

CHAPTER IX

PURCHASING

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Purchasing is the procurement of equipment, heavy equipment, machinery, supplies, commodities, materials and services required for the operation of the various county offices and departments. The proper acquisition of these items is vital to county government operations.

Procurement of goods and services through purchasing accounts for a significant portion of a county's budget. The financial aspects of purchasing are of obvious importance. Only with close and intelligent cooperation between the county offices and the purchasing function can proper financial control be effectuated.

Constant changes in legislation require county purchasing personnel to monitor the enactment of new laws carefully to insure the county against violations. Since purchasing personnel cannot seek legal advice for every transaction into which they enter, they must be able to understand the basic legal requirements for each transaction and know when to seek legal advice from the attorney for the board of supervisors.

ESTABLISHMENT OF A CENTRAL PURCHASING SYSTEM

Each county in Mississippi is required by law (*Code*, § 31-7-101) to establish and operate a central purchasing system. The system is administered by a county department of purchasing and headed by a purchase clerk. Unless the board of supervisors assigns the duties of purchase clerk to the chancery clerk, the purchase clerk is appointed by the county administrator, with the approval of the board of supervisors, in counties required to operate under a county-wide system of road administration ("unit" system). In "beat" system counties, the board of supervisors appoints the purchase clerk. The purchase clerk shall not be a member of the board of supervisors. The purchase clerk may, subject to the approval of the entity which appointed him, hire personnel necessary to operate the department of purchasing efficiently. The central purchasing system must comply with requirements prescribed by the Office of the State Auditor.

Members of the board of supervisors in a "unit" county cannot make purchases under any circumstances. Members of the board of supervisors in a "beat" county may make limited purchases of not more than One Hundred Dollars (\$100.00) or for the emergency purchase of parts or repair services which are exempt from bid requirements pursuant to § 31-7-13(m)(ii) and (iii). Department heads in both forms of county government may make limited purchases of not more than One Hundred Dollars (\$100.00) without following central purchasing procedures. Such purchases shall require the signature of the supervisor, officer or authorized designee on the receipt or invoice which shall then be forwarded to the purchase clerk. (*Code*, §§ 31-7-119 and 31-7-103)

The primary objectives of the purchasing department are to: (1) procure the necessary materials, supplies, services, etc. for the county government, (2) procure these items at the lowest possible cost and in a timely fashion, and (3) direct deliveries to their appropriate destinations. The goal of the purchasing department is to have on hand necessary items or have available necessary services to insure uninterrupted operations at the lowest expense. In summary, the task is to obtain what is wanted at the least cost, when it is wanted and where it is wanted.

Purchase Clerk⁵⁴⁹

The purchasing department in small to medium size counties will consist of a purchase clerk and assistants to the purchase clerk. In large counties, the purchasing department may be expanded to include buyers and clerical help.

The purchasing department, headed by the purchase clerk, has the sole responsibility of purchasing all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any county office or county department except those offices or departments in which expenditures are not required by law to be approved by the board of supervisors. The purchase clerk shall disapprove any purchase requisitions which, in his opinion, are not in compliance with the purchasing laws of the state.

Receiving Clerk⁵⁵⁰

In addition to appointing a purchase clerk, all counties must appoint a receiving clerk. Unless the chancery clerk is appointed as receiving clerk by the board of supervisors, the receiving clerk is appointed by the county administrator, with the approval of the board of supervisors, in counties required to operate under the "unit" system. In "beat" counties the board of supervisors appoints the receiving clerk. The receiving clerk shall not be a member of the board of supervisors. Assistant receiving clerks may be appointed by the receiving clerk when necessary, subject to the approval of the entity which appointed him.

The receiving clerk and his assistants shall be solely responsible for accepting the delivery of all equipment, heavy equipment, machinery, supplies, commodities, materials and services purchased by the county. The receiving clerk or his assistants must, upon proper delivery, acknowledge receipt of goods and services in compliance with the system prescribed by the Office of the State Auditor. The receiving clerk is responsible for maintenance of the prescribed system.

Inventory Control Clerk⁵⁵¹

In addition to the required central purchasing system, every county must maintain an inventory control system in accordance with requirements prescribed by the Office of the State Auditor. Every county must employ an inventory control clerk in the same manner used to employ or designate the purchase clerk.

The inventory control clerk is responsible for the maintenance of the inventory control system. He assumes responsibility for assistant inventory clerks needed for the efficient operation of the system. The inventory control clerk cannot be a member of the board of supervisors.

