



PURCHASING DEPARTMENT

Madison County Board of Supervisors
146 West Center Street
Canton, MS 39046 / 601-855-5534
kesha.buckner@madison-co.com

April 1, 2019

To: Board of Supervisors
From: Kesha Buckner, Purchasing Clerk
Subject: Purchase of 12M3 Caterpillar Motor Grader

Road Manager Cornelius Bacon would like to lease-purchase a 12M3 Caterpillar Motor Grader using State Contract procedure. The Department of Finance and Administration's cooperative purchase agreement with Caterpillar, through the National Joint Powers Alliance (NJPA), requires the company to sell the motor grader for a minimum 30 % discount off dealer list price. Below is a detail of the pricing from Puckett on a 12M3 Caterpillar Motor Grader:

Dealer list price	\$396,365.00
30% discount	(\$118,910.00)
Dealer list price minus 30 percent	\$284,565.30
Freight	\$1,510.00
One Year Warranty	\$1,810.00
Five Year Warranty	\$3,790.00
Total	\$284,565.00
Puckett Discount	(\$13,776.00)
Selling Price	\$270,789.00

If the board wishes to lease-purchase a 12M3 Caterpillar Motor Grader on State Contract from Puckett at the price of \$270,789.00, please find that this purchase through the cooperative purchase agreement is in the best interest of the county and authorize the issuance of a purchase order for this equipment.

Attachments: State Contract with Caterpillar
State Contract heavy equipment index sheet
Caterpillar discount sheet
NJPA Program Agreement
Copy of Quote from Puckett
Copy of Miss. Code 31-7-13



STATE OF MISSISSIPPI

**CONTRACT NUMBER
8200036742**

**CATERPILLAR CORPORATION COOPERATIVE AGREEMENT
FOR CONSTRUCTION EQUIPMENT**

**DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF PURCHASING AND TRAVEL
701 WOOLFOLK BUILDING, SUITE A
501 NORTH WEST STREET
JACKSON, MISSISSIPPI 39201**

CATERPILLAR CORPORATION
and
THE STATE OF MISSISSIPPI

SCOPE: Cooperative Contract for Construction Equipment

CONTRACT NUMBER: 8200036742

EFFECTIVE DATES: December 1, 2018 through May 15, 2019

CONTACTS:

State of Mississippi
Symone Bounds
Director of Marketing and Audit
Symone.bounds@dfa.ms.gov
(601) 359 - 9373

Caterpillar Contract Administrator:
Patty Redpath
Phone: 309-494-4578
Local Caterpillar Dealers

Thompson Machinery Point of Contact:

Trace Hall
1245 Bridgestone Blvd.
Lavergne, TN 37086
615-744-7816
Trace.Hall@ThompsonMachinery.com

Puckett Machinery Company Point of Contact:

Dean Hennigan
P O Box 321033
100 Caterpillar Drive
Flowood MS 39232
601-969-6000
Dean.Hennigan@PuckettMachinery.com

We have established an agreement with Sourcewell to allow purchases from their cooperative contract with Caterpillar Corporation for commodities only. It is the buyer's responsibility to ensure this contract is not used in place of a required competitive process or as a substitute for other required purchasing approvals as required by Mississippi law. This contract was approved as another option for agencies to save money on construction equipment not currently covered by our competitively bid contracts, and provides that the provisions thereof may be available to any county, municipality, school board or other local public agency or authority of the State of Mississippi which may elect to purchase at the prices, terms and conditions of sale specified therein.

2018 Caterpillar Coop Contract Discounts v1

Track Type Tractors

D3	23.00%
D4	23.00%
D5	23.00%
D6	21.00%
D7	19.00%
D8	19.00%
D9	10.00%

Wheeled Excavators

M314F	26.00%
M315F	26.00%
M316F	26.00%
M317F	26.00%
M318F	26.00%
M320F	26.00%
M322F	26.00%

Material Handlers

MH3022	26.00%
MH3024	26.00%
MH3026	26.00%

Cold Planers

PM310	20.00%
PM312	20.00%
PM313	20.00%
PM620	20.00%
PM622	20.00%
PM820	20.00%
PM822	20.00%
PM825	20.00%

Reclaimers

RM300	20.00%
RM500	20.00%

Telehandlers

TH255	23.00%
TH3510	24.00%
TH357	24.00%
TH408	24.00%
TH514	24.00%
TL642	24.00%
TL943	24.00%
TL1055	24.00%
TL1255	24.00%

Motor Graders

12	30.00%
120	34.00%
140	30.00%
160	30.00%
14	19.00%

Skid Steer Loaders

226	21.00%
232	21.00%
236	21.00%
242	21.00%
246	21.00%
262	21.00%
272	21.00%

Multi-Terrain Loaders

257	21.00%
277	21.00%
287	21.00%
297	21.00%

NJPA PROGRAM AGREEMENT

This National Joint Powers Alliance® (NJPA) Program Agreement ("Program Agreement") by and between State of Mississippi ("Buyer") and Caterpillar Inc. is made effective as of October 1, 2017 (the "Program Agreement Effective Date") and is attached to and governed by the NJPA Agreement(s) specifically marked and identified in Section 2.2 below ("NJPA Agreement(s)") between Caterpillar, Inc. and NJPA. Buyer and Caterpillar, Inc. are collectively referred to herein as the "Parties". All capitalized terms used herein shall have the meaning assigned to them in the NJPA Agreement unless otherwise defined herein.

