought feedback from the Task Force on his choice as the new MDOC Commissioner, Marshall Fisher. Based on Mr. Fisher's stellar experience, the Task Force provided positive feedback to the Governor. Since Mr. Fisher has assumed the position of Commissioner, the Task Force has found him to be forthcoming, forward-thinking, transparent, and fully committed to restoring integrity, efficiency, and professionalism to MDOC operations.

The final recommendations that follow are offered in the hopes of achieving the Task Force's assigned goals in at least some measure.



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Task Force on Contracting and Procurement in the Mississippi Department of Corrections

Final Recommendations

June 26, 2015

At its regular meetings, the Task Force gained much insight into the public procurement process in Mississippi. On December 31, 2014, the Task Force issued initial recommendations to the Governor. Many of those recommendations were considered and acted upon by the Legislature. They are set forth in H.B. 825, H.B. 400 and S.B. 2400 of the 2015 Regular Session of the Legislature. Since the Legislature acted, the Task Force has continued to review contracts and gather input. The Task Force offers the following recommendations for further improvement of the public procurement process in Mississippi.

1. The Task Force recommends that the Legislature by statute, the Governor by executive order, or the State Personal Service Contract Review Board by regulation require contractual warranties and representations from each vendor entering a personal or professional service contract with a state agency that no consultant has been or is to be retained by the vendor in connection with the securing of the contract or the provision of goods or services under the contract, or, if a consultant has been retained by the vendor, fully identifying by name, services provided and fee paid to and received by each consultant retained by the vendor, in a manner similar to reporting requirements for lobbyists and lobbyists' clients under Mississippi law.

2. The Task Force recommends that the Legislature by statute, the Governor by executive order, or the State Personal Service Contract Review Board by regulation require contractual warranties and representations from each vendor entering a personal or professional service contract with a state agency, identifying by name and address each principal of the vendor owning or controlling a greater than 5% interest in the vendor's business.

3. The Task Force recommends that the Legislature by statute, the Governor by executive order, or the State Personal Service Contract Review Board by regulation require all businesses desiring to enter into personal or professional service contracts with the State to register as vendors with the Secretary of State. Demonstration of proof of registration should be required of prospective vendors at the beginning of any procurement process.

4. The Task Force recommends that the Legislature by statute, the Governor by executive order, or the State Personal Service Contract Review Board by regulation require that MDOC become a “certified purchasing office.” This certification requires that at least half the staff in an agency’s purchasing department receive national certification and for all staff to attend annual training. After reviewing a number of MDOC RFPs during its term of service, the Task Force believes the RFP process at MDOC needs improvement. Obtaining “certified purchasing office” should be part of that improvement. The PSCRB should consider requiring this certification for all agencies that issue complex and/or costly RFPs.

5. The Task Force recommends that among the first actions of the reconstituted State Personal Service Contract Review Board should be a review of existing procurement rules and the development of recommendations for improvement. In particular the board should provide for diligent review of agency RFP evaluations and awards.

6. The Task Force recommends that the Legislature reconsider the language in House Bill 825 of the 2015 Session, regarding the voting membership and quorum and passage requirements for the reconstituted Personal Service Contract Review Board. When the director of the Department of Finance and Administration was added as an *ex officio* member of the board, the membership of the board was increased from five to six. The bill establishes a quorum as three members and the number required to pass a motion as three, inclusive of the director of the Personnel Board. Three members do not constitute a majority of a six member board. Either the quorum and passage numbers should to be changed to four, or, if so intended, the status of the director of DFA should be changed to “*ex officio* and non-voting member.”

7. The Task Force recommends that the Legislature remove or extend the new requirement included in House Bill 825 of the 2015 Session that an agency request shall be deemed approved if the Personal Service Contract Review Board does not act within 30 days of submission of a contract. If a time limit is needed, a 45 day limit from submission would be more practicable, and still not work undue inefficiencies in the management of the contracting process.

