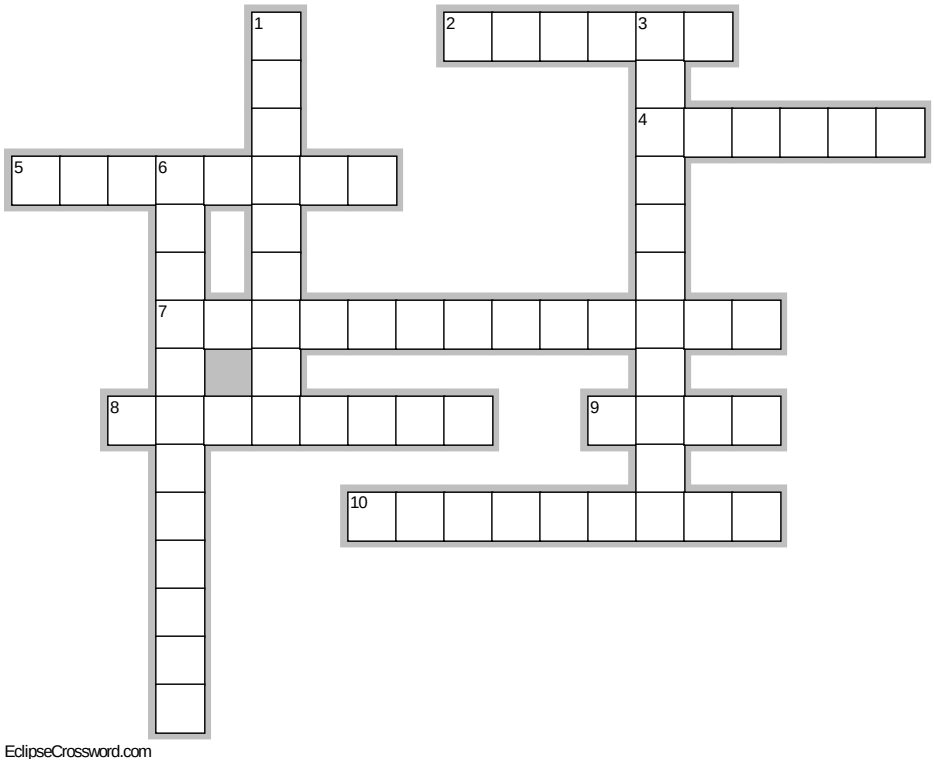
MISSISSIPPI PURCHASING CERTIFICATION PROGRAM

MANUAL

Revised September 2018

Try to complete the crossword puzzle without looking in your book!
(Answers after introduction section, p. 10)



Across

2. State board, committee, or council of the government
4. MS statewide purchasing organization
5. Buying, renting, acquiring of goods or services
7. Description, characteristics of a good or service
8. A payment, advance, or gift for services provided of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received
9. Received from potential providers of goods
10. Earthquake, severe weather, fire, flooding situations

Down

1. Vendor is prevented from obtaining further contracts
3. Encourages favorable pricing among potential providers
6. Process of building, altering, improving renovating or demolishing a public structure

CMPA BASIC PUBLIC PURCHASING OBJECTIVES

OVERALL COURSE OBJECTIVES

- Prepare participants to pass a knowledge test with a score of 70 or higher
- Give participants a broad, general knowledge of Mississippi public purchasing policy and requirements
- Promote ethical practices in public purchasing
- Explain the steps in the procurement cycle
- Help participants understand basic specifications
- Promote best value purchasing
- Compare and contrast bids and proposals
- Understand Logistics
- OPSCR Overview
- ITS Overview

INTRODUCTION

- List the Agencies Within the Mississippi Procurement Organization
- Understand the purpose of the Office of Purchasing, Travel and Fleet Management and its Major Roles
- List Professional Purchasing Organizations
- Understand the purpose of the Procurement Manual

PUBLIC PURCHASING OVERVIEW

- Define Purchasing & Procurement
- Discuss the Basic Principles of Public Purchasing

MISSISSIPPI PURCHASING LAW – IT'S THE LAW

- Identify the most common laws from the MS Code pertaining to purchasing
- Explain the applicability of each section of law

LEGAL AND CONTRACTUAL REMEDIES

- Define key terms
- Discuss protests and actions required by agencies
- Understand suspensions and debarment

STEPS IN THE PROCUREMENT CYCLE

- Identify approved purchasing methods and their characteristics
- Properly assess types of purchases and the appropriate method of purchase

- Review purchasing thresholds
- Properly determine P-1 usage
- Review OPTFM contracts
- Discuss PPRB approval process
- Understand the emergency purchase process
- Understand sole source procurement requirements
- Review utilizing state contracts
- Review the OPTFM website

LOGISTICS

- Shipping
- Receiving
- Disposals

SPECIAL PROCEDURES

- Discuss procedures for procuring petroleum products
- Procedures for open purchase orders
- Purchasing hi-tech and surveillance equipment
- Discuss copier purchases and rentals
- Purchasing commodities produced from recovered materials
- Procedures for applying preference to resident contractors
- Information applicable to construction
- Information applicable to taxes

PROCUREMENT CARD

- Who is eligible to use the P-card
- How to correctly use the P-card
- Benefits of using the P-card

TRAVEL

- Travel guidelines
- Travel forms
- Meal/Milage Reimbursements

ETHICS IN PUBLIC PURCHASING

- Review the OPTFM Statement of Policy
- Define and Discuss Key Ethical Terms
- Review Ethical Standards of Conduct
- Discuss Conflicts of Interest

- Define and Discuss Gratuities
- Discuss Contingent Fees, Influence Peddling, and Improper Influence
- Identify Restrictions on Employees
- Discuss Contractor/Consultant Conflicts

FLEET

- Purchasing state-owned vehicles
- Vehicle replacement procedures
- Titling and marking state-owned vehicles

DETERMINING BID AND PROPOSAL REQUIREMENTS

- Differentiate between the bidding and proposal processes
- Identify the steps in the bid process and the proposal process
- Understand when each process is appropriate

UNDERSTANDING BASIC SPECIFICATIONS

- Define key terms related to specifications
- Explain the purpose for specifications
- Understand why specifications are needed
- Identify sources for specifications
- Understand the proper use of brand names or equal in specifications
- Prepare brand name specifications
- Avoid unduly restrictive specifications

PERSONAL & PROFESSIONAL SERVICES

- Understand the role and function of OPSCR
- Be familiar with the unique requirements of HB 1109
- Avoid common mistakes seen by OPSCR in review
- Pre-Approved Vendor Lists

INFORMATION TECHNOLOGY GOODS & SERVICES

- Understand the role and function of MDITS/ISS
- Be familiar with ITS purview
- Express Products Lists
- Initiating an ITS Project

The following information in this manual should only be considered as a commentary and set forth as an introduction to the State of Mississippi Procurement Manual. Additionally, students should be familiar with the DFA Office of Personal Service Contract Review Rules and Regulations and the Mississippi Department of Information Technology Services Procurement Handbook.

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INTRODUCTION

The Mississippi Department of Finance and Administration is committed to being a good steward of the funds entrusted to it by the citizens of Mississippi and the Mississippi Legislature. To that end, the Office of Purchasing, Travel and Fleet Management (OPTFM) is commissioned to administer the statutes, policies, and procedures required to ensure that all funds are spent in accordance with Mississippi law and that the highest ethical standards are maintained throughout the many agencies of state government.

Purchasing in state government is a particularly challenging endeavor. Decreasing budget dollars and reduced personnel demand that public purchasers be efficient, forward-thinking, and proactive in order to ensure that the public trust is maintained and that the State gets the best return for every dollar spent. Oftentimes, the public purchasing agent must wear many hats within his/her individual agency or entity and must be able to balance numerous duties while still ensuring that taxpayer dollars are spent wisely.

The OPTFM has developed this training program to give public purchasers in Mississippi the essential tools to carry out their duties in the most professional manner possible. The subject matter in this manual is designed to broadly address the daily activities in which the purchasing professional may be involved. Additionally, it will introduce public purchasers to techniques, practices, and concepts that will ensure that they are adequately equipped to provide a broader spectrum of services to support the mission of the agency/entity. We believe that this training will make public purchasers in Mississippi more knowledgeable of their profession and will provide a significant return on investment to each agency/entity in more efficient use of funds, better acquisition and allocation of resources, maximizing the useful life of state-owned equipment, and properly disposing of items that no longer have value.

The OPTFM wishes you success as you complete the training in this manual. We hope that this training will encourage you to continue to develop your knowledge and skill set in the purchasing profession and motivate you to use that knowledge to better serve your agency/entity and the state of Mississippi.

The objectives of this section of the manual are:

- Purpose of the Procurement Manual
- List the Agencies Within the Mississippi Procurement Organization
- List Professional Purchasing Organizations

1. Debarment; 2. Agency; 3. Competition; 4. MAGPPA; 5. Purchase; 6. Construction; 7. Specification; 8. Gratuity; 9. Bids, 10. Emergency

Purpose of the Mississippi Procurement Manual

The purpose of the Mississippi Procurement Manual is to set forth all laws and regulations, along with any other pertinent information, that shall be in effect with the implementation of Title 31, Chapter 7, Mississippi Code of 1972, Annotated. The policies and procedures set forth in the Manual apply to the procurement of **commodities and equipment** either bought, leased or rented with any funds, regardless of source, by those agencies which are required by the statute to be under the authority of the Mississippi Department of Finance and Administration Public Procurement Review Board (PPRB). The Manual is intended to be a thorough representation of procedures relative to purchasing by all state entities. Further, it shall serve as a source of information for vendors instructing them as to the proper procedures that must be followed in doing business with the State. For the purpose of that document, all definitions found in Section 31-7-1, Mississippi Code of 1972, Annotated, shall apply.

The Mississippi Procurement Organization

The Mississippi Procurement Organization is made up of two primary entities: The Department of Finance and Administration (DFA) and the Department of Information Technology Services (ITS). Below is a chart showing the flow of authority and responsibility within the State.

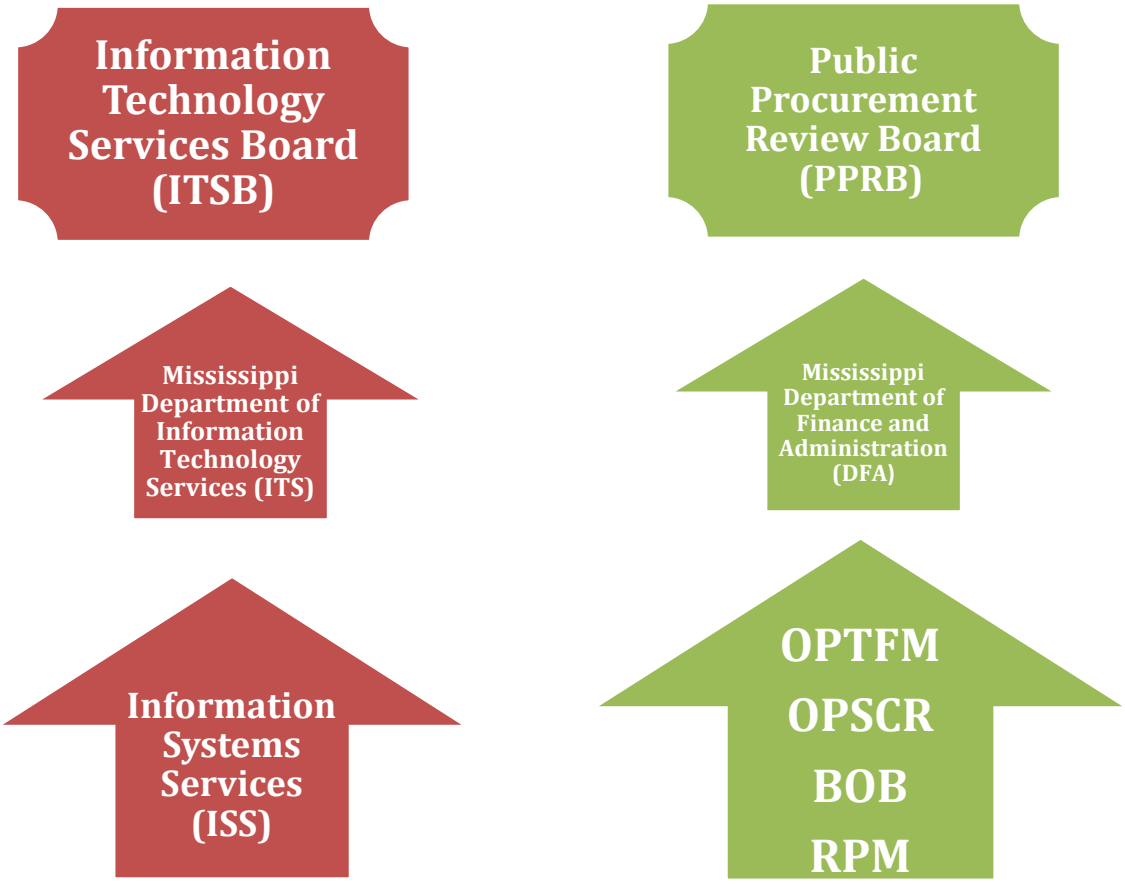


Fig. 2-1

The **DFA** is the primary agency responsible for State government financial and administrative operations including employee payroll, vendor payments, employee insurance, construction, maintenance and protection of state buildings in the Capitol Complex and beyond, financial information management systems, management of the State's vehicle fleet, and numerous other related activities. DFA is composed of twenty-two (22) offices with over 450 employees and contract workers. The mission of DFA as the executive branch agency for fiscal and asset management is to provide services, solutions, regulations, and guidance to its customers to help improve the quality of life in Mississippi. The department is located in the Woolfolk Building in the Capitol Complex in downtown Jackson.

The **PPRB** was created via Section 27-104-7 of the Mississippi Code of 1972 Annotated and recently reconstituted on January 1, 2018. The PPRB's duties include:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration; and

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;
(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;
(iii) Asian-American: having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
(iv) American Indian or Alaskan Native: having origins in any of the original people of North America; or
(v) Female;

(e) In consultation with and approval by the Chairs of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building;

(f) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into by any agency that employs only nonstate service employees as defined in Section 25-9-107(c), any personal service contracts entered into for

computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the individual state institutions of higher learning, any personal service contracts entered into by the Mississippi Department of Transportation, any personal service contracts entered into by the Department of Human Services through June 30, 2019, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services, any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019, any contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission, and any contract for attorney, accountant, actuary auditor, architect, engineer, and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that the Public Procurement Review Board may propose shall be submitted to the Chairs of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives and the Chairs of the Appropriation Committees of the Senate and House of Representatives at least fifteen (15) days before the board votes on the proposed changes, and those rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

(g) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars ($75,000.00), except as provided in paragraph (f) of this subsection (2) and in subsection (8);

(h) Develop mandatory standards with respect to contractual services personnel that require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Public Procurement Review Board shall, unless exempted under this paragraph (h) or under paragraph (i) or (o) of this subsection (2), require the agency involved to submit the procurement to a competitive procurement process, and may reserve the right to reject any or all resulting procurements;

(i) Prescribe certain circumstances by which agency heads may enter into contracts for personal and professional services without receiving prior approval from the Public Procurement Review Board. The Public Procurement Review Board may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

(i) Agency requirements may be fulfilled by procuring services performed incident to the state's own programs. The agency head shall determine in writing whether the price represents a fair market value for the services. When the procurements are made from other governmental entities, the private sector need not be solicited; however, these contracts shall still be submitted for approval to the Public Procurement Review Board.

(ii) Contracts between two (2) state agencies, both under Public Procurement Review Board purview, shall not require Public Procurement Review Board approval. However, the contracts shall still be entered into the enterprise resource planning system.

(j) Provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

(k) Present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(l) Authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Public Procurement Review Board procurement regulations;

(m) Request the State Auditor to conduct a performance audit on any personal or professional service contract;

(n) Prepare an annual report to the Legislature concerning the issuance of personal and professional services contracts during the previous year, collecting any necessary information from state agencies in making such report;

(o) Develop and implement the following standards and procedures for the approval of any sole source contract for personal and professional services regardless of the value of the procurement:

(i) For the purposes of this paragraph (o), the term “sole source” means only one (1) source is available that can provide the required personal or professional service.

(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

(iii) Any agency alleging to have a sole source for any personal or professional service, other than those exempted under paragraph (f) of this subsection and subsection (8), shall publish on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

1. The personal or professional service offered in the contract;

2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;

3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;

4. An explanation of why the amount to be expended for the personal or professional service is reasonable; and

5. The efforts that the agency went through to obtain the best possible price for the personal or professional service.

(iv) If any person or entity objects and proposes that the personal or professional service published under subparagraph (iii) of this paragraph (o) is not a sole source service and can be provided by another person or entity, then the objecting person or entity shall notify the Public Procurement Review Board and the agency that published the proposed sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

(v) 1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Public Procurement Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

3. If the Public Procurement Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Public Procurement Review Board in this appeal process shall be valid unless approved by a majority of the members of the Public Procurement Review Board present and voting.

(vi) The Public Procurement Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Accountability, Efficiency and Transparency Committees that details the sole source contracts presented to the Public Procurement Review Board and the reasons that the Public Procurement Review Board approved or rejected each contract. These quarterly reports shall also include the documentation and memoranda required in subsection (4) of this section. An agency that submitted a sole source contract shall be prepared to explain the sole source contract to each committee by December 15 of each year upon request by the committee.

(p) Assess any fines and administrative penalties provided for in Sections 31-7-401 through 31-7-423.

The **OPTFM** is the office of the DFA that has the most direct involvement with the daily purchasing activities of state agencies and governing authorities. The OPTFM promotes economy and efficiency in procurement functions for governmental entities within the State of Mississippi and provides a consistent, efficient, and cost effective fleet management program for all vehicles owned by the State of Mississippi. The office is divided into three distinct bureaus. They include: the Bureau of Purchasing and Contracting, which oversees the purchasing functions of state agencies and governing authorities to include state contracts, P-1 approvals, and the State's Master Lease program; the Bureau of Marketing, Travel, and Card Programs, which oversees travel policy, procurement and travel card services, vendor status, training, and the Certified Purchasing Office (CPO) program; and the Bureau of Fleet Management (BFM) which manages the State's fleet of vehicles as well as the fuel management program.

State agencies and institutions of higher learning (IHL) fall under the purview of DFA/OPTFM. DFA maintains the Mississippi Accountability System for Government Information and Collaboration (MAGIC) system through which the majority of entities enter purchasing information directly. Some agencies and governing authorities have separate enterprise reporting systems and provide an annual report to the DFA which is blended into the Comprehensive Annual Financial Report (CAFR).