WHEREAS, Buyer, a member of NJPA (as defined below), and Caterpillar, Inc. desire to enter into this Program Agreement pursuant to which Buyer may participate in the NJPA Program to purchase Products (as defined below).

NOW, THEREFORE, in consideration of the foregoing mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1.0 **Term.** The term of this Program Agreement with respect to Buyer shall commence on the Program Agreement Effective Date and shall terminate upon the earlier of (i) termination or expiration of the Agreement, or (ii) the date at which Buyer ceases to be a Member of the Program. In the event that the Program Agreement terminates or expires pursuant to (i) or (ii) above, Caterpillar, Inc. agrees to offer Buyer the option to enter into a separate agreement with Caterpillar, Inc. only, provided, however, Caterpillar, Inc. and Buyer mutually agree upon the terms and conditions of such separate agreement.
- 2.0 **Definitions.**
 - 2.1 **NJPA.** The National Joint Powers Alliance® is a public agency serving as a national government/education contracting agency. NJPA was created and organized under the "Service Cooperative" section of the Minnesota Statute; M.S. 123A.21. NJPA is governed by publicly elected officials while cooperatively serving all municipal and educational agencies nationally under the authority of the Minnesota Joint Exercise of Powers laws M.S. 471.59.
 - 2.2 **NJPA Program.** The specific program(s) checked below:
 - Construction and Agricultural Equipment Program.** Construction and agricultural equipment offered for sale by Caterpillar, Inc. to NJPA members that are included in the NJPA purchasing program for construction and agricultural equipment pursuant to RFP award #032515-CAT as amended from time to time or any future equivalent IFB/RFP for construction and agricultural equipment awarded to Caterpillar, Inc..
 - 2.3 **Products.** All construction and agricultural equipment items included in the NJPA Program that Buyer purchases or may purchase from Caterpillar, Inc.; except, however, those items which are available on the Buyer's competitively bid state contracts are not included in this Agreement.
- 3.0 **Buyer Representations.** Buyer hereby represents that:
 - 3.1 it is a governmental entity or it is a nonpublic school administrative unit or non-profit eligible to participate in the NJPA Program;
 - 3.2 it is an NJPA member and will maintain its NJPA membership during the Program Agreement Term;

- 3.3 it has the local legal ability to recognize and participate in joint exercise of powers activities under the applicable state and federal procurement laws; and
- 3.4 as a member of NJPA, Buyer may participate in the NJPA Program, provided, however, Buyer acknowledges that it will be bound in all respects by the terms and conditions of the NJPA Agreement and terms and conditions of this Program Agreement.
- 4.0 **Prices.** Prices for Products are available at the time of purchase as provided by the NJPA Program.
- 5.0 **Precedence.** The agreement between the parties consists of this Program Agreement, the NJPA Agreement, and the attached Exhibit A *State of Mississippi Terms and Conditions*. In the event of conflict between this Program Agreement and the NJPA Agreement, the terms and conditions of this Program Agreement shall control. In the event of a conflict between the Program Agreement or the NJPA Agreement and the attached Exhibit A, the terms and conditions of the Exhibit A shall control.
- 6.0 **Termination.** Either Party may terminate this Program Agreement for any reason upon at least thirty (30) calendar days' prior written notice to the other Party.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Program Agreement under seal as of the Program Agreement Effective Date.

STATE OF MISSISSIPPI

By its authorized agent:


(Signature)

Name: Ross Campbell

Title: Director -- DFA OPTFM

Date: 11/21/17

Address for Notices:

State of Mississippi
Department of Finance and Administration
Office of Purchasing, Travel and Fleet
Management
701 Woolfolk Building Suite A
501 North West Street
Jackson, Mississippi 39201
ATTN: Ross Campbell
Telephone: 601-359-3409
Facsimile: 601-359-3910
Email: ross.campbell@dfa.ms.gov

CATERPILLAR, INC.

By its authorized agent:


(Signature)

Name: Patty Redpath

Title: Government Account Manager

Date: November 21, 2017

Address for Notices:

Caterpillar Inc.
Attn: Patty Redpath
Global Construction & Infrastructure
100 NE Adams St
Peoria, IL 61629

Telephone: 309-494-4578
Email: redpath_patty@cat.com

**STATE OF MISSISSIPPI
TERMS AND CONDITIONS**

A. PRECEDENCE

These STATE OF MISSISSIPPI (or "State") Terms and Conditions shall take precedence and should ambiguities, conflicts, or questions of interpretation of any documents associated with the Vendor's Agreement with the State arise, they shall be resolved first by reference to the State's Terms and Conditions.

B. E-PAYMENT & PAYMODE

The Vendor agrees to accept all payments in United States currency via the State's electronic payment and remittance vehicle. The STATE OF MISSISSIPPI agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.