The inventory control clerk must perform physical inventories of assets of the county on or before October 1 of each year and must file a written report of such inventory with the board of supervisors. The clerk of the board of supervisors (the chancery clerk) shall keep the original of each inventory report filed by the inventory control clerk as a permanent record of the county

⁵⁴⁹Code, § 31-7-103.

⁵⁵⁰Code, § 31-7-109.

⁵⁵¹Code, § 31-7-107.

and must forward a copy to the Office of the State Auditor no later than October 15. In a separate report to the clerk of the board of supervisors, the inventory control clerk must submit a list of additions to and deletions from the annual inventory report and a list of items unaccounted for from the previous annual inventory report.

Prescribed Forms and System⁵⁵²

The Office of the State Auditor prescribes the purchase requisition, purchase order, receiving report and inventory control forms to be used, the system of filing and records necessary for maintenance of the central purchasing system and inventory control system.

When an emergency purchase has been properly authorized by the board of supervisors or its designee, the purchase requisition, purchase order and receiving report may be prepared and processed within three (3) working days after the emergency.

Some expenditures by the county are not considered purchases and accordingly do not require purchase requisitions, purchase orders and receiving reports. A list of exceptions may be found in the *Professional Education Curriculum For County Purchase Clerks* manual available from the Office of the State Auditor.

County Employees Serving As Purchase Clerk, Receiving Clerk or Inventory Control Clerk⁵⁵³

The board of supervisors may designate county employees to serve as purchase clerk, receiving clerk, or inventory control clerk, in addition to their other responsibilities. An employee designated to serve as one of these clerks cannot, at the same time, be designated to serve in the other clerk positions, except in a few limited situations.

Bond of Purchase Clerk, Receiving Clerk and Inventory Control Clerk⁵⁵⁴

The purchase clerk, receiving clerk, and inventory control clerk must each be bonded for \$75,000.00. All assistant purchasing, receiving, and inventory control clerks must each be bonded for \$10,000.00. The premiums on these bonds must be paid from any funds available to the board of supervisors for such payment.

Training of Purchase Clerk, Receiving Clerk and Inventory Control Clerk⁵⁵⁵

Any person serving as a purchase clerk, receiving clerk or inventory control clerk must successfully complete a professional education program within one (1) year after his appointment and at the beginning of each term of office. The training is coordinated by the Center for Governmental Training & Technology in the Mississippi State University Extension Service with instructors provided by the Office of the State Auditor.

⁵⁵² Code, § 31-7-113.

⁵⁵³ Code, § 31-7-118.

⁵⁵⁴ Code, § 31-7-124.

⁵⁵⁵ Code, § 19-3-77.

Audit Requirements⁵⁵⁶

The books, records, supporting documents and other data of the purchase clerk and inventory control clerk are required to be audited for compliance with applicable laws each fiscal year. The audit is performed by the Office of the State Auditor or a certified public accountant employed by the Office of the State Auditor. The report must be published in a newspaper published in the county or having general circulation in the county.

Enforcement⁵⁵⁷

In order to insure the proper enforcement of county central purchasing laws, as well as to insure the enforcement of all other laws pertaining to county government and the board of supervisors, the district attorney, in addition to any other power the office holds, may investigate the personnel, records or supervisors of any county in his district and may bring criminal or civil actions to recover funds illegally spent, to recover damages, or to seek injunction relief to prevent unlawful acts or compel lawful acts by supervisors or other personnel of county government. In the event of a refusal or failure of the district attorney to act, the Attorney General's Office may exercise the above stated powers of the district attorney.

Failure to properly implement county central purchasing laws may result in state aid road construction funds, fuel tax reimbursements, and motor vehicle license seawall tax revenues being withheld and forfeited. (*Code*, § 19-2-11)

MISSISSIPPI PUBLIC PURCHASING LAWS

Definitions⁵⁵⁸

The following terms are used throughout public purchasing laws. An understanding of each is necessary to interpret and comply with the *Code*.

“Agency” shall mean 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.

“*Governing authority*” shall mean 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, 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

⁵⁵⁶*Code*, § 31-7-115.

⁵⁵⁷*Code*, § 31-7-127.

⁵⁵⁸*Code*, § 31-7-1.

or municipality of this state. [Some economic development authorities and commissions are excluded from this definition.]

“*Purchasing agent*” shall mean 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.

“*Public funds*” shall mean and include any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

The word “*commodities*” shall mean and include 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.

The term “*equipment*” shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

The term “*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.