Throughout this Course, you will also learn about and hear from represensatives from the DFA Office of Personal Service Contract Review (**OPSCR**) and the Mississippi Department of Information Technology Services (**ITS**).

PROFESSIONAL PURCHASING ORGANIZATIONS

There are numerous professional organizations that the procurement professional can associate with to gain additional insights and professional education towards national and international certifications. Several of these organizations are listed below.

Institute for Supply Management (ISM)

Institute for Supply Management™ (ISM) is the first supply management institute in the world. Founded in 1915, ISM exists to lead and serve the supply management profession and is a highly influential and respected association in the global marketplace. The ISM offers several certifications under its programs: The Certified Professional in Supply Management (CPSM), Certified in Supply Management (CSM), and the Certified Professional in Supplier Diversity (CPSD). (Obtained from www.napm.org)

NIGP, The Institute for Public Procurement

NIGP has been developing, supporting and promoting the public procurement profession through premier educational and research programs, professional support, technical services and advocacy initiatives that benefit members and constituents since 1944. With over 2,600 member agencies representing over 16,000 professionals across the United States, Canada and countries outside of North America, the Institute is international in its reach. NIGP's goal is to promote recognition and esteem for the government procurement profession and its dedicated practitioners. NIGP and NASPO formed the Universal Public Procurement Certification Council (UPPCC) which offers two levels of

certification: the Certified Professional Public Buyer (CPPB) and the Certified Public Procurement Officer (CPPO). (Obtained from www.nigp.org)

National Association of State Procurement Officials (NASPO)

The National Association of State Procurement Officials (NASPO), Inc. was formally established on January 29, 1947, in Chicago, Illinois. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public procurement, improve the quality of procurement, exchange information and cooperate to attain greater efficiency, economy, and customer satisfaction. (Obtained from www.naspo.org)

National Association of Educational Procurement (NAEP)

NAEP was formed in the 1920's and has served as the non-profit professional Association primarily dedicated to serving higher education purchasing officers in the U.S. and Canada. NAEP'S mission is to facilitate the development, exchange and practice of effective and ethical procurement principles and techniques within higher education and associated communities, through continuing education, networking, public information and advocacy. (Obtained from www.naepnet.org)

National Contract Management Association (NCMA)

The National Contract Management Association (NCMA), founded in 1959, is the world's leading professional resource for those in the field of contract management. The organization, which has over 22,000 members, is dedicated to the professional growth and educational advancement of procurement and acquisition personnel worldwide. NCMA strives to serve and inform the profession it represents and to offer opportunities for the open exchange of ideas in neutral forums. The association awards three certifications to public procurement professionals: Certified Professional Contracts Manager (CPCM), Certified Federal Contracts Manager (CFCM), and Certified Commercial Contracts Manager (CCCM). (Obtained from www.ncmahq.org)

Mississippi Association of Governmental Purchasing/Property Agents (MAGPPA)

MAGPPA serves hundreds of public purchasing professionals throughout Mississippi by promoting and maintaining high ethical values, enhancing public purchasing practices, protecting the public trust and making a positive difference by leading the way through excellence. MAGPPA focuses its efforts on increasing membership certification through educational opportunities and providing members with a collaborative learning environment that encourages professional growth. MAGPPA members can obtain CPPB and CPPO designations through a relationship with NIGP and the UPPCC.

OPTFM Website

The OPTFM makes every effort to provide resources for the procurement professionals in Mississippi government. One of the best ways to provide those resources to the masses is

through the OPTFM website. The website is full of information and additional resources that will help to answer practically any question that the procurement professional may have.

What are some of the things that are available on the website? The list below is not comprehensive but provides a good overview of what is available.

- OPTFM Staff
- Purchasing Guidelines and State Contracts
- Procurement Manual
- State Travel Policies and Procedures
- State Procurement Card Program Information
- Purchasing Documents and Forms
- Certified Purchasing Offices Information
- Minority Vendor Information
- MS Code
- Purchasing Tools and Training Information
- Vendor Information
- Vehicle Contracts and Cut-Off Dates
- Fuel Management Card Services
- Fuelman Site Information
- Commuter Mileage Calculator

The information on the OPTFM website can be found by accessing www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/. Take some time to browse the site and become familiar with the many subject areas. The information provided will help you find answers to many questions concerning the procurement profession in Mississippi, allowing you to maximize the time spent on addressing agency needs.

PUBLIC PURCHASING OVERVIEW

Now that you've had an introduction to the purchasing profession in Mississippi, we will begin to focus on the actual profession of public purchasing as conducted within the realm of Mississippi governance. As the figure indicates, we'll "paint the picture" of the processes and techniques available in the Mississippi purchasing profession and offer guidance on how to employ these processes and techniques in your daily operations. The objectives of this section of the manual are:

- Define Purchasing & Procurement
- Discuss the Basic Principles of Public Purchasing
- Review the OPTFM website

What's the Difference

The public purchasing professional plays a vital role in helping state agencies and governing authorities to obtain the goods and services that are needed daily to continue to serve the public. But are we simply "the folks in purchasing" or are we much more than that? **Purchasing** is defined as "buying, renting, leasing or otherwise acquiring." Yes, as purchasing professionals we do a lot of buying, renting, leasing, and otherwise acquiring; but this doesn't really tell the full story of what a purchasing professional should be.

A true purchasing professional follows after this definition: "Buying, purchasing, renting, leasing, or otherwise acquiring any commodities, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any commodities, equipment, services, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration." Wow, that seems like an awful lot. What is this describing? I'm glad that you asked.

The latter is the definition of "**Procurement**" and as you can see, it is substantially more involved than simply buying, renting, etc. Procurement embodies the entire process that is involved in identifying a need, determining how best to meet the need, then getting the needed items to governmental entities at the time and place and for the best possible value (which may not be based solely on price). The process doesn't stop once the item(s) is delivered. The item is tracked throughout its existence within the entity and once its usefulness is diminished or is fully realized, the item must be disposed of in a manner consistent with existing statutes. The procurement professional recognizes and executes all of these facets throughout the organization and ensures that the maximum benefit is gained from every item that requires an expenditure of funds.

Basic Principles of Public Purchasing

According to NIGP, The Institute for Public Procurement, procurement professionals need to be aware of some basic principles that govern purchasing throughout all governmental entities. Although there may be differences in the applications, the principles remain the same.

- **Accountability --**Taking ownership and being responsible to stakeholders for our actions…essential to preserve the public trust and protect the public interest.

  Principles:

  - Apply sound business judgment.
  - Be knowledgeable of and abide by all applicable laws and regulations.
  - Be responsible stewards of public funds.
  - Maximize competition to the greatest extent practicable. The term "competition" encourages vendors to provide the most favorable pricing, quality, delivery, and/or terms of service.
  - Practice due diligence.
  - Promote effective, economic, and efficient acquisition.
  - Support economic, social, and sustainable communities.
  - Use procurement strategies to optimize value to stakeholders.

- **Ethics --** Acting in a manner true to these values…essential to preserve the public's trust.

  Principles:
  - Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety.
  - Maintain consistency in all processes and actions.
  - Meet the ethical standards of the profession.

- **Impartiality -** Unbiased decision-making and action…essential to ensure fairness for the public good.

  Principles:
  - Be open, fair, impartial, and non-discriminatory in all processes.
  - Treat suppliers equitably, without discrimination, and without imposing unnecessary constraints on the competitive market.
  - Use sound professional judgment within established legal frameworks to balance competing interests among stakeholders.

- **Professionalism -** Upholding high standards of job performance and ethical behavior…essential to balance diverse public interests.

  Principles:
  - Be led by those with education, experience, and professional certification in public procurement.
  - Continually contribute value to the organization.
  - Continually develop as a profession through education, mentorship, innovation, and partnerships.
  - Develop, support, and promote the highest professional standards in order to serve the public good.
  - Seek continuous improvement through on-going training, education, and skill enhancement.

- **Service -** Obligation to assist stakeholders…essential to support the public good.

  Principles:
  - Be a crucial resource and strategic partner within the organization and community.
  - Develop and maintain relationships with stakeholders.
  - Develop collaborative partnerships to meet public needs.
  - Maintain a customer-service focus while meeting the needs, and protecting the interests, of the organization and the public.

- **Transparency -** Easily accessible and understandable policies and processes…essential to demonstrate responsible use of public funds.

  Principles:
  - Maintain confidentiality of information where required.

- Maintain current and complete policies, procedures, and records.
- Provide open access to competitive opportunities.
- Reading bids aloud publicly to minimize the risk of protests.
- Provide timely access to procurement policies, procedures, and records.
- After award has been made, bear in mind, the information related to the solicitation, opening, evaluation, and awarding of bids and proposals become public record and can be obtained under Section 25-61-1, Mississippi Code of 1972, Annotated, in accordance with each state entity's policies and procedures. This allows the public the opportunity to see how well its tax dollars are being utilized while simultaneously maintaining an additional level of scrutiny on our government officials.

Ultimate Goal

The ultimate goal of the procurement professional is to accomplish the "Rights" of public purchasing.

- Right price
- Right quantity
- Right quality
- Right time
- Right place
- Right source
- Right service

Review Questions

1. What agency is primarily responsible for State government financial and administrative operations?

2. Who has as part of its duties to approve all purchasing regulations governing the purchase or lease by any agency of commodities and equipment, except computer equipment?

3. Which office has the most direct involvement with the daily purchasing activities of state agencies and governing authorities?

4. What is the automated system through which the majority of entities enter purchasing information directly?

5. What term is defined as buying, renting, leasing, or otherwise acquiring?

6. What term is described as the buying, purchasing, renting, leasing, or otherwise acquiring any commodities, equipment, services or construction, which would also include all other functions such as description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration?

7. What term encourages vendors to provide the most favorable pricing, quality, delivery, and/or terms of service?

8. Right quality, right quantity, right place, right time, right supplier, right service, and right price are all the ultimate goal of whom?

9. Which Mississippi purchasing organization serves public purchasing professionals in Mississippi?

MISSISSIPPI PURCHASING LAW

“It’s the Law”

MISSISSIPPI PURCHASING LAW

There are a significant number of state laws that govern the purchasing profession in Mississippi and it is vital that the purchasing professional is familiar with these laws. This section will meet two primary objectives:

- Identify the most common laws from the MS Code pertaining to purchasing
- Explain the applicability of each section of law.

MS Code 31-7-1

This section of the code defines key terms.

(a) "Agency" means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority. An academic medical center or health sciences school as defined in Section 37-115-50 is not an "agency" for those purchases of commodities as defined in this section that are used for clinical purposes and (i) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and (ii) medical devices, biological, drugs and radiation emitting devices as defined by the United States Food and Drug Administration.

(b) "Governing authority" means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds. The term "governing authority" also shall not include the governing board of a charter school.

(c) "Purchasing agent" means any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency, including issue purchase orders, invitations for bid, requests for proposals, and receive and accept bids.

(d) "Public funds" means and includes any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(e) “Commodities” means and includes the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.
(i) “Equipment” shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.
(ii) “Furniture” shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(f) “Emergency” means 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.

(g) “Construction” means the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) “Purchase” means buying, renting, leasing or otherwise acquiring.

(i) “Certified purchasing office” means any purchasing office in which fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification, and in which, in the case of a state agency purchasing office, in addition to the national certification, one hundred percent (100%) of the purchasing officials hold a certification from the State of Mississippi's Basic or Advanced Purchasing Certification Program.

(j) “Certified Mississippi Purchasing Agent” means a state agency purchasing official who holds a certification from the Mississippi Basic Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.

(k) “Certified Mississippi Procurement Manager” means a state agency purchasing official who holds a certification from the Mississippi Advanced Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.

MS Code 31-7-3

This section of the code grants administrative authority to DFA.

The Department of Finance and Administration shall administer the provisions of this chapter.

The purposes of the Department of Finance and Administration in carrying out said provisions shall be to coordinate and promote efficiency and economy in the purchase of commodities by the agencies of the state.

MS Code 31-7-5

This section of the code directs DFA to establish rules and regulations governing its operations and also establishes the OPTFM.

The Department of Finance and Administration shall prescribe rules and regulations governing the manner in which the authority and duties granted to it by law may be carried out. It shall employ suitable and competent personnel, necessary to carry out its purposes. The Department of Finance and Administration may establish an Office of Purchasing and Travel and Fleet Management and employ a competent person as Director of the Office of Purchasing and Travel and Fleet Management who shall be non-state service and paid a salary as determined by the Executive Director of the Department of Finance and Administration with the approval of the State Personnel Board.

MS Code 31-7-7

This section of the code prescribes duties for the Office of General Services (now known as DFA).

Through its director and other supervisory personnel and, upon its request, through the agencies of the state, the Office of General Services shall supervise the performance of the following duties imposed upon it by this chapter:

(a) A study of the purchases of commodities by the agencies of the state; the compilation, exchange and coordination of information concerning same; and the distribution of such information to the agencies and governing authorities requesting same.

(b) The planning and coordination of purchases in volume for the agencies in order to take advantage of and secure the economies possible by volume purchasing; the arrangement of agreements between agencies and between governing authorities whereby one may make a purchase or purchases for the other or whereby an agency may make a purchase for a governing authority; the arrangement of agreements whereby purchases of commodities can be made between an agency and another agency or governing authority at a fair price, less depreciated value; the negotiations and execution of purchasing agreements and contracts through and under which the Office of General Services may require state agencies to purchase; and the obtaining or establishment of methods for obtaining of competitive bid prices upon which any agency of the state may purchase at the price approved by the Office of General Services.

(c) The arrangement of provisions in purchase contracts of the state, or any agency, providing

that the same price for which a commodity is available to an agency, may also, during the period of time provided therein, be available to any governing authority.

MS Code 31-7-9

This section of the code grants authority to OPTFM to develop purchasing regulations for agencies and governing authorities.

(1) (a) The Office of Purchasing, Travel and Fleet Management shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing, Travel and Fleet Management with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The said Office of Purchasing, Travel and Fleet Management shall furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the Office of Purchasing, Travel and Fleet Management and any amendments, changes or eliminations of same that may be made from time to time.

(b) The Office of Purchasing, Travel and Fleet Management may adopt purchasing regulations governing the use of credit cards, procurement cards and purchasing club membership cards to be used by state agencies, governing authorities of counties and municipalities, school districts and the Chickasawhay Natural Gas District. Use of the cards shall be in strict compliance with the regulations promulgated by the office. Any amounts due on the cards shall incur interest charges as set forth in Section 31-7-305 and shall not be considered debt.

(c) Pursuant to the provision of Section 37-61-33(3), the Office of Purchasing, Travel and Fleet Management of the Department of Finance and Administration is authorized to issue procurement cards to all public school district classroom teachers and other necessary direct support personnel at the beginning of the school year for the purchase of instructional supplies using Educational Enhancement Funds. The cards will be issued in equal amounts per teacher determined by the total number of qualifying personnel and the then current state appropriation for classroom instructional supplies under the Education Enhancement Fund. All purchases shall be in accordance with state law and teachers are responsible for verification of capital asset requirements when pooling monies to purchase equipment. The cards will expire on a pre-determined date at the end of each school year. All unexpended amounts will be carried forward, to be combined with the following year's instructional supply fund allocation, and reallocated for the following year. The Department of Finance and Administration is authorized to loan any

start-up funds at the beginning of the school year to fund this procurement system for instructional supplies with loan repayment being made from sales tax receipts earmarked for the Education Enhancement Fund.

(d) In a sale of goods or services, the seller shall not impose a surcharge on a buyer who uses a state-issued credit card, procurement card, travel card, or fuel card. The Department of Finance and Administration shall have exclusive jurisdiction to enforce and adopt rules relating to this paragraph. Any rules adopted under this paragraph shall be consistent with federal laws and regulations governing credit card transactions described by this paragraph. This paragraph does not create a cause of action against an individual for a violation of this paragraph.

(2) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.

(3) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, regulations governing the certification process for certified purchasing offices, including the Mississippi Purchasing Certification Program, which shall be required of all purchasing agents at state agencies. Such regulations shall require entities desiring to be classified as certified purchasing offices to submit applications and applicable documents on an annual basis, and in the case of a state agency purchasing office, to have one hundred percent (100%) participation and completion by purchasing agents in the Mississippi Purchasing Certification Program, at which time the Office of Purchasing, Travel and Fleet Management may provide the governing entity with a certification valid for one (1) year from the date of issuance. The Office of Purchasing, Travel and Fleet Management shall set a fee in an amount that recovers its costs to administer the Mississippi Purchasing Certification Program, which shall be assessed to the participating state agencies.

MS Code 31-7-10

This section of the code addresses the lease purchase program for state agency equipment; participation by local governments; and Master Lease-Purchase Program Fund.

(1) For the purposes of this section, the term "equipment" shall mean equipment, furniture, and if applicable, associated software and other applicable direct costs associated with the acquisition. In addition to its other powers and duties, the Department of Finance and Administration shall have the authority to develop a master lease-purchase program and, pursuant to that program, shall have the authority to execute on behalf of the state master lease-purchase agreements for equipment to be used by an agency, as provided in this section. Each agency electing to acquire equipment by a lease-purchase agreement shall participate in the Department of Finance and Administration's master lease-purchase program, unless the Department of Finance and Administration makes a determination that such equipment cannot be obtained under the program or unless the equipment can be obtained elsewhere at an overall cost lower than that for which the equipment can be obtained under the program. Such lease-purchase agreements may include the refinancing or consolidation, or both, of any state agency lease-purchase agreements

entered into after June 30, 1990.

(2) All funds designated by agencies for procurement of equipment and financing thereof under the master lease-purchase program shall be paid into a special fund created in the State Treasury known as the "Master Lease-Purchase Program Fund," which shall be used by the Department of Finance and Administration for payment to the lessors for equipment acquired under master lease-purchase agreements.

(3) Upon final approval of an appropriation bill, each agency shall submit to the Public Procurement Review Board a schedule of proposed equipment acquisitions for the master lease-purchase program. Upon approval of an equipment schedule by the Public Procurement Review Board with the advice of the Department of Information Technology Services, the Office of Purchasing, Travel and Fleet Management, and the Division of Energy and Transportation of the Mississippi Development Authority as it pertains to energy efficient climate control systems, the Public Procurement Review Board shall forward a copy of the equipment schedule to the Department of Finance and Administration.

(4) The level of lease-purchase debt recommended by the Department of Finance and Administration shall be subject to approval by the State Bond Commission. After such approval, the Department of Finance and Administration shall be authorized to advertise and solicit written competitive proposals for a lessor, who will purchase the equipment pursuant to bid awards made by the using agency under a given category and then transfer the equipment to the Department of Finance and Administration as lessee, pursuant to a master lease-purchase agreement.