Payments by state agencies using the Statewide Accounting System shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Vendor's choice. The State may, at its sole discretion, require the Vendor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Vendor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Vendor shall remain responsible and liable for full performance.

C. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the STATE OF MISSISSIPPI to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the STATE OF MISSISSIPPI, the STATE OF MISSISSIPPI shall have the right upon ten (10) working days written notice to the Vendor, to terminate this Agreement without damage, penalty, cost or expenses to the STATE OF MISSISSIPPI of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

D. RECORD RETENTION AND ACCESS TO RECORDS

Provided Vendor is given reasonable advance written notice and such inspection is made during normal business hours of Vendor, the Vendor agrees that the STATE OF MISSISSIPPI or any of its duly authorized representatives shall have unimpeded, prompt access to any of Vendor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be kept by the Vendor for a period of three (3) years after final payment under this Agreement and all pending matters are closed; however, if any audit, litigation, or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

E. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be

brought in the courts of this State. The Vendor shall comply with applicable federal, state, and local laws and regulations.

F. ANTI-ASSIGNMENT/SUBCONTRACTING

Vendor acknowledges that it was selected by the State to perform the services and provide the products required hereunder based, in part, upon Contractor's special skills and expertise. The Vendor shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Agreement without prior written consent of the STATE OF MISSISSIPPI, which the STATE OF MISSISSIPPI may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer without said consent shall be null and void. No such approval by the STATE OF MISSISSIPPI of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the STATE OF MISSISSIPPI in addition to the total fixed price agreed upon in this Agreement. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the STATE OF MISSISSIPPI may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties. In accordance with the foregoing, the STATE OF MISSISSIPPI hereby consents to Vendor subcontracting all sales and service responsibilities (including, without limitation, quoting, invoicing, and the collection of payment), among other responsibilities common for dealers, as outlined in this Agreement or the NJPA Agreement(s) to its authorized dealers in the State.

G. COMPLIANCE WITH LAWS

The Vendor understands that the STATE OF MISSISSIPPI is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Vendor agrees during the term of the Agreement that the Vendor will strictly adhere to this policy in its employment practices and provision of services. The Vendor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

H. TRANSPARENCY

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," codified as Section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this Agreement is subject to provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 27-104-151 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement is required to be posted to the Mississippi Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by the Vendor as trade secrets, or other proprietary information including confidential Vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

I. EMPLOYEE STATUS VERIFICATION SYSTEM

If applicable, the Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, et seq. of the Mississippi Code Annotated (1972, as amended), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor

electronic verification system replacing the E-Verify Program. The Vendor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Vendor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The Vendor understands and agrees that any breach of these warranties may subject the Vendor to the following: (1) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (2) the loss of any license, permit, certification or other document granted to the Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (3) both. In the event of such cancellation/termination, the Vendor would also be liable for any additional costs incurred by the State due to the Agreement cancellation or loss of license or permit.

J. INDEPENDENT CONTRACTOR

The Vendor shall, at all times, be regarded as and shall be legally considered an Independent Contractor and shall at no time act as an agent for the STATE OF MISSISSIPPI. Nothing contained herein shall be deemed or construed by the STATE OF MISSISSIPPI, Vendor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the STATE OF MISSISSIPPI and the Vendor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the STATE OF MISSISSIPPI or the Vendor hereunder creates, or shall be deemed to create, a relationship other than the independent relationship of the STATE OF MISSISSIPPI and the Vendor. Vendor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the STATE OF MISSISSIPPI. No act performed or representation made, whether oral or written, by the Vendor with respect to third parties shall be binding on the STATE OF MISSISSIPPI. Neither the Vendor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the STATE OF MISSISSIPPI; and the STATE OF MISSISSIPPI shall at no time be legally responsible for any negligence or other wrongdoing by the Vendor, its servants, agents, or employees. The STATE OF MISSISSIPPI shall not withhold from the contract payments to Vendor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Vendor. Further, the STATE OF MISSISSIPPI shall not provide to the Vendor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the STATE OF MISSISSIPPI for its employees.

K. MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the STATE OF MISSISSIPPI revisions of any applicable laws or regulations make changes in this Agreement necessary.

L. TERMINATION FOR CONVENIENCE

(1) Termination. The STATE OF MISSISSIPPI may, when the interests of the STATE OF MISSISSIPPI so require, terminate this Agreement in whole or in part for the convenience of the STATE OF MISSISSIPPI. The STATE OF MISSISSIPPI shall give written notification of the termination to the Vendor specifying the part of the Agreement terminated and when the termination becomes effective.

(2) Vendor's Obligations. The Vendor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Vendor will stop work to the extent specified. The Vendor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Vendor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Vendor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

M. TERMINATION FOR DEFAULT

(1) Default. If the Vendor refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified within this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the STATE OF MISSISSIPPI may notify the Vendor in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the STATE OF MISSISSIPPI, the STATE OF MISSISSIPPI may terminate the Vendor's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the STATE OF MISSISSIPPI may procure similar supplies or services in a manner and upon terms deemed appropriate by the STATE OF MISSISSIPPI. The Vendor shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) Vendor's Duties. Notwithstanding termination of the Agreement and subject to any directions from the STATE OF MISSISSIPPI, the Vendor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Vendor in which the STATE OF MISSISSIPPI has an interest.

