



State of Mississippi

A Disclosure of Emergency Purchases Made by State Agencies In Fiscal Year 2002

From the Office of State Auditor

Phil Bryant

August 30, 2002

Report Summary

Section 31-7-13 (j) of the Mississippi Code of 1972 Annotated, allows state agencies to circumvent state purchasing laws for instances where delays created by these procedures would be detrimental to the state.

During fiscal year 2002, eleven (11) state agencies reported to DFA, Office of Purchasing, seventeen (17) such emergency purchases at a cost of \$703,314.65. (Detailed list included in the report.) Documentation for these purchases is required to be submitted to DFA-Purchasing, where DFA reviews these documents for completeness.

Additionally, reported to DFA, Bureau of Buildings, Grounds and Real Property in fiscal year 2002, twenty-one (21) emergency purchases were made at a cost of \$1,874,499.78 by thirteen (13) state agencies.

And additionally, reported to Information Technology Services in fiscal year 2002, eight (8) emergency purchases were made at a cost of \$208,833.03 by three (3) state agencies.

During our review the following was found:

- ▶ Disclosure forms filed by state agencies with DFA - Purchasing for emergency purchases do not clearly indicate the state agency manager's signature on documents is under oath, as required by state law.
- ▶ State agency purchases of computer and telecommunications equipment and services on an emergency basis are filed with Information Technology Services rather than with DFA - Purchasing, as required by state law.

www.osa.state.ms.us

PERFORMANCE AUDIT

Office of the State Auditor
Performance Audit Division

**A Disclosure of Emergency Purchases
Made By State Agencies In Fiscal Year 2002**

August 30, 2002

Phil Bryant
State Auditor



STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR
PHIL BRYANT
AUDITOR

August 30, 2002

Senate Fees, Salaries and Administration Committee
House Fees and Salaries of Public Officers Committee
Joint Legislative Budget Committee

Ladies and Gentlemen:

Pursuant to Section 31-7-13 (j), Mississippi Code of 1972, Annotated, the Office of the State Auditor has completed *A Disclosure of Emergency Purchases Made By State Agencies In Fiscal Year 2002*. This disclosure is presented to you in the report published herein.

The Office of Purchasing is authorized and does examine emergency purchase decisions made by state agencies, periodically questions emergency purchases by requesting more information from agencies concerning some emergency purchases, but has no authority to disallow these transactions. The Office of Purchasing ceased maintaining emergency purchase documentation in a method to allow for expedient review during 2001. The accumulation of emergency purchase documentation, for the purpose of expediting this report, was resumed in December 2001, as a result of the previous disclosure of emergency purchases issued December 3, 2001. Accordingly the scope of our work was limited to the emergency purchases as provided by the applicable state agencies and then provided this office by the Office of Purchasing.

I trust that by publishing a report of emergency expenditures for the Legislative Committees and the public, state agencies will remain circumspect in exercising the emergency purchase exception to state purchasing laws thereby making public purchasing more efficient.

Sincerely,

A handwritten signature in black ink, reading "Phil Bryant".

Phil Bryant
State Auditor

Introduction

Purpose

Pursuant to Section 31-7-13 (j), Mississippi Code of 1972, Annotated, the office of the State Auditor (Office) Performance Audit Division (Division) initiated an inquiry concerning emergency purchases made by state agencies. The purpose of this review was to disclose emergency purchases made by state agencies for Fiscal Year 2002.

This report will:

- summarize information on the number and dollar amount of emergency purchases reported by agencies; and
- provide background information on current state law concerning emergency purchases by state agencies.

Scope

The scope of the performance review by statute is all emergency purchases by state agencies for Fiscal Year 2002. However, according to DFA, the Office of Purchasing and Travel, ceased maintaining emergency purchase documentation in a method to allow for review. As a result, Fiscal Year 2002 emergency purchases reported to DFA-Purchasing are available for our review only for the period from December 2001 through June 2002. Upon our request, DFA, Office of Purchasing and Travel agreed to resume maintenance of emergency purchase documentation beginning in December 2001 in a manner that would facilitate this report. For emergency purchases reported by agencies to DFA, Bureau of Buildings, Grounds and Real Property Management and to Information Technology Services, the scope of our review is the entire Fiscal Year 2002.

Method

In conducting the review, the Division performed the following procedures:

- analyzed Mississippi statutes;
- reviewed emergency purchase documentation;
- interviewed appropriate state agency personnel; and
- performed other necessary procedures

Background

State Agencies Must Notify DFA Of Emergency Purchases

State purchasing laws provide an exemption for state agencies experiencing an emergency situation. Section 31-7-13 (j), Mississippi Code of 1972 Annotated states:

“If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable. On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.”

Emergencies Defined By State Purchasing Law

Section 31-7-1 (f), Mississippi Code of 1972 Annotated defines the term, emergency as:

“‘Emergency’ shall mean any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not

general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.”

Information Technology Emergency Purchases

When state agencies make emergency purchases related to computers, telecommunications and other information technology, agencies notify Information Technology Services rather than DFA, Office of Purchasing.