The Department of Finance and Administration shall select the successful proposer for the financing of equipment under the master lease-purchase program with the approval of the State Bond Commission.

(5) Each master lease-purchase agreement, and any subsequent amendments, shall include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include any covenants deemed necessary or desirable to protect the interests of the lessor, including, but not limited to, provisions setting forth the interest rate (or method for computing interest rates) for financing pursuant to such agreement, covenants concerning application of payments and funds held in the Master Lease-Purchase Program Fund, covenants to maintain casualty insurance with respect to equipment subject to the master lease-purchase agreement (and all state agencies are specifically authorized to purchase any insurance required by a master lease-purchase agreement) and covenants precluding or limiting the right of the lessee or user to acquire equipment within a specified time (not to exceed five (5) years) after cancellation on the basis of a failure to appropriate funds for payment of amounts due under a lease-purchase agreement covering comparable equipment. The State Bond Commission shall transmit copies of each such master lease-purchase agreement and each such amendment to the Joint Legislative Budget Committee. To the extent provided in any master lease-purchase agreement, title to equipment leased pursuant thereto shall be deemed to be vested in the state or the user of the equipment (as specified in such master lease-purchase agreement), subject to default under or termination of such master lease-purchase agreement.

A master lease-purchase agreement may provide for payment by the lessor to the lessee of the purchase price of the equipment to be acquired pursuant thereto prior to the date on which payment is due to the vendor for such equipment and that the lease payments by the lessee shall commence as though the equipment had been provided on the date of payment. If the lessee, or lessee's escrow agent, has sufficient funds for payment of equipment purchases prior to payment due date to vendor of equipment, such funds shall be held or utilized on an as-needed basis for payment of equipment purchases either by the State Treasurer (in which event the master lease-purchase agreement may include provisions concerning the holding of such funds, the creation of a security interest for the benefit of the lessor in such funds until disbursed and other appropriate provisions approved by the Bond Commission) or by a corporate trustee selected by the Department of Finance and Administration (in which event the Department of Finance and Administration shall have the authority to enter into an agreement with such a corporate trustee containing terms and conditions approved by the Bond Commission). Earnings on any amount paid by the lessor prior to the acquisition of the equipment may be used to make lease payments under the master lease-purchase agreement or applied to pay costs and expenses incurred in connection with such lease-purchase agreement. In such event, the equipment-use agreements with the user agency may provide for lease payments to commence upon the date of payment by the lessor and may also provide for a credit against such payments to the extent that investment receipts from investment of the purchase price are to be used to make lease-purchase payments.

(6) The annual rate of interest paid under any lease-purchase agreement authorized under this section shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101.

(7) The Department of Finance and Administration shall furnish the equipment to the various agencies, also known as the user, pursuant to an equipment-use agreement developed by the Department of Finance and Administration. Such agreements shall require that all monthly payments due from such agency be paid, transferred or allocated into the Master Lease-Purchase Program Fund pursuant to a schedule established by the Department of Finance and Administration. In the event such sums are not paid by the defined payment period, the Executive Director of the Department of Finance and Administration shall issue a requisition for a warrant to draw such amount as may be due from any funds appropriated for the use of the agency which has failed to make the payment as agreed.

(8) All master lease-purchase agreements executed under the authority of this section shall contain the following annual allocation dependency clause or an annual allocation dependency clause which is substantially equivalent thereto: "The continuation of each equipment schedule to this agreement is contingent in whole or in part upon the appropriation of funds by the Legislature to make the lease-purchase payments required under such equipment schedule. If the Legislature fails to appropriate sufficient funds to provide for the continuation of the lease-purchase payments under any such equipment schedule, then the obligations of the lessee and of the agency to make such lease-purchase payments and the corresponding provisions of any such equipment schedule to this agreement shall terminate on the last day of the fiscal year for which appropriations were made."

(9) The maximum lease term for any equipment acquired under the master lease-purchase program shall not exceed the useful life of such equipment as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and Regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. The Department of Finance and Administration shall be deemed to have met the requirements of this subsection if the term of a master lease-purchase agreement does not exceed the weighted average useful life of all equipment covered by such agreement and the schedules thereto as determined by the Department of Finance and Administration. For purposes of this subsection, the "term of a master lease-purchase agreement" shall be the weighted average maturity of all principal payments to be made under such master lease-purchase agreement and all schedules thereto.

(10) Interest paid on any master lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation. All equipment, and the purchase thereof by any lessor, acquired under the master lease-purchase program and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes.

(11) The Governor, in his annual executive budget to the Legislature, shall recommend appropriations sufficient to provide funds to pay all amounts due and payable during the applicable fiscal year under master lease-purchase agreements entered into pursuant to this section.

(12) Any master lease-purchase agreement reciting in substance that such agreement has been entered into pursuant to this section shall be conclusively deemed to have been entered into in accordance with all of the provisions and conditions set forth in this section. Any defect or irregularity arising with respect to procedures applicable to the acquisition of any equipment shall not invalidate or otherwise limit the obligation of the Department of Finance and Administration, or the state or any agency of the state, under any master lease-purchase agreement or any equipment-use agreement.

(13) There shall be maintained by the Department of Finance and Administration, with respect to each master lease-purchase agreement, an itemized statement of the cash price, interest rates, interest costs, commissions, debt service schedules and all other costs and expenses paid by the state incident to the lease-purchase of equipment under such agreement.

(14) Lease-purchase agreements entered into by the Board of Trustees of State Institutions of Higher Learning pursuant to the authority of Section 37-101-413 or by any other agency which has specific statutory authority other than pursuant to Section 31-7-13(e) to acquire equipment by lease-purchase shall not be made pursuant to the master lease-purchase program under this section, unless the Board of Trustees of State Institutions of Higher Learning or such other agency elects to participate as to part or all of its lease-purchase acquisitions in the master lease-purchase program pursuant to this section.

(15) The Department of Finance and Administration may develop a master lease-purchase

program for school districts and, pursuant to that program, may execute on behalf of the school districts master lease-purchase agreements for equipment to be used by the school districts. The form and structure of this program shall be substantially the same as set forth in this section for the master lease-purchase program for state agencies. If sums due from a school district under the master lease-purchase program are not paid by the expiration of the defined payment period, the Executive Director of the Department of Finance and Administration may withhold such amount that is due from the school district's minimum education or adequate education program fund allotments.

(16) The Department of Finance and Administration may develop a master lease-purchase program for community and junior college districts and, pursuant to that program, may execute on behalf of the community and junior college districts master lease-purchase agreements for equipment to be used by the community and junior college districts. The form and structure of this program must be substantially the same as set forth in this section for the master lease-purchase program for state agencies. If sums due from a community or junior college district under the master lease-purchase program are not paid by the expiration of the defined payment period, the Executive Director of the Department of Finance and Administration may withhold an amount equal to the amount due under the program from any funds allocated for that community or junior college district in the state appropriations for the use and support of the community and junior colleges.

(17) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(18) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

MS Code 31-7-11

This section of the code directs agencies to report purchasing practices to DFA and authorizes DFA to supervise purchasing practices of agencies.

Each agency of the state shall furnish information relative to its purchase of commodities, and as to its method of purchasing such commodities, to the Department of Finance and Administration annually and at such other times as the Department of Finance and Administration may request.

The Department of Finance and Administration shall have supervision over the purchasing and purchasing practices of each state agency and may by regulation or order correct any practice that appears contrary to the provisions of this chapter or to the best interests of the state. If it shall appear that any agency is not practicing economy in its purchasing or is permitting favoritism or any improper purchasing practice, the Department of Finance and Administration shall require that the agency immediately cease such improper activity, with full and complete authority in the Department of Finance and Administration to carry into effect its directions in such regard.

All purchases, trade-ins, sales or transfer of personal property made by any officer, board, agency, department or branch of the state government except the Legislature shall be subject to

the approval of the Department of Finance and Administration. Such transaction shall be made in accordance with rules and regulations of the Department of Finance and Administration relating to the purchase of state-owned motor vehicles and all other personal property. The title of such property shall remain in the name of the state.

MS Code 31-7-12

This section of the code establishes the terms for use of state contracts.

(1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration to solicit purchases outside the terms of the contracts. However, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b) or (c) of Section 31-7-13. It shall be the responsibility of the Department of Finance and Administration to ascertain that the resulting prices shall provide a cost effective alternative to the established state contract.

(2) Governing authorities may purchase commodities approved by the Department of Finance and Administration from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established by the Department of Finance and Administration for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of Finance and Administration shall make such purchases pursuant to the provisions of Section 31-7-13 without regard to state contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

(4) The Department of Finance and Administration shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established therefore by the Department of Finance and Administration. If the Department of Finance and Administration does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of Finance and Administration shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive

bidding procedures pursuant to Section 31-7-13 for purchases of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

MS Code 31-7-13

This section of the code establishes bid requirements and procedures for agencies.

All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over $5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars ($5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars ($5,000.00) or less.

(b) **Bidding procedure for purchases over $5,000.00 but not over $50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars ($5,000.00) but not more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars ($50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. “Competitive” shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without

knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars ($5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) **Bidding procedure for purchases over $50,000.00.**

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars ($50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five

Thousand Dollars ($25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars ($25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The

Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars ($50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buyback provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buyback provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the

Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buyback provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) **Construction project negotiations authority.** If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term “equipment” shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range

(ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils

and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, 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 head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.

If the governing board or the executive head, or his designees, of any agency determines 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 threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for

competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made. Total purchases made under this paragraph (j) shall only be for the purpose of meeting needs created by the emergency situation. 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 filed with the Department of Finance and Administration. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

(k) **Governing authority emergency purchase procedure.** If the governing authority, or the governing authority acting through its designee, 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 interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

(l) **Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher learning and

state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.** Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products by the Department of Corrections, regional correctional facilities or privately owned prisons.** Purchases made by the Mississippi Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

(xxxi) **Design-build method and dual-phase design-build method of contracting.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxii) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxiii) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxiv) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(xxxv) **Certain purchases or transfers entered into with local electrical power associations.** Contracts or agreements entered into under the provisions of Section 55-3-33.

(xxxvi) **Certain purchases by an academic medical center or health sciences school**. Purchases by an academic medical center or health sciences school, as defined in Section 37-115-50, of commodities that are used for clinical purposes and 1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of

the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term “competitive written bid” shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price,

technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of

higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars ($1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

MS Code 31-7-15

This section of the code establishes preferences for awarding contracts for commodities; procurement of products made from recovered materials; state agencies to purchase products manufactured or sold by Mississippi Industries for the Blind whenever economically feasible.

(1) Whenever two (2) or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities grown, processed or manufactured within this state shall be given preference. A similar preference shall be given to commodities grown, processed or manufactured within this state whenever purchases are made without competitive bids, and when practical the Department of Finance and Administration may by regulation establish reasonable preferential policies for other commodities, giving preference to resident suppliers of this state.

(2) Any foreign manufacturing company with a factory in the state and with over fifty (50) employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(3) On or before January 1, 1991, the Department of Finance and Administration shall adopt bid and product specifications to be utilized by all state agencies that encourage the procurement of commodities made from recovered materials. Preference in awarding contracts for commodities shall be given to commodities offered at a competitive price.

(4) Each state agency is required to procure products made from recovered materials when those products are available at a competitive price. For purposes of this subsection, "competitive price" means a price not greater than ten percent (10%) above the lowest and best bidder. A decision not to procure products made from recovered materials must be based on a determination that such procurement:

(a) Is not available within a reasonable period of time; or

(b) Fails to meet the performance standards set forth in the applicable specifications; or

(c) Is not available at a competitive price.

(5) Whenever economically feasible, each state agency is required to purchase products manufactured or sold by the Mississippi Industries for the Blind.

MS Code 31-7-38

Establishment of group purchasing programs by certain public hospitals and regional mental health centers.

The board of trustees or governing board of any hospital or regional mental health center owned or owned and operated separately or jointly by the State of Mississippi or any of its branches, agencies, departments or subdivisions, or by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may authorize by resolution the organization and operation of, or the participation in, a group purchasing program with other hospitals or regional mental health centers, for the purchase of supplies, commodities and equipment when it appears to the board of trustees or governing board that such a group purchasing program could or would affect economy or efficiency in their operations. Purchases by hospitals or regional mental health centers participating in group purchasing programs of supplies, commodities and equipment through such programs shall be exempt from the provisions of Sections 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13.

MS Code 31-7-55

This section of the code establishes penalties for unlawful purchases by government officials.

[For penalties applicable to violations occurring between January 1, 1981, and August 15, 1988, the following provisions govern.]

(1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972. Any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority who violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972 shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than One Hundred Dollars ($ 100.00) and not more than Five Hundred Dollars ($ 500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(2) Any person diverting the benefits of any article of value tendered or received by any agency

or governing authority to his or her personal use, in violation of Section 31-7-23, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than Five Hundred Dollars ($ 500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, and shall be required to return the money value of the article unlawfully diverted to the agency involved.

[The following provisions apply to violations which occur on or after August 16, 1988.]

(1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

(2) Except as otherwise provided in subsection (4) of this section, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($ 100.00) and not more than Five Hundred Dollars ($ 500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(3) Any person who intentionally, willfully and knowingly violates the provisions of subsection (1) of Section 31-7-57 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($ 100.00) and not more than Five Hundred Dollars ($ 500.00), or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, if the value of such article be less than Five Hundred Dollars ($ 500.00), shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($ 100.00) nor more than Five Hundred Dollars ($ 500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars ($ 500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($ 1,000.00) nor more than Five Thousand Dollars ($ 5,000.00), or sentenced to the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved.

(5) The provisions of this section are supplemental to any other criminal statutes of this state.

MS Code 31-7-57

This section of the code establishes individual liability for unlawful expenditures and for the disposition of recovered funds.

(1) Any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally for up to the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure, to be recovered by suit in the name of the governmental entity involved, or in the name of any person who is a taxpayer suing for the use of the governmental entity involved, and such taxpayer shall be liable for costs in such case. In the case of a governing board of an agency or governing authority, only the individual members of the governing board who voted for the appropriation or authorization for expenditure shall be liable under this subsection.

(2) No individual member, officer, employee or agent of any agency or board of a governing authority shall let contracts or purchase commodities or equipment except in the manner provided by law, including the provisions of Section 25-9-120(3), Mississippi Code of 1972, relating to personal and professional service contracts by state agencies; nor shall any such agency or board of a governing authority ratify any such contract or purchase made by any individual member, officer, employee or agent thereof, or pay for the same out of public funds unless such contract or purchase was made in the manner provided by law; provided, however, that any vendor who, in good faith, delivers commodities or printing or performs any services under a contract to or for the agency or governing authority, shall be entitled to recover the fair market value of such commodities, printing or services, notwithstanding some error or failure by the agency or governing authority to follow the law, if the contract was for an object authorized by law and the vendor had no control of, participation in, or actual knowledge of the error or failure by the agency or governing authority.

(3) The individual members, officers, employees or agents of any agency or governing authority as defined in Section 31-7-1 causing any public funds to be expended, any contract made or let, any payment made on any contract or any purchase made, or any payment made, in any manner whatsoever, contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such contracts shall be let, payment on any contract made, purchase made, or any other payment or expenditure made, shall be liable, individually, and upon their official bond, for compensatory damages, in such sum up to the full amount of such contract, purchase, expenditure or payment as will fully and completely compensate and repay such public funds for any actual loss caused by such unlawful expenditure.

(4) In addition to the foregoing provision, for any violation of any statute of the State of Mississippi prescribing the manner in which contracts shall be let, purchases made, expenditure or payment made, any individual member, officer, employee or agent of any agency or governing authority who shall substantially depart from the statutory method of letting contracts, making payments thereon, making purchases or expending public funds shall be liable, individually and on his official bond, for penal damages in such amount as may be assessed by any court of competent jurisdiction, up to three (3) times the amount of the contract, purchase, expenditure or payment. The person so charged may offer mitigating circumstances to be

considered by the court in the assessment of any penal damages.

(5) Any sum recovered under the provisions hereof shall be credited to the account from which such unlawful expenditure was made.

(6) Except as otherwise provided in subsection (1) of this section, any individual member of an agency or governing authority as defined in Section 31-7-1 shall not be individually liable under this section if he voted against payment for contracts let or purchases made contrary to law and had his vote recorded in the official minutes of the board or governing authority at the time of such vote, or was absent at the time of such vote.

MS Code 31-7-303

This section of the codes establishes the time for filing requisition for payment of invoice and the time for mailing payments to vendors.

(1) The requisition for payment of an invoice submitted to a public body and required by law to be filed with the State Fiscal Management Board shall be filed with the State Fiscal Management Board not later than thirty (30) days after receipt of the invoice and receipt, inspection and approval of the goods or services, except that in the case of a bona fide dispute the requisition for payment shall contain a statement of the dispute and authorize payment only in the amount not disputed. If a requisition for payment filed within the thirty-day period is returned by the State Fiscal Management Board because of an error, it shall nevertheless be deemed timely filed. The thirty-day filing requirement may be waived by the State Fiscal Management Board on a showing of exceptional circumstances in accordance with rules and regulations established by the State Fiscal Management Board.

(2) The warrant, in payment of an invoice submitted to a public body of the state, shall be mailed or otherwise delivered by the public body not later than fifteen (15) days after filing of the requisition for payment; however, this requirement may be waived by the State Fiscal Management Board on a showing of exceptional circumstances in accordance with rules and regulations of the State Fiscal Management Board or as otherwise provided in Section 7-7-35, Mississippi Code of 1972.

MS Code 31-7-305

This section of the code establishes recordkeeping and notice requirements, time for mailing check in payment of invoice, time for payment in event of dispute, and interest penalties.

(1) All public bodies of the state, including those which issue checks and those which file requisitions for payment with the State Fiscal Management Board, shall keep a record of the date of receipt of the invoice, dates of receipt, inspection and approval of the goods or services, date of issuing the check or date of filing the requisition for payment, as the case may be, and date of mailing or otherwise delivering the warrant or check in payment thereof. In the event that the State Fiscal Management Board mails or otherwise delivers the warrant directly to the claimant, pursuant to Section 7-7-35, Mississippi Code of 1972, the State Fiscal Management Board shall notify the public body of the date thereof. The provisions of this section are supplemental to the requirements of Sections 19-13-29, 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

(2) All public bodies that are authorized to issue checks in payment of goods and services and are not required to issue requisitions for payment to the State Fiscal Management Board shall mail or otherwise deliver such checks no later than forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services; however, in the event of a bona fide dispute, the public body shall pay only the amount not disputed.