(3) Compensation. Payment for completed goods or services delivered and accepted by the STATE OF MISSISSIPPI shall be at the Agreement price. The STATE OF MISSISSIPPI may withhold from amounts due the Vendor such sums as the STATE OF MISSISSIPPI deems to be necessary to protect the STATE OF MISSISSIPPI against loss because of outstanding liens or claims of former lien holders and to reimburse the STATE OF MISSISSIPPI for the excess costs incurred in procuring similar goods and services.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of Subcontractors, the Vendor shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms (including any failure by the Vendor to make progress in the prosecution of the work hereunder which endangers such performance) if the Vendor has notified the STATE OF MISSISSIPPI within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or make progress, and if such failure arises out of causes similar to those set forth above, the Vendor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Vendor to meet the Agreement requirements. Upon request of the Vendor, the STATE OF MISSISSIPPI shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Vendor's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the STATE OF MISSISSIPPI under the clause of this Agreement entitled "Termination for Convenience". As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier.

(5) Erroneous Termination for Default. If, after notice of termination of the Vendor's right to proceed under the provisions of this clause, it is determined for any reason that the Agreement was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for Convenience".

(6) **Additional Rights and Remedies.** The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Agreement.

N. STOP WORK ORDER

(1) **Order to stop work.** The STATE OF MISSISSIPPI, may by written order to the Vendor at any time, and without notice to any surety, require the Vendor to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Vendor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Vendor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the STATE OF MISSISSIPPI shall either:

(a) cancel the stop work order; or,

(b) terminate the work covered by such order as provided in the "Termination for Default" clause or the "Termination for Convenience" clause of this Agreement.

(2) **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Vendor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Vendor price, or both, and the Agreement shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the Vendor's cost properly allocable to, the performance of any part of this Agreement; and

(b) the Vendor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the STATE OF MISSISSIPPI decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

(3) **Termination of Stopped Work.** If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

O. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to this Agreement must be made in writing by the STATE OF MISSISSIPPI and agreed to by the Vendor.

P. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

The STATE OF MISSISSIPPI shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Vendor's internal administrative and quality assurance files and internal project correspondence and confidential information such as engineering drawings, specifications, trade secrets, patents, renderings and other background intellectual property. The Vendor shall deliver such documents and work papers to the STATE OF MISSISSIPPI upon termination or completion of the Agreement. The foregoing notwithstanding, the Vendor shall be entitled to retain a set of such work papers for its files. The Vendor shall be entitled to use such work papers only after receiving written permission from the STATE OF MISSISSIPPI and subject to any copyright protections.

Q. INDEMNIFICATION

To the fullest extent allowed by law, the Vendor shall indemnify, defend, save and hold harmless, protect, and exonerate the STATE OF MISSISSIPPI, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Vendor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, the Vendor may be allowed to control the defense of any such claim, suit, etc. In the event the Vendor defends said claim, suit, etc., Vendor shall use legal counsel acceptable to the State. Vendor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Vendor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

R. THIRD PARTY ACTION NOTIFICATION

The Vendor shall give the STATE OF MISSISSIPPI prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Vendor by any entity that may result in litigation related in any way to this Agreement.

S. FAILURE TO ENFORCE

Failure by the STATE OF MISSISSIPPI at any time to enforce the provisions of the Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Agreement or any part thereof or the right of the STATE OF MISSISSIPPI to enforce any provision at any time in accordance with its terms.

T. PROCUREMENT REGULATIONS

This Agreement shall be governed by the applicable provisions of the *Mississippi Procurement Manual*, a copy of which is available online at www.dfa.ms.gov

U. REPRESENTATION REGARDING CONTINGENT FEES

The Vendor represents that it has not retained a person to solicit or secure a STATE OF MISSISSIPPI contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except its authorized dealers' sales persons.

V. REPRESENTATION REGARDING GRATUITIES

The Vendor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

W. PRICE ADJUSTMENT

- (1) Price Adjustment Methods. Any adjustment in Agreement price pursuant to a clause in this Agreement shall be made in one or more of the following ways:
 - (a) By agreement on a fixed price adjustment before commencement of the additional performance;
 - (b) By unit prices specified in the Agreement;

- (c) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement; or
 - (d) By the price escalation clause.
- (2) Submission of Cost or Pricing Data. The Vendor shall provide cost or pricing data for any price adjustments.

X. CHANGE IN SCOPE OF WORK

The STATE OF MISSISSIPPI may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Agreement. No claims may be made by the Vendor that the scope of the project or of the Vendor's services has been changed, requiring changes to the amount of compensation to the Vendor or other adjustments to the Agreement, unless such changes or adjustments have been made by written amendment to the Agreement signed by the STATE OF MISSISSIPPI and the Vendor.

If the Vendor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Vendor, the Vendor must immediately notify the STATE OF MISSISSIPPI in writing of this belief. If the STATE OF MISSISSIPPI believes that the particular work is within the scope of the Agreement as written, the Vendor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the Agreement.