8. The Task Force recommends that the Legislature add and fund positions needed by PSCRB to properly review contracts submitted by agencies. The short deadline to act (see item #7), and the provision in H.B. 825 lowering the threshold of contracts for PSCRB to review from \$100,000 to \$75,000, threaten to leave the agency short-staffed. In partial response, the director of the Personnel Board said she may have to eliminate RFP preview services the PSCRB currently provides agencies; this would be contrary the improving the public procurement process.

9. The Task Force recommends that the Legislature by statute eliminate all statutory exemptions from the bid process for MDOC contracts totaling \$75,000 or more, or that the Governor by executive order require MDOC to use the competitive bid process even where not statutorily required.

10. The Task Force recommends that the Legislature give the State Personal Service Contract Review Board or other appropriate agency authority to review and approve agency “net-of-fee” contracts.¹ At this time contracts of this nature, such as the MDOC commissary contract in effect at the time the Task Force was commissioned by the Governor, do not come under the authority of any contract review agency.

11. The Task Force recommends that the Legislature by statute, the Governor by executive order, or the State Personal Service Contract Review Board by regulation require that the analysis for the award of personal and professional service contracts be posted online at the time each executed State contract is posted online.

12. The Legislature by statute, the Governor by executive order, or the State Auditor by request should require state agencies to post in their workplaces notices

¹ A net-of-fee contract is one for which revenues generated through the contract pay the costs incurred by the contracts, i.e., no state funds are expended out of pocket.

describing the State's Auditor's fraud hotline and website (1-800-321-1275; <http://www.osa.state.ms.us/fraud.html>) in the same manner they post federal and state employment information.”

13. The Task Force recommends that the Legislature by statute require the appropriate state agency (*e.g.*, Office of State Auditor or Ethics Commission) to conduct financial status reviews of state agency heads at least every four years, with potential problems reported to Attorney General for investigation. Additionally, more detailed annual financial disclosure should be required of state agency heads.

The Task Force held regular meetings to gather input from agency heads and staff. The newly appointed MDOC Commissioner reported to the Task Force that his top priority would be to transform his low-paid, poorly trained correctional officers into a highly trained, professional Force. He said it would take such training – plus higher pay – to reduce the enticement of corruption from his workforce.

- The Task Force believes that corruption at the lowest levels creates a culture that invites corruption throughout the MDOC system, including the procurement process. To help stamp out such corruption, we encourage the Legislature to fund the Commissioner's request at a level that will allow him to realign salaries of correctional, probation, and parole officers to a level competitive with other law enforcement agencies.

The Task Force held public hearings attended by many citizens, and received many hours of comment from family members of inmates. Many of the issues raised were not within its purview, but the Task Force considers them significant and worthy of consideration:

1. The Task Force recommends that the Legislature establish a Prison Advisory Council, supported by per diem funding, to regularly hold public hearings on prison operations and report its findings to the Governor and Legislature for consideration.

2. A specific issue raised many times during the hearings and a great many times in written comment was that House Bill 585 of the 2014 Regular Session of the Legislature does not have retroactive effect. Thus, inmates incarcerated prior to July 1, 2014 are treated differently from inmates incarcerated a day or a month later. The Task

Force recommends that the Legislature study this dichotomy to see if some adjustment in the interest of even-handedness should be made.

Finally, the Task Force believes there is a need for additional review and investigation in other respects, and, consequently, the Task Force recommends the Legislature request its PEER Committee to conduct reviews and publish analyses of:

1. The management, functionality and compliance with law at Walnut Grove Correctional Facility;
2. The provision of commissary services in all correctional facilities, and the historical decision to privatize commissary services rather than manage those services as a component of facility management;
3. The true value to the State of privatized correctional operations compared to State-run operations, and the relative benefits or costs associated with privatization.
4. Any statutes that exempt agency contracts, such as the “net-of-fee” contract described in item #10, above, from oversight by any contract review agency.