(3) If a warrant or check, as the case may be, in payment of an invoice is not mailed or otherwise delivered within forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods and services, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1- 1/2 %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. The provisions of this paragraph shall apply only to undisputed amounts for which payment has been authorized. In the case of an error on the part of the vendor, the forty-five-day period shall begin to run upon receipt of a corrected invoice by the public body and upon compliance with the other provisions of this section. The various public bodies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. Also, at the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be.

(4) (a) In the event of a bona fide dispute as to an invoice, or any portion thereof, the dispute shall be settled within thirty (30) days after interest penalties could begin to be assessed, if it were not for the dispute.

(b) If a warrant or check, as the case may be, in payment of an invoice, subject to a prior dispute, is not mailed or otherwise delivered within thirty (30) days after settlement of the dispute, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1- 1/2 %) per month or portion thereof on the unpaid balance from the expiration of said thirty-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. At the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be. The interest penalty prescribed in this paragraph shall be in lieu of the penalty provided in subsection (3).

MS Code 31-7-401

This section of the code establishes which procurements are governed by the provisions establishing procedures for Requests for Proposals (RFPs) and Requests for Qualifications (RFQs).

Except as otherwise provided by law, the provisions of Sections 31-7-401 through 31-7-423 shall apply to every procurement of commodities, supplies, equipment, construction, technology, personal and professional services other than those in Section 27-104-7(2)(f) and (8), state agency employee benefits, supplemental insurance and cafeteria plans, that are solicited by any state agency by a request for proposals or request for qualifications. The following provisions are

intended to ensure that the best practices for soliciting requests for proposals or requests for qualifications are implemented. Any agency that is required to receive approval by the Public Procurement Review Board before entering into a personal or professional services contract as provided in subsection (2)(g) of Section 27-104-7 shall implement the best practices specified in Sections 31-7-401 through 31-7-423. The Public Procurement Review Board shall promulgate any necessary rules and regulations to administer the provisions of Sections 31-7-401 through 31-7-423.

MS Code 31-7-403

This section establishes the conditions of use for RFPs/RFQs.

(1) Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, a request for proposals or request for qualifications may be used. The terms “practicable” and “advantageous” are to be given ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application. “Advantageous” denotes a judgmental assessment of what is in the state's best interest.

(2) The following factors shall be considered when determining advantageousness:

(a) The need for flexibility;

(b) The type of evaluations that will be needed after offers are received;

(c) Whether the evaluation factors involve the relative abilities of offerers to perform, including degrees of technical or professional experience or expertise;

(d) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;

(e) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and

(f) Whether prior procurements indicate that a request for proposals may result in more beneficial contracts for the state.

(3) The following factors shall be considered when determining practicability:
(a) Whether the contract needs to be a contract other than a fixed-price type contract;

(b) Whether oral or written discussions may need to be conducted with offerers concerning technical and price aspects of their proposals;

(c) Whether offerers may need to be afforded the opportunity to revise their proposals, including price;

(d) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and

(e) Whether the primary consideration in determining award may not be price.

(4) On or before January 1 of each year, and every time a chief procurement officer is hired, each state agency shall provide to the state purchasing agent the name of the state agency's chief procurement officer and information identifying the state agency's central purchasing office, if applicable. If the chief procurement officer of an agency or his or her designee determines, in writing, that the use of competitive sealed bidding is either not practicable or not advantageous to the state, he or she shall submit a detailed explanation of the reasons for that determination to the Public Procurement Review Board. If the Public Procurement Review Board determines that competitive sealed bidding is either not practicable or not advantageous to the state, then a contract may be entered into for the procurement of commodities, supplies, equipment, construction, technology, personal and professional services, state agency purchased employee benefits or state agency supplemental insurance and cafeteria plans, by a request for proposals or request for qualifications. However, these procurements contracted for through a request for proposals or request for qualifications may not be combined or included in a contract with other procurements that are required to be procured through competitive sealed bidding so as to avoid the statutory obligation for procurement through competitive sealed bidding. The board may modify or revoke its determination at any time, and the determination should be reviewed for current applicability from time to time.

In addition to determining whether a request for proposals or request for qualifications would be practicable and advantageous to the state, when making the decision to use a request for proposals or request for qualifications, the chief procurement officer shall consider the following factors:

(a) Whether quality, availability or capability is overriding in relation to price in procurements for research and development, technical supplies or services;

(b) Whether the initial installation needs to be evaluated together with later maintenance and service capabilities and what priority should be given to these requirements in the best interests of the state; and

(c) Whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals but evaluation and discussion of them before making the award.

MS Code 31-7-405

This section of the code governs the content of RFPs and RFQs.

(1) The request for proposals or request for qualifications shall include the following:

(a) Instructions and information to offerers concerning the request for proposals or request for qualifications submission requirements, including the time and date set for receipt of proposals or qualifications, the address of the office to which proposals or qualifications are to be delivered, the maximum time for proposal or qualification acceptance by the state, the manner in which proposals or qualifications are to be submitted, including any forms for that purpose and any other special information;

(b) The purchase description, evaluation factors, delivery or performance schedule and any inspection and acceptance requirements that are not included in the purchase description;

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable;

(d) A statement that discussions may be conducted with offerers who submit proposals or qualifications determined to be reasonably susceptible of being selected for the award, but that proposals or qualifications may be accepted without such discussions; and

(e) A statement of when and how price should be submitted.

(2) The request for proposals or request for qualifications may incorporate documents by reference provided that the request for proposals or request for qualifications specifies where those documents can be obtained.

(3) Proposal or qualification preparation time shall be set to provide offerers a reasonable time to prepare their proposals or qualifications. A minimum of thirty (30) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the chief procurement officer of the requesting agency.

MS Code 31-7-407

This section of the code details the public notice required for RFPs and RFQs.

(1) In addition to any method of public notice regarding the solicitation of requests for proposals or requests for qualifications currently being used by state agencies, the chief procurement officer shall also have posted on the Mississippi procurement portal and on the soliciting agency's website, public notification of a pending procurement through request for proposals or request for qualifications. The notice shall include the following:

(a) The due date for responses;

(b) The name and phone number of the officer conducting the procurement; and

(c) The means of obtaining the solicitation.

(2) The notice shall be posted at least thirty (30) days before the date that proposals or qualifications are to be submitted to the chief procurement officer, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the chief procurement officer of the requesting agency.

(3) Each chief procurement officer may determine that other methods of public notification are best for that particular agency or that particular request for proposals or request for qualifications. If such a determination is made, the chief procurement officer may provide notice in an alternative manner about the request for proposals or request for qualifications in addition to the methods provided for in Sections 31-7-401 through 31-7-423.

(4) The Department of Finance and Administration (DFA) shall monitor agency websites and the Mississippi procurement portal to ensure that the agencies are posting the required notice. DFA shall audit agencies and report its findings to the Chairs of the House of Representatives and Senate Accountability, Efficiency and Transparency Committees and House of Representatives and Senate Appropriations Committees by December 31 of each year.

MS Code 31-7-409

This section of the code governs pre-proposal conferences.

(1) Pre-proposal conferences may be conducted to explain the procurement requirements. If a chief procurement officer plans to hold such a conference, he or she shall prominently place the notification in the request for proposals or request for qualifications solicitation. The notification shall include the date, time and location of the conference. If the chief procurement officer decides to hold a pre-proposal conference after the request for proposals or request for qualifications has been sent out, then he or she shall notify all prospective offerers known to have received a request for proposals or request for qualifications.

(2) If a pre-proposal conference is held, it shall be at least fourteen (14) days after the request for proposals or request for qualifications has been issued. In setting the time for the conference, the chief procurement officer shall consider the complexity of the procurement and the potential modifications that may need to be made after the conference and any amendments to the solicitation that the chief procurement officer may need to make after the conference.

(3) The chief procurement officer issuing the request for proposals or request for qualifications shall serve as chair of the conference. Offerers attending the conference shall be required to sign an attendance sheet provided by the soliciting agency. The chair shall announce at the beginning of the conference how the conference is to be handled. The conference shall be recorded. A chief procurement officer may mandate attendance at a conference if he or she feels it is critical to understanding the solicitation. Once the conference is over, the chief procurement officer shall put the recordings from the conference and the questions and answers from the conference in writing and send them to the offerers who received the request for proposals or request for qualifications and post them on the Mississippi procurement portal and the soliciting agency's website.

MS Code 31-7-411

This section of the code governs drafting the RFP or RFQ.

(1) In addition to the items listed in Sections 31-7 401 through 31-7-423, the contents of a request for proposals or request for qualifications shall also include the following:

(a) A statement that discussions may be conducted with offerers who submit proposals or qualifications determined to be reasonably susceptible of being selected for the award, but that proposals or qualifications may also be accepted without those discussions; and

(b) A statement of when and how price should be submitted.

(2) The request for proposals or request for qualifications shall indicate, either by the order listed, weights or some other manner, the order of importance of the evaluation criteria.

(3) The request for proposals or request for qualifications, its amendments, the offerer's proposals or qualifications and the best and final offer shall constitute the contract.

MS Code 31-7-413

This section of the code governs evaluation factors in RFPs or RFQs.

(1) When the chief procurement officer submits the determination that the use of competitive sealed bidding is either not practicable or not advantageous to the state to the Public Procurement Review Board for its approval, he or she shall include in that submission the evaluation factors that will be used in reviewing the submitted proposals or qualifications. The evaluation factors shall be approved by the Public Procurement Review Board in the same way that the decision to solicit procurements through a request for proposals or request for qualifications must be approved.

(2)(a) The request for proposals or request for qualifications shall state all of the approved evaluation factors, including price, and their relative importance. When the chief procurement officer is determining the weights and importance of each evaluation factor, price as an evaluation factor shall be given the highest criteria weighting and at least thirty-five percent (35%) out of the one hundred percent (100%) total weight of all the other evaluation factors. The evaluation shall be based on the evaluation factors set forth in the request for proposals or request for qualifications. The evaluation factors used and the weights given to each shall be decided and agreed to by the evaluation committee before the opening of any proposal or qualification. Numerical rating systems shall be used when determining the weight and importance of each evaluation factor. Factors not specified in the request for proposals or request for qualifications shall not be considered. Upon completion of the evaluation, the evaluation score sheets used to review the submitted proposals or qualifications shall be made part of the report required under Section 31-7-423(1).

(b) The following, as appropriate to individual circumstances, shall be used as criteria for evaluating requests for proposals or requests for qualifications under the request for proposals or request for qualifications process described in Sections 31-7-401 through 31-7-423. These factors are not intended to be limiting or all-inclusive, and they may be adapted or supplemented in order to meet a soliciting agency's individual needs as the competitive procurement process requires.

(i) Technical factors (Proposed methodology):

a. Does the offerer's proposal or qualification demonstrate a clear understanding of the scope of work and related objectives?

b. Is the offerer's proposal or qualification complete and responsive to the specific request for proposals or request for qualifications requirements?

c. Has the past performance of the offerer's proposed methodology been documented?

d. Does the offerer's proposal or qualification use innovative technology and techniques?

(ii) Management factors (Factors that will require the identity of the offerer to be revealed must be submitted separately from other factors):

1. Project management:

a. How well does the proposed scheduling timeline meet the needs of the soliciting agency?

b. Is there a project management plan?

2. History and experience in performing the work:

a. Does the offerer document a record of reliability of timely delivery and on-time and on-budget implementation?

b. Does the offerer demonstrate a track record of service as evidenced by on-time, on-budget, and contract compliance performance?

c. Does the offerer document industry or program experience?

d. Does the offerer have a record of poor business ethics?

3. Availability of personnel, facilities, equipment and other resources:

a. To what extent does the offerer rely on in-house resources vs. contracted resources?

b. Are the availability of in-house and contract resources documented?

4. Qualification and experience of personnel:

a. Documentation of experience in performing similar work by employees and when appropriate, sub-contractors?

b. Does the offerer demonstrate cultural sensitivity in hiring and training staff?

(iii) Cost factors (Factors must be submitted separately from other factors unless specifically approved by the Public Procurement Review Board):

1. Cost of goods to be provided or services to be performed:

a. Relative cost: How does the cost compare to other similarly scored proposals or qualifications?

b. Full explanation: Is the price and its component charges, fees, etc. adequately explained or documented?

2. Assurances of performance:

a. If required, are suitable bonds, warranties or guarantees provided?

b. Does the proposal or qualification include quality control and assurance programs?

3. Offerer's financial stability and strength: Does the offerer have sufficient financial resources to meet its obligations?

MS Code 31-7-415

This section of the code governs evaluation committees for RFPs and RFQs.

(1) Evaluation committees shall be used to evaluate request for proposals or request for qualifications and award contracts. Persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the proposal or qualification. The members of the evaluation committee shall have no personal, financial or familial interest in any of the contract offerers, or principals thereof, to be evaluated.

(2) The names of the members of the evaluation committee shall not be publicly disclosed until their evaluation report as required under Section 31-7-423(1). The members' names and job titles shall be made available to the public. Where evaluation committee members are not public employees, those members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be made available to the public.

(3) Before evaluating proposals or qualifications, each individual participating in the evaluation of a proposal or qualification shall execute a statement in accordance with subsection (1) of this section certifying that he or she does not have a conflict of interest. The statement shall be filed with the chief procurement officer of the soliciting agency, before beginning the evaluation process. The certification shall be as follows:

“I hereby certify that I have reviewed the conflict of interest standards prescribed herein, and that I do not have a conflict of interest with respect to the evaluation of this proposal or qualification. I further certify that I am not engaged in any negotiations or arrangements for prospective employment or association with any of the offerers submitting proposals or qualifications or their parent or subsidiary organization.”

(4) Committee members may conduct their work separately or together.

(5) The committee may use advisors, as it deems necessary to give opinions on evaluating proposals or qualifications, except that such advisors shall be subject to the provisions of subsection (3) of this section. The names of the advisors shall be made public at the same time as members of the evaluation committee as provided in subsection (2) of this section. For the purposes of this section, the term “advisors” shall mean those individuals who provide such significant input to a member or members of the evaluation committee that the advisor's opinions are fundamental in shaping the committee member's evaluation of the submitted proposals or qualifications.

(6) The process of establishing weighting criteria and evaluating proposals or qualifications shall result in a finding that a specific proposal or qualification is the most practical and advantageous, price and other factors considered, or that all proposals or qualifications should be rejected.

MS Code 31-7-417

This section of the code deals with receipt and registration of proposals or qualifications.

(1) Submitted proposals or qualifications shall be opened at the time designated for opening in the request for proposals or request for qualifications. Proposals or qualifications and modifications shall be date-stamped or time and date-stamped upon receipt and held in a secure place until the established due date. Electronic proposals or qualifications received will be stored in an electronic lockbox until the time designated for the opening of the proposal or qualification.

(2) As each proposal or qualification is submitted but before those proposals or qualifications are opened, the chief procurement officer shall designate a person to prepare a register of proposals or qualifications, which shall include the number of modifications received, if any, and a description sufficient to identify the supply, service, commodity or other item offered. The designated person shall assign each submitted proposal or qualification an identifying letter, number, or combination thereof, without revealing the name of the offerer who submitted each proposal or qualification to the chief procurement officer or any person named to the evaluation committee for that proposal or qualification. The designated person shall keep the names of the offerers and their identifying numbers or letters, or combination thereof, in a sealed envelope or other secure location until factors not requiring knowledge of the name of the offerer have been evaluated and scored. If the designated person reveals the names of the offerers and the corresponding identifying information before such time, the procurement process shall be terminated and the proposal or qualifications resolicited. The register of proposals or qualifications shall be made part of the report required under Section 31-7-423(1).

MS Code 31-7-419

This section of the code governs evaluation of submitted proposals or qualifications

(1) The evaluation committee shall evaluate proposals or qualifications only in accordance with the methodology and weighting criteria described in the request for proposals or request for qualifications. Proposals or qualifications shall be initially classified as: (a) acceptable; (b)

potentially acceptable, which means reasonably susceptible of being made acceptable; or (c) unacceptable. Offerers whose proposals or qualifications are unacceptable shall be so notified promptly.

(2) Discussions may be held with offerers to:

(a) Promote understanding of the state's requirements and the offerer's proposals or qualifications; and

(b) Facilitate arriving at a contract that will be the most practicable and advantageous to the state taking into consideration price and the other evaluation factors set forth in the request for proposals or request for qualifications.

(3) Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals or qualifications. Any discussions that take place under the provisions of this section shall be recorded and the recordings shall be made public upon award of the contract. The chief procurement officer shall establish procedures and schedules for conducting discussions. If, during discussions, there is a need for any substantial clarification of or change in the request for proposals or request for qualifications, the request shall be amended to incorporate the clarification or change. Auction techniques, revealing one offerer's price to another, and disclosure of any information derived from competing proposals is prohibited. Any substantial oral clarification of a proposal or qualification shall be reduced to writing by the offerer.

MS Code 31-7-421

This code section governs best and final offers.

The chief procurement officer shall establish a common date and time for the submission of best and final offers. Best and final offers shall be submitted only once; however, the chief procurement officer may make a written determination that it is in the state's best interest to conduct additional discussions or change the state's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed before the award. Offerers shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

MS Code 31-7-423

This code section governs awarding the contract.

(1) After proposals or qualifications have been evaluated, the evaluation committee shall prepare a report evaluating and recommending the award of a contract or contracts. The report shall list the names of all potential offerers who submitted a proposal or qualification and shall summarize the proposals or qualifications of each offerer. The report shall rank offerers in order of evaluation, shall recommend the selection of an offerer or offerers, as appropriate, for a contract, shall be clear in the reasons why the offerer or offerers have been selected among others

considered, and shall detail the terms, conditions, scope of services, fees and other matters to be incorporated into the contract. The report shall be available to the public at least forty-eight (48) hours before the awarding of the contract.

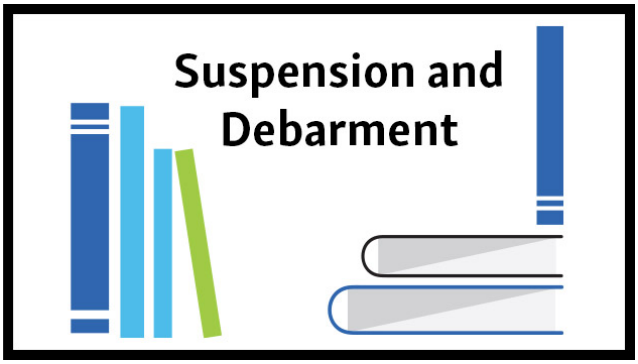
(2) The chief procurement officer shall publish a notice on the agency's website and the Mississippi procurement portal summarizing the award of the contract, which shall include but not be limited to, the nature, duration and amount of the contract, the name of the offerer and a statement that the contract is on file and available for public inspection in the office of the chief procurement officer.