Y. CONTRACTOR PERSONNEL

The STATE OF MISSISSIPPI shall, throughout the life of the Agreement, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Vendor. If the STATE OF MISSISSIPPI reasonably rejects staff or Subcontractors, the Vendor must provide replacement staff or Subcontractors satisfactory to the STATE OF MISSISSIPPI in a timely manner and at no additional cost to the STATE OF MISSISSIPPI. The day-to-day supervision and control of the Vendor's employees and Subcontractors is the sole responsibility of the Vendor.

Z. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this Agreement which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the Agreement shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

AA. TERMINATION UPON BANKRUPTCY

This Agreement may be terminated in whole or in part by the STATE OF MISSISSIPPI upon written notice to Vendor, if Vendor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Vendor of an assignment for the benefit of its creditors. In the event of such termination, Vendor shall be entitled to recover just and equitable compensation for satisfactory work performed under this Agreement, but in no case shall said compensation exceed the total Agreement price.



MACHINE SALES QUOTATION

Jackson (601) 969-6000
 Gulfport (228) 832-1711
 Natchez (601) 442-1633
 Meridian (601) 483-4511
 Hattiesburg (601) 268-2000
 Brookhaven (601) 833-5115

_____ of _____ pages

Customer No:	
Company Name:	MADISON COUNTY
Contact:	CORNELIUS BACON
Phone No:	

Quote No:	
Date:	3/20/2019
Salesman:	
Machine Model:	12M3
Serial No:	
P. O. No:	

QTY	DESCRIPTION	PRICE
NEW	12M3 CATERPILLAR MOTORGRADER	396,365.00
	NJPA 30%	(118,910.00)
	CAB WITH A/C AND HEAT	FRIEGHT 1,510.00
	ACCUGRADE READY OPTION	1 YR WTY 1,810.00
	1400 X 24 TIRES	5 YR WTY 3,790.00
	14 FT BLADE	TOTAL 284,565.00
	FRONT AND REAR LIGHTS	PUCKETT DISCOUNT (13,776.00)
	TOW HITCH	SELLING PRICE 270,789.00
	REAR CAMERA	
	COMFORT PACKAGE	
	PRODUCT LINK	
	JOY STICK CONTROLS	
	FRONT SCARIFIER	
	STABLE BLADE	
	5 YEAR OR 5000 HOUR POWERTRAIN WARRANTY	
Total		

THIS QUOTE IS VALID FOR 30 DAYS
 PRODUCT AVAILABILITY
 _____ DAYS

Accepted by: _____

Puckett



MACHINE SALES QUOTATION

Jackson (601) 969-6000
 Gulfport (228) 832-1711
 Natchez (601) 442-1633
 Meridian (601) 483-4511
 Hattiesburg (601) 268-2000
 Brookhaven (601) 833-5115

_____ of _____ pages

Customer No:	
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Phone No:	

Quote No:	
Date:	3/20/2019
Salesman:	
Machine Model:	12M3
Serial No:	
P. O. No:	

QTY	DESCRIPTION	PRICE
NEW	12M3 CATERPILLAR MOTORGRADER	396,365.00
	NJPA 15.5%	(61,463.00)
	CAB WITH A/C AND HEAT	FRIEGHT 1,510.00
	ACCUGRADE READY OPTION	1 YR WTY 1,810.00
	1400 X 24 TIRES	5 YR WTY 3,790.00
	14 FT BLADE	TOTAL 342,012.00
	FRONT AND REAR LIGHTS	PUCKETT DISCOUNT (71,223.00)
	TOW HITCH	SELLING PRICE 270,789.00
	REAR CAMERA	
	COMFORT PACKAGE	
	PRODUCT LINK	
	JOY STICK CONTROLS	
	FRONT SCARIFIER	
	STABLE BLADE	
	5 YEAR OR 5000 HOUR POWERTRAIN WARRANTY	
Total		

THIS QUOTE IS VALID FOR 30 DAYS
 PRODUCT AVAILABILITY
 _____ DAYS

Accepted by: _____



MACHINE SALES QUOTATION

Jackson (601) 969-6000
 Gulfport (228) 832-1711
 Natchez (601) 442-1633
 Meridian (601) 483-4511
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_____ of _____ pages

Customer No:	
Company Name:	MADISON COUNTY
Contact:	CORNELIUS BACON
Phone No:	

Quote No:	
Date:	3/20/2019
Salesman:	
Machine Model:	12M3
Serial No:	
P. O. No:	

QTY	DESCRIPTION	PRICE
NEW	12M3 CATERPILLAR MOTORGRADER	
	60 MONTH LEASE 3055.67 PER MO, OPTION 139500	
	48 MONTH LEASE 3451.81 PER MO, OPTION 147500	
	36 MONTH LEASE 4051.51 PER MO, OPTION 157500	
Total		

THIS QUOTE IS VALID FOR 30 DAYS
 PRODUCT AVAILABILITY
 _____ DAYS

Accepted by: _____

[Miss. Code Ann. § 31-7-13](#)

Current through HB 366, 2019 Regular Session, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The final official version of the statutes affected by 2019 legislation will appear on Lexis Advance in September 2019.