The term “*emergency*” shall mean any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage, or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens.

The term “*construction*” shall mean 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.

The term “*purchase*” shall mean buying, renting, leasing or otherwise acquiring.

The term “*certified purchasing office*” shall mean any purchasing office wherein fifty percent (50%) or more of the purchasing agents hold certification from the Universal Public Purchasing Certification Council or other nationally recognized purchase certification.

State Contract Price for Purchase of Commodities⁵⁵⁹

The Department of Finance and Administration Office of Purchasing and Travel, a state agency located in Jackson, is responsible for obtaining contracts for the purchase of many commodities for state agencies. This information is made available to all governing authorities.

The county purchase clerk must be familiar with commodities under state contracts. Governing authorities may purchase commodities from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established for such commodity, without obtaining or advertising for competitive bids. [If this option is not used, bid requirements must be followed.] This exception is not applicable to purchases of information technology products on contracts approved by Information Technology Services, a state agency.

Bid Requirements⁵⁶⁰

All counties 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 follows:

Purchases which do not involve an expenditure of more than Three Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. [The county may use a competitive solicitation process if it so chooses.]

Purchases which involve an expenditure of more than Three Thousand Five Hundred Dollars (\$3,500.00) but not more than Fifteen Thousand Dollars (\$15,000.00), excluding freight or 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. The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority (county) 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 of 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. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution without the signature of the vendor’s representative unless required by the county.

Purchases which involve an expenditure of more than Fifteen Thousand Dollars (\$15,000.00), excluding freight or shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county. If no such newspaper exists, the county may post a notice at the courthouse and two prominent places in the county or the county may advertise in a newspaper having a general circulation in the county as provided above. On the same date that the notice is submitted to the newspaper for publication, the county involved shall mail written notice of the same information as

⁵⁵⁹ Code, § 31-7-12.

⁵⁶⁰ Code, § 31-7-13.

that in the published notice to the main office of the Mississippi Contract Procurement Center, 1636 Poppo's Ferry Road, Suite 229, Biloxi, MS 39532. [Telephone number: 228-396-1288, Fax number: 228-396-2520, Email: mprgoff@mscpc.com]

When To Open Bids⁵⁶¹

No less than seven (7) working days are required between the date of the last published notice in the newspaper and the date set for the bid opening and no less than a fifteen (15) working day interval is required for construction projects when the total cost of the project is in excess of Fifteen Thousand Dollars (\$15,000.00)

Specification Requirements⁵⁶²

Specifications shall be written so as not to exclude comparable equipment of domestic manufacture.

Specifications may include life-cycle costing, total cost bids, extended warranties or guaranteed buy-back provisions that meet the guidelines of the Department of Financial Administration. [Code, §31-7-13(d)(i)]

Specifications must include all factors that will be considered by the county when determining the lowest and best bidder.

The board of supervisors may approve a request for specific equipment necessary to perform a specific job. This is permissible when a registered professional engineer or architect writes specifications for the county to require a specific item of equipment available only from limited sources or vendors. These specifications must conform with the rules and regulations promulgated by an appropriate federal agency regulating such matters under the federal procurement laws. Documentation in the board minutes is required.

Lowest and Best Bid⁵⁶³

Purchases may be made from the lowest and best bidder:

Freight and shipping charges must be included when determining the lowest and best bid.

If the bid accepted is not the lowest, detailed calculations and a narrative summary showing how the lowest and best bid was determined must be recorded on the board's minutes. The dollar amount of the accepted bid and the dollar amount of the lowest bid must be included in this documentation. The purchase clerk may make the lowest and best bid decision for purchases not over Three Thousand Five Hundred Dollars (\$3,500.00). The board may delegate the lowest and best bid decision to the purchase clerk for purchases over Three Thousand Five Hundred Dollars (\$3,500.00) but not more than Fifteen Thousand Dollars (\$15,000.00) by policy on the board's minutes.

⁵⁶¹ Code, § 31-7-13(c).

⁵⁶² Code, § 31-7-13(c).

⁵⁶³ Code, § 31-7-13(d).

Lease-Purchase Agreements⁵⁶⁴

A county may acquire equipment by lease-purchase agreement. The term of the lease-purchase may not exceed the useful life of the property as determined according to the maximum asset depreciation range (ADR) guidelines of the United States Internal Revenue Code and regulations thereunder. The annual interest rate may not be greater than the rate stated by law (presently 11%). Lease-purchase financing may be obtained from the vendor or from a third party source after having solicited and obtained at least two (2) written competitive bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment.