Legal and Contractual Remedies

The procurement professional will always seek to meet the needs of his/her agency while also maintaining respectful relationships with any and all vendors and contractors. Inevitably, there are those times when differences arise that require a more official response. In this section, we will look at some of the potential actions and what the procurement professional will need to accomplish in order to bring the action to the most practicable solutions. The objectives for this section are to:

- Define the key terms involved in such actions
- Discuss protests and actions required by agencies
- Understand suspensions and debarment
- Identify contractual remedies
- Understand debriefings

Remember, these provisions discuss the process as defined in the OPTFM Procurement Manual. Processes and regulations governing legal and contractual rememdies for procurements governed by OPSCR or ITS may differ.



Definitions

Interested Party - an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

Protestor - any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

Attorney General Designee - the individual assigned by the Attorney General to provide legal assistance to the Department of Finance and Administration.

Chief Procurement Officer – the person holding the position as the Director of the Office of Purchasing, Travel and Fleet Management.

Authority to Resolve Protested Solicitations and Awards

Who has the right to protest the award of a bid or proposal to a particular vendor? Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest in writing within 7 days after becoming aware of the potential offense. The Chief Procurement Officer, agency head, or a designee shall have the authority to settle and resolve a protest. If the protest is not resolved by mutual agreement, a decision in writing will be issued.

The decision shall state the reasons for the action taken and will also inform the protester of its right to administrative review. Once the decision has been issued, a copy of the decision shall be mailed or otherwise furnished immediately to the protester and any other party intervening. A decision shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision appeals administratively to the Public Procurement Review Board.

Procedures for Addressing Protests

The protester must file his/her protest in writing with the agency and DFA within seven (7) days of becoming aware of the perceived offense. The protest should be placed in an envelope labeled "Protest" and it must include: the name and address of the protestor, the appropriate identification of the procurement and if a contract has been awarded, its number; a statement of reasons for the protest; supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

Once the protest has been filed, DFA will submit a copy of the protest to the Attorney General (AG) within three (3) days of receipt. It is important to note that no award can be made during the protest period unless the Chief Procurement Officer lifts the stay of the award. All parties may request additional information within an agreed upon time frame. A decision on the protest is first made by the head of the purchasing agency. A request for reconsideration to the Chief Procurement Officer or the head of the purchasing agency is permitted. If still aggrieved, a protestor may appeal to the Public Procurement Review Board.

Suspension and Debarment

On occasion there may be times when an agency believes it necessary to suspend or debar vendors. The following may be cause for debarment or suspension:

- Conviction of a crime in obtaining/attempting to obtain public contracts,
- Conviction for an offense indicating a lack of business integrity or honesty,
- Conviction for antitrust violations,
- Contract violations deemed worthy of debarment,
- Any other cause deemed worthy of debarment by DFA or the Agency Head, or
- Ethical violations

After reasonable notice to the person involved and a reasonable opportunity for that person to be heard, the Chief Procurement Officer or the head of a purchasing agency, after consultation with the using agency and the Attorney General, may debar a person for cause from consideration for award of contracts. Suspensions precede debarment and are initiated in order to give the agency an opportunity to investigate the facts and circumstances surrounding the potential debarment. Suspension can be recommended by DFA or the Agency Head, after consultation with the AG, pending the outcome of an investigation. If a contractor is suspended the contractor will not be awarded any contracts during the suspension nor will any bids or proposals be accepted from the contractor. The suspension remains in effect until it is ended by the officer who issued the suspension or after three (3) months.

Following suspension and a hearing, a person may be debarred. DFA or the Agency Head, after consultation with the using agency and the Attorney General, shall have the authority to debar a person for cause from consideration for award of contracts.

Once a debarment action is initiated, the contractor may request a hearing after receiving the notification of debarment. The hearing must be requested in writing within seven (7) days of the debarment notification. If the decision is made to debar the person, following the hearing, the person may appeal to the Public Procurement Review Board for a final decision. DFA will maintain a list of all debarred contractors to ensure that they are excluded from future DFA or agency contracts during the debarment period.

Contractual Remedies

The Mississippi Procurement Code establishes procedures and remedies to resolve contract and breach of contract controversies between the State and a contractor. It is the State's policy, consistent with the Code, to try to resolve all controversies by mutual agreement. In appropriate circumstances, informal discussions between the parties can aid in the resolution of differences by mutual agreement and are encouraged. If such informal discussions do not resolve the controversy, individuals who have not participated substantially in the matter in controversy may be brought in to conduct discussions if this is feasible. Independent committees and panels which review controversies expeditiously and informally with a view to fair settlement possibilities also are encouraged at this stage.

Authority to Resolve Contract and Breach of Contract Controversies is addressed in Chapter 6 of the Procurement Manual and is applicable to controversies between the State and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation

controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification, reformation, or rescission. The word "controversy" is meant to be broad and all-encompassing. It includes the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

Debriefing

Chapter 3 of the Procurement Manual includes information on Requests for Proposal debriefings. The Agency Procurement Officer is authorized to provide debriefings that furnish the basis of the source selection decision and contract award. Debriefings may only be conducted when utilizing the competitive sealed proposal process as authorized in Chapter 3 of the manual.

(1) At the written request of any offeror who has submitted a proposal, debriefings may be given orally, in writing, or by any other method acceptable to the Agency Procurement Officer. Such debriefings may be given at any time on or after the eighth (8th) day after the agency has awarded the contract. In no case may an offeror request a debriefing more than thirty (30) days after the agency has awarded the contract.

(2) An offeror's written request for a debriefing should include a list of any questions an offeror may have in order to assist the Agency Procurement Officer or agency staff in preparing for the debriefing.

(3) A post-award debriefing may include:

    (a) The agency's evaluation of significant weaknesses or deficiencies in the proposal, if applicable;
    (b) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror;
    (c) The overall ranking of all proposals, when any such ranking was developed during the source selection;
    (d) A summary of the rationale for award;
    (e) Reasonable responses to relevant questions about whether source selection procedures contained in the Request for Proposals and applicable law were followed.

(4) Post-award debriefings should not include point-by-point comparisons of the debriefed proposal with those of other offerors.

(5) Any debriefing should not reveal any information prohibited from disclosure by law, or exempt from release under the Mississippi Public Records Act of 1983, including trade secrets, or privileged or confidential commercial or manufacturing information. Agencies should consult their Public Information Officer or agency legal representative for guidance in complying with the Act prior to conducting debriefings.

(6) Debriefings are non-adversarial business meetings. Accordingly, offerors may bring legal representation to any oral debriefing, although it is not necessary. If, however, any offeror has legal representation present during an oral debriefing, the agency must also have its legal representative in attendance. Questioning of agency staff by offerors' legal representative(s) is not permitted.

(7) A summary of any debriefing should be included in the contract file.

Review Questions

1. What section of the MS Code defines common terms used in purchasing?

2. What section of the MS Code grants administrative authority to DFA?

3. MS Code 31-7-11 gives supervision over the purchasing and purchasing practices of each state agency to what entity?

4. In MS Code 31-7-1, what is defined as any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection?

5. MS Code 31-7-3 states that the purposes and aims of DFA in carrying out the provisions of this section shall be to coordinate and promote efficiency and economy in the purchase of what?

6. What section of the MS Code establishes the terms for use of state contracts?

7. What section of the MS Code establishes bid requirements and procedures for state agencies?

8. What section of the MS Code establishes the time for filing requisitions for payment of invoices?

9. Requisitions for payment of invoices submitted to a public body are to be paid not later than how many days after receipt of the invoice?

10. What is the interest rate per month that a vendor is allowed to charge to an agency if the payment is not made for a duly submitted invoice within 45 days?

11. What term defines any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest?

12. What term defines an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract?

13. Who has the authority to settle and resolve a protest?

14. A decision on a protest will be issued in writing if the protest is not resolved by what method?

15. Once a protest is filed, what agency does DFA submit a copy of the protest to within three days?

16. Conviction of a crime in obtaining public contracts, conviction for antitrust violations, and ethical violations are all reasons that can lead to what action against a vendor?

17. If a vendor is debarred, how soon must the vendor request a hearing if the decision is questioned?

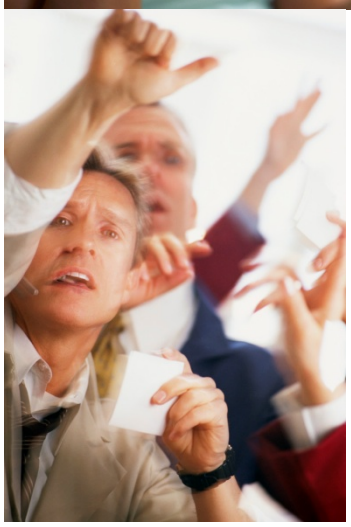
18. After what type of procurement should an agency do a debriefing?

19. Whose permission does an agency need to issue an RFP?

20. How long must an RFP be advertised and where?

21. When can an RFP evaluator know the identity of a Proposer?

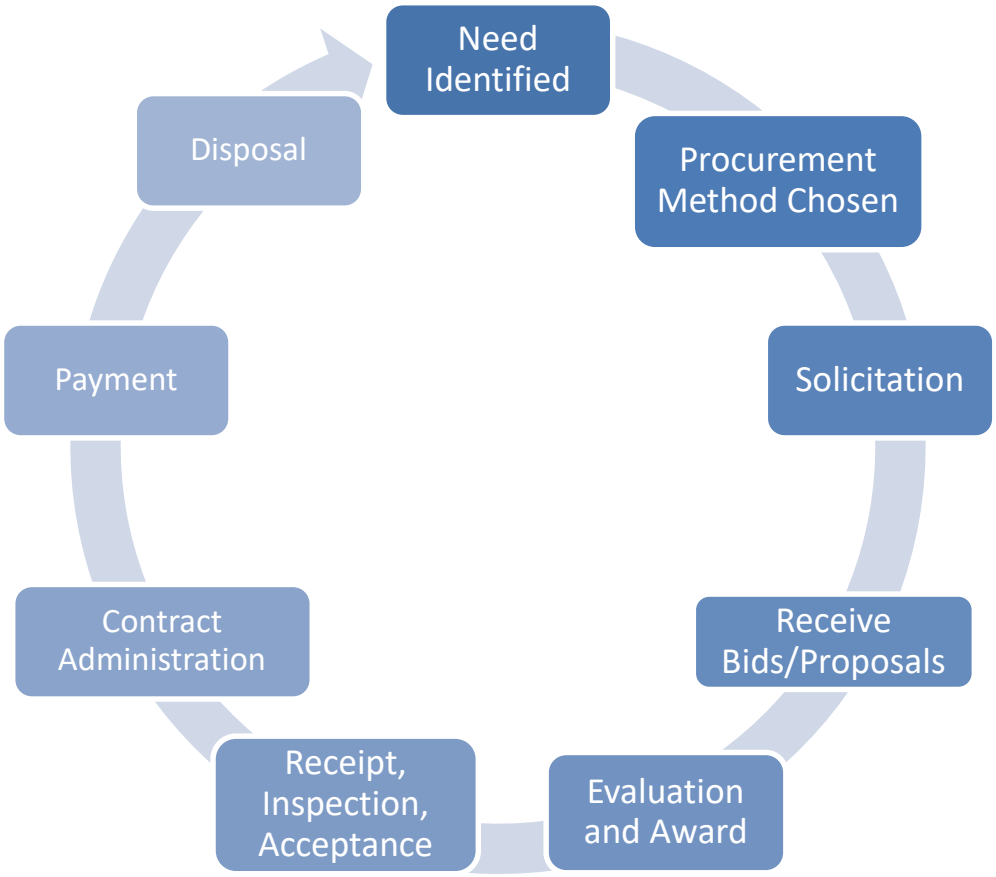
STEPS IN THE PROCUREMENT CYCLE



This section of the manual is designed to help the procurement professional to learn the numerous methods of obtaining goods and services as well as managing the use of those goods and services throughout their useful life. There are five main objectives for this section:

- Identify approved purchasing methods and their characteristics
- Properly assess types of purchases and the appropriate method of purchase
- Properly determine P-1 usage
- Review OPTFM contracts
- Discuss PPRB approval process

The Mississippi Procurement Cycle



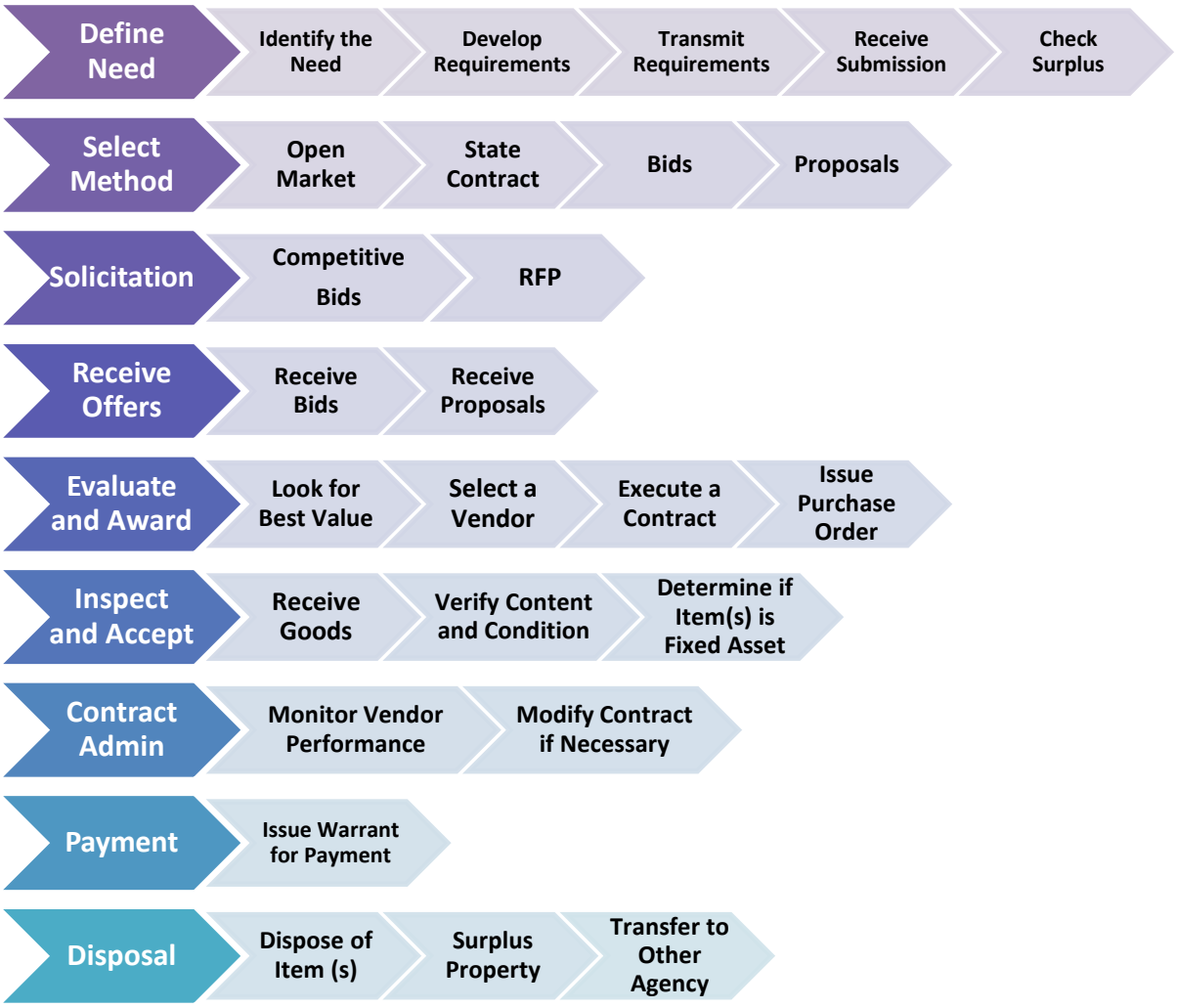
The illustration above is a graphical representation of the procurement cycle. The procurement cycle is not unique to Mississippi governmental purchasing; however the statutes, regulations, and procedures for meeting the requirements of the procurement cycle are unique. You will find that every purchase that is made, small or large, will follow this same cycle, thus it is important to have an understanding of the steps of the cycle.

The process begins with identifying the need. The need could be for something as simple as a pack of ink pens to something as complex as a multi-engine aircraft. The procurement professional must work with his/her customers (departments, offices, schools, etc.) to determine what is needed and at what quantity. Once the need is established, the procurement professional must decide which method of procurement will be most efficient and effective to meet the need. These methods can include open-market purchases, state contracts, request for proposals, or bids. After the determination is made, then the professional will issue the actual solicitation to a qualified vendor or vendors who will then provide pricing for the goods or services requested. The solicitation can take the form of a quote from the vendor or a description in a catalog or on a company website. Once the solicitation is issued, the vendor will provide a response to the request. The professional will review the response to determine if the response meets the

specifications for the goods or services as requested. If the response meets the specifications, the order is placed and the goods or services are received by the procurement professional for review and inspection to insure that all goods are accounted for and in good working order.
The contract administration phase involves managing the use of the goods or services and ensuring that the items meet the planned useful life. Naturally, once the items are received and placed into service, the vendor must be paid for providing the goods or services. Mississippi law provides for payment to vendors within forty-five days of receipt and acceptance of the goods or services and a valid invoice. The final step in the cycle is the disposal phase. Disposals can be as simple as throwing a depleted ink pen into the trash or sending a discharged ink cartridge to be recharged, or it can be as complex as setting up a public auction to sell those items that have reached the end of their useful life.

Throughout this process, the procurement professional must be engaged with the agency and its employees to ensure that no step or steps in the cycle are overlooked or mismanaged. Diligence is crucial to verifying that misappropriation does not occur.

Mississippi Purchasing Process



The illustration above is another view of the purchasing process as carried out under Mississippi procurement law. Procurement professionals can use this as a guide when making purchasing decisions to ensure that all steps in the process have been carried out.

Method of Source Selection

Purchasing professionals have a number of different options available for making purchases of needed goods and services. In this section we will look at the various options that are available and discuss how and when to apply each option. Bear in mind that some purchases may require a combination of purchasing methods in order to get the best results.

Authority to Make Small Purchases

Purchasing professionals are able to make small purchases via established state contracts that are executed by OPTFM and made available to all state agencies, IHL's, and governing authorities. Commodities and equipment which may be obtained under current state competitive contracts shall be purchased from the state contracts, unless authority to do otherwise is granted by the OPTFM.

If a commodity is on a negotiated contract, state agencies may buy from any of the contract vendors, or state agencies may purchase the item from other than the contract vendor provided that they must follow the applicable procedures set forth in Section 31-7-13 (a), (b), or (c) and that the price paid shall not exceed the negotiated contract price.