Mississippi Code 1972 Annotated > Title 31. Public Business, Bonds and Obligations (Chs. 1 — 31) > Chapter 7. Public Purchases (§§ 31-7-1 — 31-7-423) > In General (§§ 31-7-1 — 31-7-73)

§ 31-7-13. Bid requirements and exceptions; public auctions.

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.

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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

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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

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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 buy-back 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 buy-back 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.

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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 buy-back 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.

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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.

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(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

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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

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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.

(xxxvii) Certain purchases made under the Alyce G. Clarke Mississippi Lottery Law.

Contracts made by the Mississippi Lottery Corporation pursuant to the Alyce G. Clarke Mississippi Lottery Law.

(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.

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(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.

History

Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1980, ch. 440, § 6; Laws, 1981, ch. 306, § 2; Laws, 1982, ch. 449, § 1; Laws, 1983, ch. 330, § 3, ch. 341; Laws, 1984, ch. 363; Laws, 1984, ch. 480, § 3; Laws, 1984, ch. 488, § 158; Laws, 1985, ch. 493, § 6; Laws, 1986, ch. 398; Laws, 1986, ch. 489, § 14; Laws, 1988, ch. 351; Laws, 1988, ch. 589, § 23; Laws, 1988 Ex Sess, ch. 14, § 65; Laws, 1989, ch. 349, § 1; Laws, 1989, ch. 394, § 3; Laws, 1990, ch. 534, § 27; Laws, 1990, ch. 545, § 2; Laws, 1990, ch. 561, § 2; Laws, 1990, 1st Ex Sess, ch. 51, § 2; Laws, 1991, ch. 337, § 1; Laws, 1991, ch. 523, § 1; Laws, 1992, ch. 571 § 3; Laws, 1993, ch. 418, § 2; Laws, 1993, ch. 617, § 12; Laws, 1993, ch. 556, § 3; Laws, 1994, ch. 471, § 2; Laws, 1994 Ex Sess, ch. 26, § 22; Laws, 1996, ch. 495, § 1; Laws, 1997, ch. 593, § 1; Laws, 1998, ch. 574, § 6; Laws, 1999, ch. 407, § 1; Laws, 1999, ch. 459, § 1; Laws, 2000, ch. 428, § 3; Laws, 2000, ch. 593, § 9; Laws, 2000, 3rd Ex Sess, ch. 1, § 13; Laws, 2001, ch. 333, § 2; Laws, 2002, ch. 563, § 1; Laws, 2003, ch. 539, § 5; Laws, 2004, ch. 394, § 1; Laws, 2004, ch. 577, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 190; Laws, 2005, ch. 504, § 5; Laws, 2006, ch. 446, § 1; Laws, 2007, ch. 423, § 1; Laws, 2007, ch. 424, § 2; Laws, 2007, ch. 494, § 7; Laws, 2007, ch. 582, § 22; Laws, 2008, ch. 417, § 1; Laws, 2008, ch. 469, § 1; brought forward without change, Laws, 2008, ch. 544, § 4; Laws, 2009, ch. 538, § 1; Laws, 2010, ch. 301, § 7; Laws, 2010, ch. 533, § 26; Laws, 2011, ch. 485, § 2; Laws, 2012, ch. 446, § 2; Laws, 2013, ch. 390, § 1; Laws, 2013, ch. 466, § 3; Laws, 2013, ch. 519, § 1; Laws, 2015, ch. 488, § 1; Laws, 2017, ch. 398, § 5; Laws, 2017, ch. 400, § 16; Laws, 2017, ch. 411, § 1, eff from and after Jan. 1, 2018; Laws, 2018, 1st Ex Sess, ch. 2, § 51, eff from and after September 1, 2018.

Annotations

Notes

Joint Legislative Committee Note —

Section 1 of ch. 407, Laws of 1999, effective from and after July 1, 1999 (approved March 17, 1999), amended this section. Section 1 of ch. 459, Laws of 1999, effective July 1, 1999 (approved April 1, 1999), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 459, Laws of 1999, pursuant to [Section 1-3-79](#) which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 3 of ch. 428, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 9 of ch. 593, Laws of 2000, effective from and after its passage (approved May 20, 2000), also amended this section. As set out above, this section reflects the language of both amendments pursuant to [Section 1-1-109](#) which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become

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effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000, meeting of the Committee.

Section 1 of ch. 394, Laws of 2004, effective from and after July 1, 2004 (approved April 20, 2004), amended this section. Section 2 of ch. 577, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 577, Laws of 2004, pursuant to [Section 1-3-79](#) which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 423, Laws of 2007, effective from and after passage (approved March 20, 2007), amended this section. Section 2 of ch. 424, Laws of 2007, effective July 1, 2007 (approved March 20, 2007), also amended this section. Section 7 of ch. 494, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), amended this section. Section 22 of ch. 582, Laws of 2007, effective July 18, 2007, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, also amended this section. As set out above, this section reflects the language of Section 22 of ch. 582, Laws of 2007, pursuant to [Section 1-3-79](#) which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 417, Laws of 2008, effective from and after July 1, 2008 (approved April 2, 2008), amended this section. Section 1 of ch. 469, Laws, 2008, effective July 1, 2008 (approved April 14, 2008), also amended this section. Section 4 of ch. 544, Laws, 2008, effective upon passage (approved May 9, 2008), brought this section forward without change. As set out above, this section reflects the language of all amendments pursuant to [Section 1-1-109](#) which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2008, meeting of the Committee.