Section 25-53-5 (p), Mississippi Code of 1972 Annotated, describes the powers of Information Technology Services regarding state procurement of telecommunications equipment, software and services by stating:

“When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.”

Based on this statute, Information Technology Services developed the following procurement procedure regarding emergency purchases of information technology by state agencies:

“ITS oversees sole source and emergency information technology procurements consistent with Public Purchasing Laws and guidelines. Agencies and institutions making sole source or emergency purchases should follow Public Purchasing guidelines, sending documentation to ITS rather than to DFA, where Public Purchasing Laws and Procedures prescribe DFA sign-off, approval, or notification.”

However, Section 31-7-13 (j), Mississippi Code of 1972 Annotated requires agencies to file emergency purchase requests with DFA, Office of Purchasing and Travel. Accordingly, Information Technology Services should modify the agency procurement procedures to require agencies to file emergency purchase documentation with DFA, Office of Purchasing.

State Agencies Utilizing the Emergency Exemption From State Purchasing Laws

List of Emergency Purchases Reported By State Agencies To DFA, Office of Purchasing

Table 1 lists emergency expenditures by state agencies for the period December 2001 through June 2002 that were reported to DFA, Office of Purchasing: seventeen (17) emergency purchases by eleven (11) state agencies totaling \$703,314.65.

Table 1

Emergency Purchases Reported To DFA, Office of Purchasing From December 2001 Through June 2002			
State Agency	Amount	Description	Explanation
Corrections Department	\$12,250.00	Heavy Frame Bed and commode/show er chair	Inmate weighing 700 lbs. required extra strength bed
Delta State University	23,260.00	Underground Cable Replacement	Electrical storm damage to electrical power cable
Delta State University	25,388.00	Air Handler Parts	Mechanical failure
Delta State University	259,123.16	Dormitory Furniture	Old dorm water damage caused new dorm deadline
Educational Television	7,850.00	Printing Workshop Guides	Funding delay by another agency caused emergency
Health Department	193,000.00	Offset Press	Mechanical failure
Military Department	3,000.00	Oil Gator Biomediation Bags	Oil spill required action or costs would increase

**Emergency Purchases Reported To DFA, Office of Purchasing
From December 2001 Through June 2002**

State Agency	Amount	Description	Explanation
Military Department	4,872.84	Rental of Portable Building	Rebidding would require dismantling and reassembling costs
Mississippi State Univ.	4,850.80	Repair Gas Line	Leaking gas line
Mississippi State Univ.	88,000.00	Repair Sewer	Sewer line failure
Mississippi State Univ.	4,000.00	Repair Sewer Line Lift Pumps	Mechanical failure
Mississippi State Univ.	20,738.00	Repair Chillers	Mechanical failure
Mississippi Valley State Univ.	19,550.00	Disability Detection System	Accreditation deadline
Pearl River Basin Dev. Dist.	21,022.00	Repair Roof	Storm damage
PERS	102.35	Tire	New tire
Transportation Department	14,407.50	Drawbridge Navigational Lights	Mechanical failure
Wildlife, Fisheries and Parks	1,900.00	Electrical Transformers	Mechanical failure
Total	\$703,314.65		

Source: Department of Finance & Administration / State Agencies

**List of Emergency Purchases Made By State Agencies Through
DFA, Office of Building, Grounds and Real Property Management**

Table 2 lists emergency purchases made in Fiscal Year 2002 by state agencies through DFA, Bureau of Buildings, Grounds and Real Property Management (DFA-Buildings): twenty-one (21) emergency purchases by thirteen (13) state agencies totaling \$1,874,499.78.

Table 2

Emergency Purchases Reported To DFA-Buildings For Fiscal Year 2002		
State Agency	Amount	Description
Alcorn State University	\$86,890.00	Chiller
Alcorn State University	13,958.06	Chiller
Capitol Facilities	34,289.00	New Capitol Security
Corrections Dept.	128,326.00	Chiller
Corrections Dept.	74,422.00	Chiller
Human Services Dept.	15,698.00	Storm Damage
Human Services Dept.	52,764.00	Storm Damage
Human Services Dept.	4,090.22	Storm Damage
Human Services Dept.	13,350.00	Storm Damage
Industries For The Blind	405,000.00	Roof
Institutions of Higher Learning	13,969.00	Chiller
Jackson State University	40,750.00	Sewer Line
Mental Health Dept.	163,000.00	HVAC
Mental Health Dept.	82,900.00	Storm Damage
Mental Health Dept.	333,200.00	Roof
Meridian Community College	146,900.00	Roof
Narcotics Bureau	1,162.50	Roof

Emergency Purchases Reported To DFA-Buildings For Fiscal Year 2002		
State Agency	Amount	Description
Public Safety Dept.	5,156.00	Storm Damage
Public Safety Dept.	71,689.00	HVAC/Chiller
Treasury Department	11,986.00	Cooling air/return
Veterans Home Purchase Board	175,000.00	Retaining Wall & Parking Lot
Total	\$1,874,499.78	

Source: Department of Finance and Administration, Bureau of Buildings, Grounds and Real Property Management

All emergency purchases reported to DFA - Buildings by state agencies fall in the categories of emergency mechanical failures or storm damage, except the purchases by the Veteran's Home Purchase Board and Office of Capitol Facilities.