State contracts are listed on the OPTFM website at www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management.

Purchases less than $5,000.01

Purchases that total less than $5,000.01 may be made on the open market, provided that there is no competitive state contract available. The purchasing agent will obtain pricing from multiple sources to ensure competition but unlike purchases of $5,000.01 or more, written bids are not required. The purchasing agent must still ensure that purchase requisitions and purchase orders are prepared and approved prior to making the purchase. Additionally, the total cost must be used and items cannot be split up to avoid obtaining written bids.

Competitive Written Bid between $5,000.01 and $50,000

Small purchases costing more than $5,000, but not more than, $50,000 require written bids from two or more businesses. We should thus identify what constitutes a written bid.

Written Bid - A bid submitted on a bid form or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. Bids may be submitted by fax, e-mail or other generally accepted methods. Bids submitted electronically shall not require the signature of the vendor's representative unless required by agencies or governing authorities; however, proof of electronic submission is required.

Once written bids have been received, the award shall be made to the lowest responsive bid, provided at least two competitive written bids have been obtained. The total cost must be used and items cannot be split up to avoid advertising for formal bids.

Example: When requesting written bids, the total cost of the order is $51,000. The agent decides to place one order for $25,000, then a second order for $26,000. This is illegal as the total cost exceeded $50,000.00 and thus would require that a formal bid advertisement be placed in the local newspaper.

Once sufficient written bids have been received and an award made, purchase requisitions and purchase orders must be prepared and approved prior to making the purchase.

Competitive Written Bid over $50,000

Purchases over $50,000 may be made from the lowest and best bidder after properly advertising and following all rules and regulations in the Procurement Manual. **Reverse Auctions** are the primary method of receiving bids and must be utilized unless an exemption is granted by the Public Procurement Review Board (PPRB).

Reverse Auctions and Electronic Bidding

Reverse auctions are the primary method of receiving bids during the bidding process. Agencies should prequalify suppliers by ensuring their products conform to the agency's specifications prior to inviting them to participate in the auction. Agencies must utilize MAGIC to perform auctions; however, suppliers may not be required to participate electronically. Contracts for public construction and procurements made by the individual institutions of higher learning are exempt from reverse auctions. Any agency seeking to utilize a traditional competitive sealed bidding process for commodities must first seek an exemption from the reverse auction process from the PPRB. Additionally, any award following a traditional sealed bidding process must be approved by the Board if an exemption from performing reverse auction was granted.

When accepting bids, entities must provide a secure electronic interactive system for the submittal of such bids as an additional bidding option for those bidders who choose to submit their bids electronically. Agencies must utilize MAGIC to accept electronic bids; however, no bidder shall be required to submit bids electronically. This requirement applies to all procurements governed by Section 31-7-13 of the Code, including construction and IHL procurements.

Exemption from bid requirements

Certain items are exempt from the competitive bid requirements. These items can be found listed in MS Code 31-7-13 (m) and Section 3.101.02 of the Procurement Manual. These items do not require approval by OPTFM except as may be required when submitting an Inventory Deletion Form.

Exemption from bid requirements requiring approval

Unless otherwise ordered by regulation of the PPRB, the following listed items are exempt from the competitive bid process; however, these purchases do require P-1 approval of OPTFM:

(1) Non-competitive items that are available from only one source – after following sole source regulations as outlined in Section 3 of the Procurement Manual

(2) Items purchased for research that are available from only one source – after following sole source regulations as outlined in Section 3 of the Procurement Manual

(3) Emergencies threatening health and safety or property

P-1 information

A P-1 is an electronic document that is a request for authority to purchase. P-1's are submitted to OPTFM for review and approval for the following types of purchases listed below:

- Agency Contract Bids
- Agency Contract Sole Source
- Competitive Bids When Not Selecting Low Bidder
- Competitive Bids When Selecting Low Bidder
- Emergency Purchases
- Exemption from State Contract
- Master Lease
- Open Purchase Order
- Research
- Sole Source
- Trade-In of Equipment with Purchase

The P-1 originates at the agency level. The agency submits the request and applicable attachments electronically. If approval is granted, the agency is notified electronically and may then issue the appropriate purchase order. All electronic documents are archived electronically for future reference.

Agencies should refer to the on-line training documentation for proper instructions that is located in OPTFM's website.

Emergency Procurements – *As outlined in the Procurement Manual*

Notwithstanding any other provisions of this regulation, the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements under emergency conditions as defined in Section 31-7-1(f), Mississippi Code of 1972, Annotated; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Such purchases shall be made in compliance with Section 31-7-13(j), Mississippi Code of 1972, Annotated. Agencies shall notify or seek approval from, where required, the Office of Purchasing, Travel and Fleet Management by using the electronic P-1 process.

Emergency procurement shall be limited in scope to those supplies, services, or construction items necessary to meet the emergency and limited in term to the time necessary to meet the emergency; however in no event shall any emergency contract exceed a term of one (1) year.

Authority to Make Emergency Procurements – *As Outlined in the Procurement Manual*

Any state agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided approval by the executive head of the agency shall be obtained prior to the procurement and provided 3.110 is followed. Governing authorities shall comply with Section 31-7-13(k), Mississippi Code of 1972, Annotated.

1) Emergencies threatening health and safety or property

If such emergency threatens the health or safety of any person, or the preservation or protection of property, then the provisions of competitive bidding shall not apply and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment and provide justification and certification in writing detailing from whom the purchase was made or with whom the repair contract was made to the Office of Purchasing, Travel and Fleet Management using the electronic P-1 process.

The justification should be written in sufficient detail so that a person not familiar with the situation could be expected to understand the need to forego the normal purchasing procedure. As per Section 31-7-13(j), Mississippi Code of 1972, Annotated, the certification for an emergency purchase must be submitted on letterhead and signed by the executive head or his/her designee(s) of the requesting agency. Agencies shall address the following when preparing the justification:

- Does it fall under the definition of an emergency set forth in Sections 31-7-1(f), Mississippi Code of 1972, Annotated?
- What happened to cause the emergency?
- What would be the negative consequences of following normal purchasing procedures?
- Does it threaten the health or safety of any person, or the preservation or protection of property?
- The total purchases made shall only be for the purpose of meeting the needs created by the emergency situation.

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 filed with the Department of Finance and Administration when submitting the applicable payment request as more particularly prescribed in the DFA MAAPP Manual. In the case of Institutions of Higher Learning, this can be done by adding an attachment to the university's P1 request.

2) Emergencies Requiring Approval Prior to Purchase

If the governing board or the executive head, or his designees, 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 head of such agency, or his designees, shall seek

approval of the Office of Purchasing, Travel and Fleet Management using the electronic P-1 process.

The justification should be written in sufficient detail so that a person not familiar with the situation could be expected to understand the need to forego the normal purchasing procedure. As per Section 31-7-13(j), Mississippi Code of 1972, Annotated, the certification for an emergency purchase must be submitted on letterhead and signed by the executive head or his/her designee(s) of the requesting agency. Agencies shall address the following when preparing the justification:

(a) Does it fall under the definition of an emergency set forth in Sections 31-7-1(f), Mississippi Code of 1972, Annotated?

(b) What happened to cause the emergency?

(c) What would be the negative consequences of following normal purchasing procedures?

(d) The total purchases made shall only be for the purpose of meeting the needs created by the emergency situation.

Upon receipt of the justification and any applicable board certification, the State Fiscal Officer or his designees, may authorize the purchase or repair without having to comply with competitive bidding requirements.

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 filed with the Department of Finance and Administration when submitting the applicable payment request as more particularly prescribed in the DFA MAAPP Manual. In the case of Institutions of Higher Learning, this can be done by adding an attachment to the university's P1 request.

Sole Source and Research Requirements – *As Outlined in the Procurement Manual*

- **Conditions for Use of Sole-Source / Research Procurement(s)**
  Sole-source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify sole-source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole-source procurement:
  - Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration (and manufacturer is sole supplier)
  - Where a sole supplier's item is needed for trial use or testing
  - Where a sole supplier's item is to be required when no other item will serve the need of the user entity

Any agency seeking sole source procurement authority for commodities shall advertise in the same manner provided in Section 31-7-13(c), Mississippi Code of 1972, Annotated. Such advertisement

shall direct vendors to the procurement portal website established by Sections 25-53-151 and 27-104-165, where the agency shall publish for a minimum of fourteen (14) days the terms of the proposed sole source procurement. The portal publication shall include, but is not limited to, the following information:

- A description of the commodity that the agency is seeking to procure
- An explanation of why the commodity is the only one that can meet the needs of the agency
- An explanation of why the source is the only person or entity that can provide the required commodity
- An explanation of why the amount to be expended for the commodity is reasonable
- The efforts that the agency went through to obtain the best possible price for the commodity
- Procedures for any person or entity that objects and proposes that the commodity published on the procurement portal is not sole source and can be provided by another person or entity. These procedures shall direct the objecting person or entity to notify the agency that published the proposed sole source procurement request with a detailed explanation of why the commodity is not sole source procurement. If such an objection has been raised, the agency shall follow the following steps:

    - If the agency determines after review that the commodity in the proposed sole source request can be provided by another person or entity, then the agency must withdraw the sole source request publication from the procurement portal website and submit the procurement of the commodity to an advertised competitive bid or selection process.
    - If the agency determines after review that there is only one (1) source for the required commodity, then the agency may appeal to the Public Procurement Review Board. The agency has the burden of proving that the commodity is only provided by one (1) source.
    - If the Public Procurement Review Board has any reasonable doubt as to whether the commodity can only be provided by one (1) source, then the agency must submit the procurement of the commodity to an advertised competitive bid or selection process.

      Once the procedures listed above have been followed, and an item has been certified as a single source item, the item may be purchased without complying with provisions for competitive bidding. Authority must be granted by the Office of Purchasing, Travel and Fleet Management prior to acquisition of the item by using the electronic P-1 process. A letter must be accompanied as an attachment to the P1 request outlining the results of the procedures that have been detailed above.

Following the approved purchase, per Section 31-7-13 (m)(viii), Mississippi Code of 1972, Annotated, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased when submitting the applicable payment request as more particularly prescribed in the DFA

MAAPP Manual. In the case of Institutions of Higher Learning, this can be done by adding an attachment to the university's previously approved P1 request.

Public Notice – *As Outlined in the Procurement Manual*

Publication

- Every procurement in excess of $50,000 must be publicized: Section 31-7-13, Mississippi Code of 1972, Annotated.
    - (1) In a newspaper published in the county or municipality in which the agency is located or a newspaper of statewide general circulation;
    - (2) By submitting notice to be published to Mississippi Procurement Technical Assistance Program on the same day that the notice is submitted to the newspaper;

Content of Advertisement

- When composing the advertisement to appear in the legal notice section of the newspaper, the intent is to include information that will promote competition.

Commentary

- The following is a suggested guide for a legal advertisement:
    - The (name of the entity) will accept sealed bids until (time of bid opening), (day of the week), (month), (date), (year) for the purpose of purchasing the following:
        - Name of commodity/service you wish to procure
        - Bid file number
        - Detailed specifications may be obtained by contacting (name of contact person) at (telephone number), at (physical mailing address) or at (email address)

Mississippi Procurement Technical Assistance Program

- Section 31-7-13(c)(i), Mississippi Code of 1972, Annotated, clearly states, "On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program that contains the same information as that in the published notice." Agencies which utilize the MAGIC system to publicize the Invitation for Bids shall be deemed in compliance with provision by ensuring that the start date of the RFx corresponds with the first date of advertisement in the newspaper.

Advertising Time

- Advertising time is the period of time between the date of publication of the advertisement and the time and date set for receipt of bids. This time is set by Section 31-7-13(c), Mississippi Code of 1972, Annotated. This section shall be interpreted to mean the advertisement for bids must be published once each week for two consecutive weeks with the

second notice being published on or after the 7th calendar day after the first notice was published. The date set for the bid opening for commodities, equipment or printing must not be less than seven (7) working days after the last notice appears in the newspaper. Therefore, the bid opening must not be sooner than the 8th working day. The bid opening for construction projects with total cost in excess of $50,000 must not be less than 15 working days after the last notice appears in the newspaper. Therefore, the bid opening must not be sooner than the 16th working day. Working days are defined as days that your entity is officially open for business.

Public Procurement Review Board

Procurement professionals must keep in mind that purchases exceeding $500,000 require approval by the Public Procurement Review Board (PPRB) prior to executing the purchase. The steps below are to be followed when seeking the approval.

A P-1 must be submitted to OPTFM for approval to purchase.

The approved P-1 requests must be submitted to the Board by the published deadline (approximately one month prior to the Board meeting)

The following items require Board approval:

- Any request for any purchase authority (to include multiple purchases or a "not to exceed" amount), award, or awards (when such awards are the result of one competitive procurement) which exceed~~s~~ $500,000 of commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state, but not commodities purchased for resale or raw materials converted into products for resale as provided by Section 31-7-1(e), Mississippi Code of 1972, Annotated
- Regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities as well as related contracts for architectural and engineering services
- Construction contracts greater than $5,000,000
- Master Lease Purchase schedules
- Cancellation of Mississippi Department of Corrections contracts on minutes
- Policies and procedures which relate to the purchasing of commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state, but not commodities purchased for resale or raw materials converted into products for resale
- Rules and regulations regarding the sale or disposal of property

Utilizing State Contracts

The following types of contracts listed below have been established or adopted by OPTFM for use by state agencies or governing authorities:

- **Competitive Contracts** are established on the basis of written specifications and sealed competitive bids with a contract being awarded to the vendor that has submitted the lowest bid that meets the specifications.

- **Negotiated Contracts** are entered into when a commodity is used by multiple state agencies and a standard specification fails to meet the needs of a majority of the state agencies.
- **Statewide Agency Contracts** are established on the basis of competitive bids or negotiation by a specific agency. These agency contracts are approved by the Office of Purchasing, Travel and Fleet Management for use by all state agencies and governing authorities to purchase specific products from the vendor.
- **Cooperative Contracts** are statewide contracts established on the basis of reviewing and selecting solicited contracts from written specifications and sealed competitive bids or by those on a multiple award schedule by consortiums which show a demonstrative cost savings.

Review Questions

1. The purchasing process begins with what step?

2. Commodities, equipment, or printing which may be obtained under current state contracts sometimes may be purchased from other sources. True or False

3. Purchases less than what amount and that are not listed on a state contract can be purchased by obtaining written bids (quotes)?

4. Purchases costing between $5,000 but not more than $50,000 require written bids from how many sources?

5. What type of bid does not require the signature of the vendor?

6. When compatibility of equipment, accessories, or replacement parts is the paramount considerations, what type of purchase may be necessary?

7. Authority for sole source purchases must be approved by what office prior to completing the purchase?

8. Severe weather, earthquake, or civil unrest are all situations that could justify what type of purchase?

9. An emergency purchase certification must be submitted on letterhead and signed by whom?

10. The procurement professional must keep in mind that purchases exceeding $500,000 require approval from whom?

11. What types of purchases require submission of a P-1?

12. List the different types of State Contracts available to agencies.

13. Name some commodities that are exempt from state purchasing law.

14. When a purchase involves an expenditure of more than $5,000.00 but not over $50,000.00, how many competitive written bids must be obtained?

15. When must an agency issue an advertisement for competitive bids? By what method must bids be taken?

16. How long and how often must the agency advertise for competitive bids?

LOGISTICS

When procurement officers make purchases of goods for use by the agency, it is important to ensure that the items are received in a timely manner and in good working order. Improper, incomplete, or damaged shipments can cause excessive downtime, losses in productivity, and can actually increase the costs of conducting governmental business. Thus, logistical planning is a crucial component of the procurement officer's duties. This section will help you to:

- Understand the difference in FOB Shipper and FOB Destination
- Explain the difference in FOB and freight
- Discuss receiving procedures
- Identify methods of disposing of personal property items

Shipping

A phrase that procurement officers should become familiar with is the phrase FOB (Free on board). This phrase is important in that it establishes who has ownership of an item(s) during the shipping process. Goods can sometimes be damaged during shipping and it is important to be able to determine proper ownership of the item(s). There are two types of FOB designations to be familiar with.

> FOB Origin – ownership (title) transfers from vendor to agency at point of origin. Responsibility of cost of freight must be specified with additional language.
>
> FOB Destination – ownership (title) transfers from vendor to agency once goods are delivered to the agency destination (always use FOB Destination).

It is always in the agency's interest to use FOB Destination since it ensures that the vendor maintains ownership of the item(s) until the agency receives the item at its location.

Procurement officers must also be aware of freight and shipping costs. Freight states who pays shipping costs but it does not address ownership (title). Freight and shipping costs must be included in the total cost estimate for all goods and services.

Receiving

Once the procurement officer has placed the order for goods and has made arrangements for freight and shipping, there must be a plan in place to receive the goods upon their arrival at the agency location. There are some practical steps to keep in mind.

> Check the shipping receipt to see if a purchase order number is listed.
>
> Check the shipping receipt against the purchase order to verify its accuracy.
>
> Does the PO contain any special instructions? If so, ensure that the shipper follows those instructions.
>
> Determine if the item(s) is a fixed asset. If so, alert Property Control to the item's arrival after the inspection is complete.
>
> Inspect the shipments; look for visible damage to the outside of the package. If time permits, check the internal contents for accuracy and for damage. Once the inspection is complete there are several options:
>
> > Accept shipment – if all items are in good condition and the order is complete.
> > Reject shipment – if all items are not in good condition or the order is incomplete.
> > Accept undamaged portion and return damaged portion – this can allow the agency to utilize the items that are useful immediately while awaiting the replacement of the damaged goods. The procurement officer should coordinate with the using department and the vendor before utilizing this option.

A couple of other considerations are over-shipments and shortages. If the vendor sends an over-shipment, then the procurement officer should only pay for the ordered goods. The procurement officer should contact the vendor and make arrangements to have the over-shipped items returned to the vendor. (The vendor should cover the costs of returning the items.) If there is a shortage in the shipment, then the procurement officer has the option to withhold payment until the order is complete or to only pay for what is received. It is best to contact the vendor and make arrangements for the remaining goods prior to issuing payment for the goods received.

Disposals

Just as surely as items are purchased, those same items will eventually reach the end of their useful life. Personal property which becomes surplus to the needs of a state agency may be disposed of in any of the following ways: Sold, traded, or transferred.