Petroleum Products⁵⁶⁵

In addition to other methods of purchasing authorized, when a county shall have a need to purchase gas, diesel fuel, oils and/or other petroleum products in excess of Three Thousand Five Hundred Dollars (\$3,500.00), the county may purchase the commodity after having solicited and obtained at least two (2) competitive written bids. In the event that a county has advertised for bids for the purchase of gas, diesel fuel, oils, other petroleum products and coal, and no acceptable bids can be obtained, the county may enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

Emergency Purchases⁵⁶⁶

If the board of supervisors or a person the board has designated to act on its behalf shall determine that an emergency exists in regard to the purchase of commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the county; then the provisions herein for competitive bidding shall not apply, and any officer or agent of the county having authority therefor in making such purchase or repair shall approve the bill presented therefor and 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 its minutes.

Exceptions To the Competitive Bid Process⁵⁶⁷

- ! Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration [State Contracts];
- ! Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, complete assemblies such as engines, transmissions and rear axles must be bid when replaced as a complete unit when the need for such total component replacement is known before disassembly of the component. Repair invoices must

⁵⁶⁴ Code, § 31-7-13(e).

⁵⁶⁵ Code, § 31-7-13(h).

⁵⁶⁶ Code, § 31-7-13(k).

⁵⁶⁷ Code, § 31-7-13(m).

- include detailed information on parts used, supplies used, number of labor hours, and the hourly labor rate;
- ! Purchases of parts for repairs to equipment by county personnel, not including entire assemblies;
 - ! Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the county;
 - ! Motor vehicles or other equipment purchased 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 at a public auction held for the purpose of disposing of such vehicles or other equipment;
 - ! Negotiated purchases, sales, transfers or trades by counties 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; [this does not permit bidding through public auctions except as stated above];
 - ! Perishable supplies or foods purchased for use in connection with hospitals and feeding county prisoners;
 - ! Noncompetitive items available from one (1) source only; a sole source purchase must have approval of board of supervisors prior to the purchase and documentation must be noted in minutes of the board at its next regular meeting;
 - ! Construction of incinerators and other facilities for disposal of solid wastes;
 - ! Purchases of supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to § 31-7-38;
 - ! Purchases of information technology products made under the provisions of purchase agreements, contracts or maximum price regulations executed or approved by the State Department of Information Technology Services (ITS) and designated for use by governing authorities;
 - ! Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, 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;
 - ! Purchases of ballots printed pursuant to § 23-15-351;
 - ! Purchases of any item manufactured, processed, grown or produced from the state's prison industries;
 - ! Purchases of surveillance equipment or any other high-tech equipment for use in under-cover operations; however, requirements established by State Department of Finance and Administration must be followed;

- ! Purchases of commodities made by school districts from vendors with which any levying authority of the school district has contracted through competitive bidding procedures;
- ! Contracts for garbage, solid waste or sewage collection or disposal; however, such contracts over Fifty Thousand Dollars (\$50,000) require advertising for proposals [Code § 31-7-13(t)];
- ! Purchases of any item manufactured, processed or produced by the Mississippi Industries for the Blind;
- ! Leases by hospitals of equipment or services if the leases are in compliance with § 31-7-13(l)(ii); and,
- ! Purchases made by certified purchasing offices under cooperative purchasing agreements previously approved by the State Office of Purchasing and Travel and established by or for the county government.

Term Purchase Contracts⁵⁶⁸

A county may enter into agreements for the purchase of commodities and equipment for periods not to exceed sixty (60) months in advance. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by county boards taking office subsequent to the board entering the contract.

Purchase of Certain Motor Vehicles⁵⁶⁹(Local Dealer Preference)

In addition to the methods of purchasing previously mentioned, a county may accept the lowest bid received from a motor vehicle dealer domiciled within the county for the purchase of any motor vehicle having a gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer as evidenced by the factory invoice for the motor vehicle. In the event the county does not have an authorized motor vehicle dealer, the county may receive bids from motor vehicle dealers in any adjoining county

Statutory bidding must be followed. In other words, the county may not simply negotiate the deal with the vendor. Also note that if the vehicle dealer is located in the county and is the state contract vehicle supplier, the county may not pay the dealer more than the state contract amount.

Preference To Resident Contractors⁵⁷⁰

In the letting of public contracts, preference shall be given to resident contractors, a nonresident 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 nonresident bidder's state, city, county, parish, province or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances.

⁵⁶⁸Code, § 31-7-13(n).