Veteran's Home Purchase Board had a retaining wall to fail and, as a result, subsequent erosion caused further damage to a parking lot. To avoid further damage to the parking lot and possible damage to the building structure, immediate action was required, according to the agency. This damage occurred at the agency's recently constructed facility.

The Office of Capitol Facilities purchased four metal detectors: two for the State Capitol Building and two for the Woolfolk Office Building. The metal detectors were considered an emergency in light of September 11th security risks.

**List of Emergency Purchases Made By State Agencies Through
Information Technology Services**

Table 3 lists emergency purchases made by state agencies in Fiscal Year 2002 through Information Technology Services (ITS) but not reported to DFA, Office of Purchasing: eight (8) emergency purchases by three (3) state agencies totaling \$208,833.03.

Table 3

Emergency Purchases Reported To ITS For Fiscal Year 2002		
State Agency	Amount	Description
Health Department	\$27,176.33	Broadcast fax server software & maintenance
Health Department	2,052.06	4.2GB SCSI drives
Secretary of State	5,050.00	SQL database maintenance
University Medical Center	79,685.84	Meditech dual server
University Medical Center	66,426.19	CISCO hardware
University Medical Center	21,494.82	CISCO hardware
University Medical Center	3,626.91	SUN hardware
University Medical Center	3,320.88	Single mode fiber install
Total	\$208,833.03	

Source: Information Technology Services

I. Accountability For Emergency Purchases

With no authority to disallow emergency purchase transactions, DFA provides some oversight of state agency emergency purchases but does not provide real accountability over expenditure of these funds. Responsibility for emergency purchases is vested with state agency managers. Due to the inherent nature of an emergency transaction the Legislature has placed sole pre-transaction responsibility for accountability on emergency purchases with state agencies.

The State Auditor's Office supplements public accountability over emergency purchases by annually filing this post-transaction report to the Legislature and the public.

II. State Agency Managers' Certification

Section 31-7-13 (j), Mississippi Code of 1972 Annotated, requires state agency managers to certify under oath in reports filed with the DFA the conditions and circumstances making emergency purchases necessary. State agency managers presently file signed reports with DFA for emergency purchases. However, the disclosure form does not clearly indicate that the state agency manager signed the document under oath nor does the document clearly require adequate explanation of the emergency situation.

The Special Circumstance Approval Form should be modified to address both of these situations an example of which is shown below.

"I certify under oath that an extreme emergency exists to an extent that delay incident to obtaining competitive quotations would be detrimental to the interest of the state. I also have provided to DFA a detailed written statement under oath setting forth the conditions and circumstances related to the emergency."

III. Examples of Apparent Justifiable Emergency Purchases

Mississippi State University made an emergency purchase on April 3, 2002 in the amount of \$4,850.80. The University stated the emergency was caused when a natural gas main was ruptured while preparing a construction site. According to the University, the gas leak was not only dangerous but was preventing progress at the construction site, and required a contractor with appropriate excavation and welding experience and equipment.

The Pearl River Basin Development District made an emergency purchase September 2001 in the amount of \$21,022. The District stated the emergency occurred when the pavilion roof at Columbia Water Park was seriously damaged by heavy winds and rain. According to the District, the damage to the roof was excessive and a threat of additional inclement weather existed. Accordingly, to prevent additional damage to the pavilion an emergency was declared.

Recommendations

- 1. State agency managers file and sign reports to DFA-Purchasing describing emergency purchases. However, the disclosure forms do not clearly indicate that the state agency manager's signature on documents are under oath and that the report includes emergency conditions and circumstances adequately explaining the adverse impact on the state which would result without the emergency purchase. DFA should modify the emergency purchase approval forms.**
- 2. Due to DFA-Purchasing's limited authority with regard to emergency purchases, the agency ceased to maintain documentation of emergency purchases during 2001 in a method to allow for expedient review. Upon our request DFA agreed to resume maintenance emergency purchase documentation separately for review. (Purchases beginning December 2001)**
- 3. State agencies purchasing computer and telecommunications equipment and services on an emergency basis file the emergency purchase documentation with Information Technology Services. DFA, Office of Purchasing is not notified of these emergency purchases. Since state purchasing law (Section 31-7-13 (j), Mississippi Code of 1972 Annotated) requires state agencies to file emergency purchase documentation with DFA, we recommend Information Technology Services modify its agency procurement procedures to require agencies to file emergency purchase documentation with DFA, Office of Purchasing. We recommend state agencies follow the modified Information Technology Services procurement procedures and state purchasing laws by filing copies of computer and telecommunications equipment and services emergency purchase documentation with DFA, Office of Purchasing.**