There are multiple ways for procurement officers to sell personal property. The most used method is the sealed bid process. The steps in the process include:

- Placing an ad in the local paper advertising property items to be sold (the ad must run for two consecutive weeks)
- Receiving and opening bids no sooner than the 8th day after the last advertisement
- The bids can be rejected under certain circumstances as described in the Procurement Manual (the agency can either run another ad and re-bid the items or it can move to another disposal method)
- Once a bid is accepted, prepare an equipment disposal form and send to OPTFM for approval
- Release the sold equipment upon receipt of disposal approval from OPTFM and payment from the winning bidder
- Remove the item from the agency's active inventory

Procurement officers may also dispose of personal property by means of a public auction. The agency can conduct the auction itself or it can contract with a professional or online auction company to conduct the auction. The auction can be held on agency property, at auction company property, or online. There are two considerations for auctions on agency property: Will the auction company only sell items with no other involvement, or will the auction company provide turn-key service? The auction company can be contracted to sell-only if the auction company agrees to a 10% commission/item, not to exceed $50/item. The contract with the auction company must be approved by OPTFM prior to the auction and the OPTFM must be notified at least 15 days prior to the auction. Buyer's fees are allowable in a sell-only auction contract. If the auction company expects to receive higher fees than the 10% item not to exceed $50 item, then the service must be advertised through the competitive bid process.

Another method of selling personal property is via a private treaty. There are several considerations when selling personal property using this method:

- The sale is based on buyer acceptance of a price set by the selling agency
- If the value is $1,000 or more then private treaty can only be used if the buyer is another state agency or governing authority
- If the value is less than $1,000, then a private treaty sale can be negotiated with a private entity
- The price should not be set too high, which can discourage agencies buying; leading to sale at public auction for less money

A third method of disposing of agency personal property is through trade-ins. Agencies may trade equipment for residual value and have that value applied towards new equipment or state contract items. This method cannot be used to purchase vehicles that are on state contract. When an agency decides to use a trade-in, the agency must submit a P-1 and an inventory disposal form to OPTFM for approval prior to the equipment trade. If the trade-in amount is greater than $5,000, the agency must advertise for bids for the personal property. The agency must factor in the total value of any traded equipment and the cost of the items to be purchased. Once the purchase is completed, remove the item(s) from the inventory.

Finally, agencies can dispose of personal property by transferring items between agencies or to the MS Office of Surplus Property. The transfer does not have to be between state agencies as property may be transferred from a state agency to a governing authority. These transfers, or sale of property from one state agency to another, do not require approval of the OPTFM. The agencies must still submit the completed Inventory Deletion Form to the Division of Property Control, Office of the State Auditor, and must obtain approval from the State Auditor's office prior to disposing of the property.

Electronic Recyclers

Agencies seeking to dispose of state-owned personal property that meets the definition of "electronics" found in Section 49-2-101, Mississippi Code of 1972, Annotated may dispose of the property through the use of a certified electronic recycler, after a determination is made that the item(s) have no value and the property will not be sold, traded, or transferred by the agency. Agencies shall only use certified recyclers who appear on the directory maintained by the Mississippi Department of Environmental Quality for the disposal of agency electronics, in accordance with Section 49-2-103, Mississippi Code of 1972, Annotated.

Review Questions

1. FOB Destination ensures that who maintains ownership of the item(s) until the agency receives them?

2. What phrase establishes who has ownership of an item during the shipping process?

3. If an item is a fixed asset, whom should be notified once the inspection is complete?

4. What term states who pays shipping costs but does not address ownership (title)?

5. What should the purchasing officer do if all items are in good condition and the order is complete?

6. With FOB Origin terms, ownership of the item transfers to the agency once the items are picked up by whom?

7. What should the shipping receipt be checked against to verify accuracy?

8. What may be sold, traded, or transferred once it becomes surplus to the needs of a state agency?

9. What method of disposal may be used as long as commissions do not exceed 10%/item, not to exceed $50/item?

10. What form of disposal of personal property may be done between state agencies or governing authorities?

11. If all items are not in good condition or the order is incomplete, what options do the purchasing officer have for the shipment?

12. How many days must the purchasing officer wait to open bids for the sale of personal property?

13. What method of disposal cannot be used to purchase vehicles that are on state contract?

14. If the price of surplus personal property is less than $1,000, with whom can a treaty sale be negotiated?

SPECIAL PROCEDURES

The procurement officer can be faced with numerous instances that do not fit the mold of traditional purchases. These instances can sometimes require considerable flexibility and adaptability in order to secure the needed goods. In this chapter we will discuss the following procedures:

- Procuring petroleum products
- List requirements for open purchase orders
- Purchasing Hi-tech and Surveillance Equipment
- Copier purchases and rentals
- Purchasing commodities produced from recovered materials
- Procedures for applying preference to resident contractors
- Information applicable to construction
- Information applicable to taxes

Petroleum Products

Petroleum Products (gas, diesel fuel, oil, etc.) require a slightly different process for completing the purchase. Procurement officers must keep in mind that costs for petroleum products can be very flexible, even volatile, thus obtaining fixed costs can be a daunting task. If the amount of petroleum products that are needed will cost $5,000 or less, the procurement officer may purchase the products from any source; however at least two quotes are recommended. If the amount of the purchase will be more than $5,000, then the procurement officer must obtain two written quotes and then make the purchase from the lowest and best quote (no P-1 required for state agencies). If two quotes are unavailable, then follow the normal bid procedures outlined in MS Code 31-7-13(c). It is very likely that bids will be required for purchases of petroleum products greater than $5,000 since many providers are unwilling to commit to a price for any length of time. Additionally, a number of agencies and governing authorities utilize Fuel Access Card Services. The Bureau of Fleet Management maintains a contract for these services and the contract is available for governing authorities as well.

Open Purchase Orders

Open purchase orders are a useful tool for procurement officers. Open PO's can be issued for a specific allotment period within a specific fiscal year. If the amount of the open PO is more than $5,000, the agency must submit an electronic P-1 to OPTFM for approval prior to issuance of the PO. The documentation must include: A brief justification of the need for an open purchase order, P-1 approval where required, a general description of the commodities/services and the maximum amount per invoice. The following certification should be included on the purchase order also:

> "This is to certify that only the commodities/services shown will be purchased and that no items currently covered by any state contract will be purchased under the terms of this purchase order without proper approval from the Office of Purchasing, Travel and Fleet Management. This procedure will not be used to separate purchases so as to circumvent any laws, regulations or policies of the State of Mississippi."

Purchasing Hi-Tech and Surveillance Equipment

The following definitions will apply:

(1) Surveillance Equipment – any equipment or device used to monitor, track, or observe persons or things related to any type of investigation or evidence gathering process wherein the need for the highest degree of security is mandatory so as not to compromise the operation in general or personnel in particular.

(2) Hi-Tech Equipment – any equipment considered by the industry and law enforcement personnel to be specialized, sophisticated and secretive in nature that to publicize its acquisition could or would jeopardize the success of the mission or the safety of those persons involved in that mission.

Mississippi Code 31-7-13 (m) (xix) provides an exemption from competitive bid requirements when purchasing hi-tech and surveillance equipment. This code states: "*purchases of*

surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration."

The Mississippi Bureau of Narcotics and any other such department of state or local government involved in any type of undercover operations relating to drug enforcement will be required to comply with this regulation when making any purchase as permitted in Section 31-7-13(m)(xix).

The objective of this regulation is to provide a procedure that would allow for the acquisition of surveillance equipment or any other hi-tech equipment used by law enforcement agents in undercover operations in the most cost-effective manner without requiring public notification of the intent to purchase the equipment.

This should be interpreted to mean that no notification of the intent to purchase need be published as required by Section 31-7-13(c), Mississippi Code of 1972, Annotated. It should not be interpreted to mean that competition be ignored.

When acquiring this type of equipment, state agencies will solicit multiple quotes unless it is determined that the item being purchased is available from only a single supplier. If the purchase is in excess of $50,000 the Request for Authority to Purchase, P-1, must be submitted to the OPTFM. In completing the P-1, the item description section need only reflect the term "surveillance" or "hi-tech" equipment. No specific description need be presented. In listing the quotes when multiple suppliers are available, the suppliers' name may be listed by name and address, or they may simply be designated as supplier 1, supplier 2, etc. The agency shall maintain a file for each such purchase which shall contain, but is not limited to:

(1) Description of the equipment being purchased;
(2) Specifications (if used);
(3) List of vendors receiving solicitation;
(4) Copies of quotes;
(5) Justification for single-source purchase (if single-source provision is exercised);
(6) Justification for accepting other than the low bid (if other than the low bid is receiving the award); and
(7) Any other documentation relative to the purchase.

Copiers

Copiers can present unique purchasing challenges also. There are a number of copiers that are on state contract and agencies and governing authorities can purchase any of those copiers at any time. Copiers with a net cost which exceeds $50,000 and copiers not covered by state contracts may be purchased in compliance with statutory bidding requirements. Copiers for rental are also on state contract and can be used by any agency or governing authority. Purchasing entities shall utilize OPTFM's Generic Rental Agreement for copiers. The Agreement can be used for other rental agreements where appropriate.

Any copier rentals not covered by state contract will be selected through the competitive bid process. Trade-ins of office equipment on rental contracts are also allowed. All equity must be extinguished prior to the agency making any payments for the new equipment.

Purchasing Commodities Produced from Recovered Materials

When preparing specifications for products that can be produced from recovered materials, the agency should include a clause indicating the desire for recycled products. The agency should also define, for the purposes of the specific purchase, the minimum percentage of recovered material which will be required to be considered for the ten percent (10%) preference. In addition, the agency should describe the award process so that all vendors know how the evaluation and award is to be made.

It is suggested that all agencies consider using the following clause when issuing specifications for products made from recovered materials. This applies to printing, paper, corrugated boxes, paper bags, toilet tissue, etc.

Mississippi law requires that specifications be written so as to promote the use of products made from recovered materials. Therefore, bidders are asked to consider bidding on a product made from recovered materials; provided, however, that any product bid must be equal in quality, weight, texture, and color to the product required by these specifications. For the purposes of these specifications, a commodity made from recovered materials must be at least 20% post-consumer waste as defined by EPA and ASTM.

Products made from recovered materials will be given a preference in the award procedure as follows:

(1) The low bid which meets specifications will be determined.

(2) If the low bid meeting specifications is made from recovered materials, then the award will be made to the vendor offering the low bid.

(3) If the low bid is not made from recovered materials, then the award will be made to the low bid meeting specifications which is made from recovered materials; provided, however, that the price paid may not be more than ten percent (10%) higher than the lowest bid received.

(4) If there are no bids for recycled products within ten percent (10%) of the lowest bid, then the award will be made to the vendor offering the lowest bid.

Procedures for Applying Preference to Resident Contractors

Sections 31-7-47 and 31-3-21, Mississippi Code of 1972, Annotated, state that, "In the letting of public contracts, preference shall be given to resident contractors, and a non-resident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the non-resident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over non-residents in awarding of contracts in the same

manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the non-resident."

In layman's terms, this means that we must penalize out-of-state vendors by the same amount as their state laws would penalize our vendors. If State A has a five percent (5%) instate preference and a vendor from State A is bidding in Mississippi, then you must give a Mississippi vendor a five percent (5%) preference in the evaluation and award of the contract. Agencies are advised to review the applicable statutes and discuss this matter with their attorney.

Information Applicable to Construction

Agencies considering construction projects should become familiar with the applicable sections of the Mississippi Code of 1972, Annotated, and the Construction Manual developed by the Bureau of Building, Grounds and Real Property Management.

Construction is defined as the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

Information Applicable to Taxes

In general, state agencies have limited authority to pay taxes. Therefore, any reference to taxes owed in contracts should be reviewed with legal counsel. Agencies may want to consider deleting sections pertaining to the payment of taxes during negotiations with the vendor. Agencies should advise vendors that the state is exempt from taxes on the sale of property, labor, services and products sold directly to the state or its departments or institutions.

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Review Questions

1. When is a purchasing officer allowed to purchase petroleum products from any provider?

2. Copier rentals that are not covered by a state contract must be selected through which process?

3. What must an agency submit to the OPTFM for approval if an open purchase order exceeds $5,000?

4. The Bureau of Fleet Management maintains a contract for what services that are available for governing authorities as well?

5. When must the generic rental agreement form be used?

PROCUREMENT CARD

All procurement card information is located in the Procurement Card Guidelines which is located on OPTFM's website.

Review Questions

1. What is the highest allowable single transaction limit for the Small Purchase Procurement Card?

2. What is the title of the person in your agency who is responsible for the Procurement Card?

3. What are some of the benefits of the Procurement Card?

4. What office oversees the Small Purchase Procurement Card program for the State of Mississippi?

5. The Procurement Card can be used to purchase computer and computer equipment $_____ and under.

6. Gratuity over _____%_ requires written justification when using the Procurement Card.

TRAVEL

All travel information is located in the State Travel Policies, Rules, & Regulations Manual which is located on OPTFM's website.

ETHICS IN PUBLIC PURCHASING

Procurement professionals are expected to maintain the highest professional and ethical standards in the conduct of their daily responsibilities. This section of the manual will:

- Review the OPTFM Statement of Policy
- Define and Discuss Key Ethical Terms
- Review Ethical Standards of Conduct
- Discuss Conflicts of Interest
- Define and Discuss Gratuities
- Discuss Contingent Fees, Influence Peddling, and Improper Influence
- Identify Restrictions on Employees
- Discuss Contractor/Consultant Conflicts

Statement of Policy

Public employment is a public trust. It is the policy of the State of Mississippi to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the State. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the State procurement organization.

To achieve the purpose of this chapter, it is essential that those doing business with the State of Mississippi also observe the ethical standards prescribed herein and within the MS Procurement Manual Section 9.102.

Key Ethical Terms

The following terms and definitions will help you gain a better understanding of ethics in public purchasing and the requirements placed on procurement officers to adhere to these terms.

Confidential Information – any information which is available to an employee only because of the employee's status as an employee of Mississippi and is not a matter of public knowledge or available to the public on request.

Direct or Indirect Participation – involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Gratuity – a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Official Responsibility – direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct Mississippi action.

Purchase Request – that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

Bona Fide Employee – a person employed by a prospective contractor and subject to the prospective contractor's supervision and control as to the time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain

Mississippi contracts. In determining whether a bona fide employment relationship exists, the following factors should be considered:

(a) Whether the employment is continuous.
(b) Whether the person is subject to the supervision and control of the prospective contractor.
(c) Whether the size of any contingent fee is reasonable in relation to the service performed.
(d) Whether the method of payment of the contingent fee is customary in the trade.
(e) Whether the person is employed solely by the prospective contractor.

Business Employee – a person, whether compensated or not, who performs personal services for a business.

Employee –As used throughout this section, the term "Mississippi Employee" shall include:

(a) A person elected to a Mississippi office;
(b) A non-elected person, whether appointed or selected through a personnel selection procedure, receiving a salary, wages, or other compensation from the State; and non-compensated or minimally compensated person who is performing personal services for the State.

The term "Mississippi Employee" does not include a person who, as an independent contractor, performs professional, scientific, technical, or advisory service for a state agency and who receives a fee, honorarium, or similar consideration for the services performed.

General Standards of Ethical Conduct

Employees must realize that their employment by a governmental entity carries significant responsibilities. Therefore employees must realize that any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. (Procurement Manual Sections 9.104, 9.105, 9.106, and 9.107) Ethical standards also apply to non-employees and it is important to note that any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.

Employee Conflict of Interest

Preserving public integrity in purchasing is one of the more important aspects of the procurement professional's job. Employees must take seriously the potential repercussions of improper or seemingly improper relationships between officials, vendors, and lawmakers. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(a) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
(b) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(c) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Ethics Commission for an advisory opinion as to what further participation, if any, the employee may have in the transaction. Notice of this prohibition shall be provided in accordance with regulations promulgated by the Ethics Commission.

Gratuities

Procurement officers are often the target of vendors and or supporters of certain vendors with numerous types of gifts or gratuities. Accepting such gratuities can potentially cause an employee's judgment to be skewed towards a particular vendor or product, which could then lead to misappropriation of public funds. It shall be a breach of regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal thereof.

In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

(1) Decision;
(2) Approval;
(3) Disapproval;
(4) Recommendation;
(5) Preparation of any part of a program requirement or a purchase request;
(6) Action to influence the content of any specification or procurement standard;
(7) Rendering of advice;
(8) Investigation;
(9) Auditing; or
(10) Other advisory capacity

This prohibition further extends to the giving of gratuities to anyone on the state employee's or former state employee's behalf such as a member of that employee's immediate family.

The prohibitions listed above do not mean that procurement officers cannot receive any type of gift or award regardless of where it originates. Specifically, Section 9.105 of the MS Procurement Manual, which covers gratuities, does not prohibit:

(1) The solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the State and is based upon a personal or family relationship;
(2) The participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
(3) Acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of state employees, such as home mortgage loans; or
(4) Acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other such items.

Prohibition Against Contingent Fees

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Influence Peddling

Section 9.106 of the Procurement Manual covers influence peddling and particularly that which might occur when a former state official is hired on a contingent basis by a business seeking state contracts. This prohibition hinders persons from leaving state employment and then immediately signing a contract with a vendor(s) with whom the former employee has developed a relationship with over the years.

Improper Influence

A business employee or a commercial selling business should be conclusively presumed not to be bona fide if the Ethics Commission determines that improper influence has been or is being used to secure a state contract.

Restrictions on Employment of Present Employees

It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. (Except as may be permitted by advisory opinions regulations or rulings of the Ethics Commission, notice of this provision shall be provided in accordance with opinions promulgated by the Ethics Commission.)

Restriction on Employees Purchasing Under Terms of a State Contract

Section 25-4-105(1), Mississippi Code of 1972, Annotated, states, "No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain or attempt to obtain pecuniary benefit for any relative or any business with which he is associated." In layman's terms, anyone purchasing a product is free to

negotiate the best price possible with the seller but any attempt to tie that sale to a state contract price based upon employment with a governmental entity could be considered to be a violation of the ethics law.

Restriction on Employees Buying Surplus Property

Section 25-4-105(3) (b), Mississippi Code of 1972, Annotated, states, "No public servant shall be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods and services when provided as public utilities or offered to the general public on a uniform price schedule." In the case of a sale by a state agency, no state employee, regardless of the agency affiliation of the selling party or the purchaser, may participate in the sale as a purchaser.

Contractor/Consultant Conflict of Interest

It is the policy of the State of Mississippi to identify, avoid or mitigate conflicts of interest in contracting with independent contractors and consultants for services related to the subsequent competitive acquisition of commodities as defined in Section 31-7-1(e), Mississippi Code of 1972, Annotated. The underlying principles of this policy are: (1) Preventing the existence of conflicting roles that may bias a contractor's or consultant's judgment in its work for the State; and (2) Preventing unfair competitive advantage. An independent contractor or consultant hired by any state agency for the purpose of preparing or furnishing complete or essentially complete specifications which are to be used in competitive acquisition for the furnishing of the same services or equipment shall not:

> (1) Be awarded a contract in the subsequent competitive acquisition of commodities; or
> (2) Be a subcontractor or consultant to a bidder participating in the competitive acquisition of the same.