Section 7 of ch. 301, Laws of 2010, effective upon passage (approved January 12, 2010), amended this section. Section 26 of ch. 533, Laws of 2010, effective upon passage (approved April 16, 2010), also amended this section. As set out above, this section reflects the language of Section 26 of ch. 533, Laws of 2010, which contains language that specifically provides that it superseded § [31-7-13](#) as amended by [Laws of 2010, ch. 301](#).

Pursuant to [Section 1-1-109](#), the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (d). Paragraph (iv), as added by Section 2 of Chapter 485, Laws of 2011, was redesignated paragraph (iii), and former (iii) was redesignated (iv). The Joint Committee ratified the correction at its July 13, 2011, meeting.

Section 1 of ch. 390, Laws of 2013, effective from and after July 1, 2013 (approved March 20, 2013), Section 3 of ch. 466, Laws of 2013, effective from and after July 1, 2013 (approved March 26, 2013), and Section 1 of ch. 519, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), amended this section. As set out above, this section reflects the language of Section 1 of ch. 519, Laws of 2013, which contains language that specifically provides that it supersedes § [31-7-13](#) as amended by ch. 390 and ch. 466, Laws of 2013.

Section 5 of Chapter 398, Laws of 2017, effective from and after July 1, 2017 (approved March 28, 2017), amended this section. Section 16 of Chapter 400, Laws of 2017, effective from and after January 1, 2018, (approved March 29, 2017), and Section 1 of Chapter 411, Laws of 2017, effective from and after January 1, 2018 (approved April 6, 2017), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 411, Laws of 2017, which contains language that specifically provides that it supersedes [§ 31-7-13](#) as amended by Chapters 398 and 400, Laws of 2017.

Editor's Notes —

[Section 7-7-2](#) provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

[Section 27-104-6](#) provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 1989, ch. 349, § 2, provides as follows:

"SECTION 2. Any contract for the purchase of commodities other than equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act (March 12, 1989) and which would have been legal under paragraph (n) of [Section 31-7-13](#) if such contract had been made after the effective date of this act (March 12, 1989), is ratified, confirmed and validated".

Laws of 1990, ch. 561, § 3, provides as follows:

"SECTION 3. Any contract for the purchase of commodities or equipment for a period of not more than twenty-four (24) months in advance, which was made before the effective date of this act and which would have been legal under paragraph (n) of [Section 31-7-13](#) as amended by this act if such contract had been made after the effective date of this act, is ratified, confirmed and validated."

Laws of 1990, 1st Extraordinary Session, ch. 51, § 3, effective June 30, 1990, provides as follows:

"SECTION 3. Any lease-purchase agreement by any agency entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [[Laws, 1991, ch. 424](#)], which was approved in writing by the Department of Finance and Administration, shall be a valid and binding obligation of such agency, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of [Section 31-7-13\(e\)](#) as amended by Chapter 51, First Extraordinary Session of 1990. Any lease-purchase agreement by any governing authority entered into after April 4, 1990, and before the effective date of Senate Bill No. 2991, 1991 Regular Session [[Laws, 1991, ch. 424](#)], which is in compliance with [Section 31-7-13\(e\)](#), as amended by Chapter 51, First Extraordinary Session of 1990, shall be a valid and binding obligation of such governing authority, in accordance with the terms of such lease-purchase agreement, to the same extent as any lease-purchase agreement entered into pursuant to the provisions of [Section 31-7-13\(e\)](#) as amended by Chapter 51, First Extraordinary Session of 1990." [Amended, Laws, 1991, ch. 424, § 2, eff from and after passage (approved March 20, 1991).]

Laws of 1996, ch. 495, § 3, provides as follows:

"SECTION 3. Any agency or governing authority that has received a bid or bids for a public construction or renovation project on or after January 1, 1996, may exercise the authority granted under subparagraph (d)(ii) of [Section 31-7-13, Mississippi Code of 1972](#)."

Former subparagraph (xxv) of paragraph (m) relating to State Prison Emergency Construction and Management Board contracts or purchases was repealed by its own terms from and after July 1, 1997.

Laws of 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

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On July 18, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 582, § [22](#).

Laws of 2017, ch. 398, § [6](#), provides:

“SECTION 6. The provisions of this act are severable. If any part is declared invalid or unconstitutional, that declaration shall not affect the part which remains.”

Amendment Notes —

The 2003 amendment made minor stylistic changes in (a); added the sentence beginning “‘Competitive’ shall mean” in (b); added (c)(v); deleted “for reasons beyond his control” in the second sentence of (f); in (j), inserted “governing board or the” preceding “executive head” and “or his designee” thereafter, and rewrote the third sentence; made minor stylistic changes in (m)(ii) and (m)(ix); rewrote the first sentence in (m)(v); inserted “or governing authority” in the first sentence of (m)(vi); added (m)(xxix); and substituted “the amount provided in paragraph (c) of this section” for “Ten Thousand Dollars (\$10,000.00)” in the first sentence of (r).