⁵⁶⁹Code, § 31-7-18.

⁵⁷⁰Code, § 31-7-47 & § 31-3-21(3).

Resident contractors actually domiciled in Mississippi are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the nonresident bidder's government. When a nonresident contractor submits a bid for a public project exceeding Fifty Thousand Dollars (\$50,000.00), he shall attach thereto a copy of his resident state's current preference law.

Fuel Management System Bidding Procedure⁵⁷¹

Any county 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 the county cannot locate or 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. Proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids.

Minority Set-Aside⁵⁷²

A county, by order placed on its minutes, may, in its discretion, set aside not more than 20% of its anticipated annual expenditures for the purchase of commodities from minority vendors. The statute provides that any such set-aside purchase shall be made in compliance with regulations promulgated by the State Department of Finance and Administration and shall be subject to bid requirement. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority bidder.

Construction Contracts⁵⁷³

Any person entering into a formal contract with any county for the construction, alteration, or repair of any public building or public work shall furnish the county with a performance bond and a payment bond. Whenever a contract is less than Twenty-Five Thousand Dollars (\$25,000.00) the board of supervisors may elect to make a lump sum payment at the completion of the job instead of requiring these bonds.

Any person entering into a formal contract with the county which exceeds Twenty-five Thousand Dollars (\$25,000.00), for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to the county proof of general liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage.

All construction and public works contracts must have a publication of contract completion in a newspaper in connection with determining the time allowed for bringing suit on performance or payment bonds. (This is usually done by the contractor.) (*Code*, § 31-5-53)

All bids submitted for public construction projects in excess of Fifty Thousand Dollars (\$50,000.00) shall contain on the outside or exterior of the envelope or container the contractor's

⁵⁷¹ *Code*, § 31-7-13 (s).

⁵⁷² *Code*, § 31-7-13 (s).

⁵⁷³ *Code*, § 31-5-51.

current certificate of responsibility number, or there must appear a statement on the outside or exterior of such envelope or container to the effect that the bid enclosed therewith did not exceed Fifty Thousand Dollars (\$50,000.00). Any bids submitted without this information cannot be considered. (*Code*, § 31-3-21)

A county cannot award a construction contract of any public work involving the practice of engineering or architecture unless the plans, specifications and estimates have been prepared and the work supervised by a registered professional engineer or architect if the expenditure exceeds Fifty Thousand Dollars (\$50,000.00). A county cannot (directly) engage in the construction of public buildings unless the plans, specifications and estimates have been prepared and the work supervised by a registered professional engineer or architect if the expenditure exceeds One Hundred Thousand Dollars (\$100,000.00) This restriction does not apply to maintenance projects. (*Code*, § 73-13-45)

Change Orders To Construction Contracts⁵⁷⁴

Reasonable change orders not made to circumvent the public purchasing statutes may be made without further public bidding, if the changes or modifications to the original contract are considered necessary or would better serve the purpose of the county and are approved by the board on its minutes prior to the change being made. The board may delegate the authority to make change orders to the architect, engineer or other authorized person for up to one percent (1%) cumulative of the total contract. Such authorization must be approved on the board minutes in advance of any changes to be made by the authorized party.

Rebates, Refunds, Gratuities, Etc. from Vendors⁵⁷⁵

Any rebates, refunds, coupons, merit points, gratuities or any article of value tendered or received by any agency or governing authority from any vendor of material, supplies, equipment or other articles shall inure to (go to) the benefit of the agency or governing authority making the purchase. The agency or governing authority may, in accordance with its best interest, either take delivery of the article of value tendered and use the same or convert it to cash by selling it for its fair and reasonable value, making use of the proceeds from such sale for the exclusive benefit of the agency or governing authority.

PENALTIES FOR VIOLATION OF PUBLIC PURCHASING LAWS

Criminal

Code, §31-7-13(o)

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

⁵⁷⁴*Code*, § 31-7-13 (g).

⁵⁷⁵*Code*, § 31-7-23.

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.

Code, §31-7-55

- (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 any 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 § 31-7-57(1) 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 personal use, in violation of § 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) or 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.

Civil⁵⁷⁶

- (1) Any elected or appointed public officer of an agency or governing authority, or the executive head, any employee or agent of any agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by

⁵⁷⁶*Code, § 31-7-57.*

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 any 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 . . . ; 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 of 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. (A circuit court order is required.)
- (3) The individual members, officers, employees or agents of any agency or governing authority . . . 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 . . . , any individual member of an agency or governing authority . . . 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.