The Chief Procurement Officer may waive this policy by determining that its application in a particular situation would not be in the best interest of the State of Mississippi. Any request for a waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the Chief Procurement Officer.

Review Questions

1. What information is available to an employee only because of the employee's status and is not a matter of public knowledge?

2. What term defines a payment, loan, advance, or anything of more than a nominal value?

3. What term defines a person who performs personal services for a business?

4. Direct administrative or operating authority to approve, disapprove, or otherwise direct Mississippi action is the definition of what?

5. Attempting to realize personal gain through public employment is a breach of what type of trust?

6. If an employee or any member of the employee's immediate family has a financial interest pertaining to a procurement, what then exists?

7. Accepting what can potentially cause an employee's judgment to become skewed towards a particular vendor or product?

8. If an employee leaves state employment and then immediately signs a contract with a vendor, that employee could be guilty of what?

9. If an employee tries to tie the sale of a personal item to a state contract held by that vendor, then employee is guilty of trying to obtain what type of benefit.

10. A person elected to a Mississippi office or a non-elected person receiving a salary, wages, or other compensation from the State is identified as what?

11. It is acceptable for an employee to accept an award for meritorious public contribution or achievement from a charitable, religious, or civic organization. TRUE FALSE

12. When a business is determined by the Ethics Commission to have used or is using improper influence to secure a state contract, then that business is presumed to not be what?

13. Public employees should conduct themselves in such a manner as to foster public confidence in the integrity of what organization?

14. Ethical standards apply to employees and to whom else?

References

NIGP, The Institute for Public Procurement

FLEET

All Fleet information is located in the Fleet Manual which is located on OPTFM's website.

Review Questions

1. What department or agency must approve the purchase of any motor vehicle by a state agency?

2. Who is not under the purview of Bureau of Fleet Management?

3. Who is not covered by TORT for liability purposes?

4. What is the recommended minimum replacement criteria for state-owned vehicles?

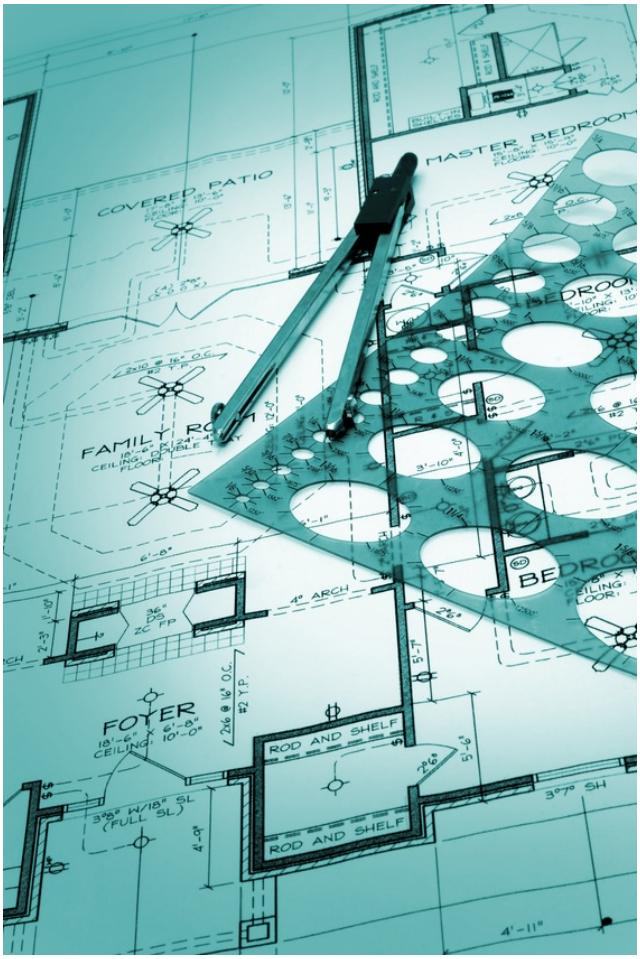
5. Name the three (3) types of vehicle assignments.

6. When replacing a vehicle, the old vehicle must be disposed of within ___ days of delivery of the new vehicle.

7. _____ of all trips must be recorded for each state-owned vehicle.

8. Name three (3) misuses or inappropriate uses of a state-owned vehicle.

DETERMINING INVITATION FOR BIDS, REQUEST FOR PROPOSALS, AND WRITING BASIC SPECIFICATION REQUIREMENTS



Determining Bid and Proposal Requirements

Procurement professionals are tasked to help their agencies to gain the maximum value for every dollar that is spent. In this section, we will explore bids and proposals and how procurement professionals can help an agency to maximize its return on investments. The primary objectives for this chapter include the following:

- Differentiate between the reverse auction, sealed bidding, and sealed proposal processes
- Identify the steps in the bid process and the proposal process
- Understand when each process is appropriate

Reverse Auctions and Competitive Sealed Bids

The sealed bid process is the preferred method of acquiring goods and services for state governmental entities. When acquiring goods or construction under Section 31-7-13(c) of the Code, **reverse auctions** are the primary method for receiving bids during the bidding process.

The competitive sealed bidding process helps to ensure that procurement practices are open and honest, that vendors are not forming coalitions to squeeze out smaller competitors, and that there is open-market competition for state dollars; which in turn helps governmental agencies to gain the best value for each purchase.

Contracts shall be awarded by **reverse auction**, unless exemption is sought and received by the Public Procurement Review Board (PPRB). The first step in both the reverse auction process and the competitive sealed bidding process is publishing an Invitation for Bids (IFB). IFBs are done when the anticipated expenditure is more than $50,000. The notice shall be made in compliance with Section 31-7-13(c), Mississippi Code of 1972, Annotated.

In the reverse auction process, bids are received by a deadline and evaluated for responsiveness prior to inviting a supplier to participate in the auction event. The prices received from suppliers in response to an IFB for a reverse auction can be used as part of the market research done to establish a start price for the auction. In a traditional competitive sealed bidding process, bids are opened publicly in the presence of one or more witnesses at the time and place designated in the IFB.

When bids have been advertised and received, the procurement professional must ensure that the proper conditions exist in order to be able to fairly evaluate and accept the bids. Bids shall be unconditionally accepted without alteration or correction, except as authorized by regulations. Bids shall be evaluated based on the requirements set forth in the IFB and those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable. The IFB shall set forth the evaluation criteria to be used once bids have been received and <u>no criteria may be used in evaluation that are not set forth in the IFB.</u>

Occasionally there may be an error made in either the advertisement of a bid or in the bid documents that are submitted. Once the error is discovered, then the procurement professional can take steps to correct the problem. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes shall be permitted in accordance with regulations, however after the bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted. Except as provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes shall be supported in writing.
It is important that the procurement process be timely while not being rushed. Once all bids have been properly evaluated the contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the IFB.

Further situations may arise where a bid package cannot be reasonably issued based primarily on price of goods provided, or the agency may not have a complete description of what is needed.

When it is considered impractical to initially prepare a purchase description to support an award based on price, an IFB may be issued requesting the submission of un-priced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. This method of procurement is called "multi-step sealed bidding" and is only allowed if permission is granted by the Chief Procurmenet Officer.

So, let's take a look at the IFB process from beginning to end. These steps apply specifically to state agencies but are easily adaptable to any governmental entity.

1. Need determined – the agency must first identify what and how much of an item(s) is needed to fulfill the mission.
2. Check state contracts; if unavailable proceed – oftentimes the legwork has already been done by the OPTFM (or ITS or OPSCR, as applicable), so always check state contracts first (remember, if the item(s) are already listed on a state contract, the agency must utilize the state contract in most cases.)
3. Develop bid specs – the procurement officer should work with the particular department to develop comprehensive specifications for the item(s) sought.
4. Determine whether an exemption to reverse auction is necessary. If necessary, seek exemption from PPRB. If not necessary, continue with advertising.
5. Place an ad in the local paper and with MDA-MS Procurement Technical Assistance Program (MPTAP). Bear in mind that:
    - The ad must run for two consecutive weeks;
    - The agency cannot open bids sooner than the 8th working day after the second advertisement (no sooner than 16 days for construction contracts)
    - RFx publishing in MAGIC sends bid to the Procurement Portal and satisfies the requirement to send ads to MPTAP
5. Receive bids, date and time stamp – this step is important in preventing bid disputes.
6. Open bids on opening day after due time – the bid can be held in the procurement officer's office or in another location designated in the bid advertisement. If bids are received for reverse auction, evaluate the bids and invite responsive suppliers to participate in the auction.
7. Record results for tabulation – this allows the procurement officer to easily see the bid information on one form.
8. Award to lowest and best responsive, responsible bidder – note the four requirements for award; lowest, best, responsive, and responsible. Lowest price does not always mean the best offer. Responding to a bid does not necessarily mean the ability to provide the product.
9. Notify other offerors of award – notification should be by official letter.
10. Develop a contract and obtain the designated signatures.
11. Issue a purchase order.
12. Manage the contract.
13. Disposal

The public bid process helps to ensure that governmental entities are meeting the ethical standards and established regulations for expending public dollars. The process keeps all

pertinent information in public view and helps to increase public trust in our agencies to spend wisely.

Competitive Sealed Proposals

As mentioned already in the previous section, it is not always feasible to issue an IFB, especially when there is no clear-cut product or service that will meet the agency's needs. When it is determined in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, an agency may seek permission from the PPRB to issue a Request for Proposals (RFP). Once approval is received, the proposals shall be solicited through an RFP and adequate public notice shall be given in accordance with the regulations. Proposals must be evaluated in accordance with regulations, with the technical and cost factors being evaluated blindly.

Conditions for Use of Competitive Sealed Proposals

The following language is from the MS Procurement Manual, Section 3.107.02, Conditions for Use:

(1) Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, a request for proposals or request for qualifications may be used. The terms "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the state's best interest.

(2) The following factors shall be considered when determining advantageousness:

(a) The need for flexibility;

(b) The type of evaluations that will be needed after offers are received;

(c) Whether the evaluation factors involve the relative abilities of offerers to perform, including degrees of technical or professional experience or expertise;

(d) Whether the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration;

(e) Whether the types of supplies, services or construction may require the use of comparative judgmental evaluations to evaluate them adequately; and

(f) Whether prior procurements indicate that a request for proposals may result in more beneficial contracts for the state.

(3) The following factors shall be considered when determining practicability:

(a) Whether the contract needs to be a contract other than a fixed-price type contract;

(b) Whether oral or written discussions may need to be conducted with offerers concerning technical and price aspects of their proposals;

(c) Whether offerers may need to be afforded the opportunity to revise their proposals, including price;

(d) Whether the award may need to be based upon a comparative evaluation of differing price and contractual factors as well as quality factors that include technical and performance capability and the content of the technical proposal; and

(e) Whether the primary consideration in determining award may not be price.

(4) If the head purchasing agent at an agency or his or her designee determines, in writing, that the use of competitive sealed bidding is either not practicable or not advantageous to the state, he or she shall submit a detailed explanation of the reasons for that determination to the Public Procurement Review Board by submitting same in writing on agency letterhead to OPTFM. If the Public Procurement Review Board determines that competitive sealed bidding is either not practicable or not advantageous to the state, then a contract may be entered into for the procurement of commodities, supplies, equipment, construction, technology, personal and professional services, state agency purchased employee benefits or state agency supplemental insurance and cafeteria plans, by a request for proposals or request for qualifications. However, these procurements contracted for through a request for proposals or request for qualifications may not be combined or included in a contract with other procurements that are required to be procured through competitive sealed bidding so as to avoid the statutory obligation for procurement through competitive sealed bidding. The board may modify or revoke its determination at any time, and the determination should be reviewed for current applicability from time to time.

(5) In addition to determining whether a request for proposals or request for qualifications would be practicable and advantageous to the state, when making the decision to use a request for proposals or request for qualifications, the head purchasing agent shall consider the following factors:

(a) Whether quality, availability or capability is overriding in relation to price in procurements for research and development, technical supplies or services;

(b) Whether the initial installation needs to be evaluated together with later maintenance and service capabilities and what priority should be given to

these requirements in the best interests of the state; and

(c) Whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals but evaluation and discussion of them before making the award.

Debriefings

In accordance with Chapter 3, Section 3.107.18 of the Manual, the Agency Procurement Officer is authorized to provide debriefings that furnish the basis of the source selection decision and contract award. Debriefings may only be conducted when utilizing the competitive sealed proposal process as authorized in Chapter 3, Section 3.107.

Understanding Basic Specifications

A vital tool in the chest of any procurement professional is the ability to understand and develop clear, concise specifications for goods and services that the agency needs. Good specifications remove any ambiguities concerning what a product must be able to do, how the product must look and feel, how it will meet the specific needs of the agency, and ultimately, how it will benefit the agency. In this section, we will look more closely at specifications and we will cover the following key subject areas:

- Define key terms related to specifications
- Explain the purpose for specifications
- Identify key considerations for developing specifications
- Identify parties with authority to develop specifications
- Discuss procedures for developing specifications
- Explain key restrictions for specifications
- Discuss the use of architects, engineers, and others in developing specifications

SPECIFICATIONS

Definitions

Before beginning the discussion of specifications it is important that you become familiar with some of the key terms and their meanings relating to specifications.

Brand Name Specification – a specification limited to one or more items by manufacturers' names or catalog numbers

Brand Name or Equal Specification – a specification which uses two or more manufacturers' names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet Mississippi requirements and which provides for the submission of equivalent products. The use of Brand Name or Equal Specifications that contain less than two manufacturer's names or catalog numbers may be cause for rejection of the purchase request by the Office of Purchasing, Travel and Fleet Management

Qualified Products List – an approved list of supplies, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements

Specification – any description of the physical, functional, or performance characteristics or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery

Purpose

Specifications serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. Well thought-out and written specifications permit maximum practicable competition consistent with this purpose and shall be drafted with the objective of clearly describing the State's requirements.

Why Use Specifications?

Specifications are written so as to not restrict bidding but to encourage open competition. The goal is to invite maximum reasonable competition. The degree to which specifications are open and unrestrictive directly affects the type and extent of the competition desired.
Specifications are public records; they serve to keep the purchasing open by allowing the public to see exactly what is being purchased. Specifications are used during the evaluation of bids to determine whether or not bids are responsive. Some of the difficulty in preparing specifications stems from the fact that the State can seldom dictate the exact characteristics of the products it wants. The requirements of an agency are usually not sufficient to justify a special or name brand product. Consequently, specifications are developed around a manufacturer's product specifications. If the specification did not have to satisfy state statutes requiring competitive bidding, the task would be much easier. The immense variety of items purchased by the State further complicates specification writing. Products are improved, new products are introduced, and the needs of the public change. Consequently, the function of preparing and updating specifications must be an ongoing one.

Specification Sources

There are many available sources that can be of assistance to you when you are developing your specifications. Here are suggestions for gathering specification information:

- Collect as much information as possible from the end user as to the function and performance of the requested product. Use their expertise and knowledge.

- Collect product information from the industry (brochures, catalogs, specs, etc.). Many manufacturers list their catalogs and product specifications on the Internet.

- Look for standards and test information from professional societies where available.

- Look for specification information from other government entities. Check to see if standard specifications already exist. Use the Internet and e-mail for research. Many states have standard specifications listed on the Internet.

- Call on other "experts" in the purchasing community for help.

- NIGP: The National Institute of Governmental Purchasing maintains a library of over 10,000 specifications developed by federal, state, and local government purchasing entities in the U.S., and Federal, Provincial, and local entities in Canada.

Use of Brand Name or Equal

Procurement officers may use brand name or equal specifications when they are deemed appropriate to meet the needs of the agency. Brand name or equal specifications may be prepared if it is determined:

No specification for a common or general use item or qualified products list is available;

Time does not permit the preparation of another form of specification, not including a brand name specification;

The nature of the product or the nature of the State's requirements makes use of a brand name or equal specification suitable for the procurement; or

Use of a brand name or equal specification is in the State's best interest.

Brand name or equal specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Unless it is determined that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required. It must be understood also that where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the

standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

Authority to Prepare Brand Name Specification

Since use of a brand name specification is restrictive, it may be used only when the Chief Procurement Officer makes a determination that only the identified brand name item or items will satisfy the State's needs.

The Agency Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3.109, Sole-Source Procurement.

Unduly Restrictive Specifications

All specifications shall seek to promote overall economy and shall not be unduly restrictive. Specifications shall not be written so as to exclude equipment of domestic manufacture in compliance with Section 31-7-13(c), Mississippi Code of 1972, Annotated. The specifications must not have the effect of exclusively requiring a proprietary commodity or equipment item nor requiring procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

Specifications Prepared by Architects, Engineers, or Others

The requirements of non-restrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

The requirements apply to all specifications prepared by other than State personnel including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than State personnel shall require the specification writer to adhere to such requirements. When persons other than State personnel prepare specifications, the State shall not be relieved from the comment and review requirements.

Review Questions

1. Any description of the physical, functional, or performance characteristics or of the nature of a supply, service, or construction item is the definition of what?

2. What serves as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs?

3. Functional or performance specifications are often not practicable in what area?

4. Use of specifications must always be in whose best interest?

5. Revisions to specifications are allowable as long as the revisions are necessary for what?

6. All specifications shall seek to promote overall economy and shall not be what?

7. When persons other than State personnel prepare specifications, the State shall not be relieved from what requirements?

8. Bids and proposals are read aloud publicly to minimize the risk of what action?

9. What do solicitations become subject to once they have been received, opened, and awarded?

10. No changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be allowed after what time?

11. The first step in the Invitation for Bids process is to determine what?

12. What step is the final step in the Invitation for Bids process?

13. The ad for an Invitation for Bids must run for two weeks in the local paper and must also be advertised with what other entity?

14. Bids for construction contracts cannot be opened for how many days after the second advertisement?

15. The public bid process keeps all pertinent information in public view and helps to increase public trust in whom?

16. When it is determined in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, what process may be used to enter into a contract?

17. A primary difference in Invitations for Bids and Requests for Proposals is the ability to enter into discussions to gain a better understanding of the offer and to derive what other benefit?

18. Competitive sealed bidding may not be practicable if the contract needs to be other than what type of contract?

19. Once discussions have been held concerning the proposal that was received, what will the procurement officer ask to be submitted by the proposer?

20. In a competitive sealed proposal process, the award shall be made to the responsible offeror whose proposal is most advantageous to what entity?

21. The term “advantageous” denotes what type of assessment of what’s in the best interest of the State?

22. What term in a Request for Proposals determination process denotes what may be accomplished or put into practical application?