The first 2004 amendment, ch. 394, inserted (d)(ii) and redesignated former (d)(ii) as present (d)(iii); and made a minor stylistic change.

The second 2004 amendment, ch. 577, added (m)(xxx).

The 2004 amendment (3rd Ex Sess, ch. 1) made a minor stylistic change at the end of (j); substituted “paragraph” for “subparagraph” in (m)(xxviii); and added (m)(xxxi).

The 2005 amendment added (c)(iv)2.

The 2006 amendment, in (c)(i), designated the former first sentence as 1., deleted “sealed” following “advertising for competitive” in 1., added 2., and designated the former third and subsequent sentences as 3.

The first 2007 amendment (ch. 423) substituted “\$5,000” for “\$3,500,” “Five Thousand Dollars” for “Three Thousand Five Hundred Dollars,” “\$25,000” for “\$15,000,” and “Twenty-five Thousand Dollars” for “Fifteen Thousand Dollars” throughout (a) through (c); and inserted “under” in (m)(xxxi).

The second 2007 amendment (ch. 424) added (u) and redesignated former (u) as present (v).

The third 2007 amendment (ch. 494), in (m)(xxxi), substituted “and dual-phase design-build method” for “or the design-build bridging method”, inserted “under,” and substituted “Section 31-7-13.1, 37-101-44 or 65-1-85” for “Section 31-11-3(9)”; and added (u) and redesignated former (u) as present (v).

The fourth 2007 amendment (ch. 582) substituted “Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority” for “Mississippi Contract Procurement Center” in (c)(i)(3); substituted present (m)(xxxi) for former (m)(xxxi), which read: “Design-build method or the design-build bridging method of contracting. Contracts entered into the provisions of Section 31-11-3(9)”; and added (m)(xxxii).

The first 2008 amendment (ch. 417), deleted the former last sentence of (j), which read: “On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.”

The second 2008 amendment (ch. 469), extended the date of the repealer for (c)(i)(2) by substituting “July 1, 2011” for “July 1, 2008.”

The third 2008 amendment (ch. 544), brought the section forward without change.

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The 2009 amendment, in (b), substituted "\$50,000.00" for "\$25,000.00" in the paragraph heading, substituted "Fifty Thousand Dollars (\$50,000.00)" for "Twenty-five Thousand Dollars (\$25,000.00)" in the first sentence, and added the second, eighth and ninth sentences; in (c), substituted "(\$50,000.00)" for "(\$25,000.00)" in the paragraph heading, in (i)1., substituted "Fifty Thousand Dollars (\$50,000.00)" for "Twenty-five Thousand Dollars (\$25,000.00)" in the first sentence and added the last sentence, substituted "item 2 of subparagraph (i)" for "part 2 of subparagraph (i)" in (i)2., and in (i)3., substituted "Fifty Thousand Dollars (\$50,000.00)" for "Twenty-five Thousand Dollars (\$25,000.00)" in the first sentence, and added the seven sentences; deleted "a" preceding "fuel management" in the last sentence of (q); added (v); and redesignated former (v) as present (w).

The first 2010 amendment (ch. 301) added "and (4)" to the end of (m)(xxvi); and inserted "into" preceding "contracts with one or more of the persons or firms submitting proposals" at the end of the second sentence of (r).

The second 2010 amendment (ch. 533) added the last sentence in (c)(i)1.; and added (m)(xxxiii).

The 2011 amendment, in (c)(i)2, added the last sentence and deleted the former last sentence, which had contained a repealer for (c)(i)2; and added (d)(iii) and redesignated former (d)(iii) as (d)(iv).

The 2012 amendment added (m)(xxxiv).

The first 2013 amendment (ch. 390) inserted "including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority" in the second sentence of (d)(ii).

The second 2013 amendment (ch. 466) added (m)(xxxv).

The third 2013 amendment (ch. 519) rewrote (m)(xviii), which read "Purchase of prison industry products. From and after January 1, 1991, purchases made by state agencies or governing authorities involving any item that is manufactured, processed, grown or produced from the state's prison industries."

The 2015 amendment, in (j), deleted "the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency" preceding "the head of such agency, or his designees, shall", and deleted "at the earliest possible date following such emergency purchase" thereafter, inserted "requesting the emergency purchase" near the end of the first sentence, added the last sentence, and added two more paragraphs; and added the last sentence of (m)(viii).

The first 2017 amendment (ch. 398), effective July 1, 2017, substituted "subparagraph (i) of this paragraph (d)" for "paragraph (d)(i)" in (d)(ii) and (iii); substituted "subparagraph (v) of this paragraph (m)" for "subparagraph (v) of this section" at the end of (m)(vi); and added (m)(xxxvi).

The second 2017 amendment (ch. 400), effective January 1, 2018, in (c)(i)2, added the first three sentences, added "If the Public Procurement Review Board ...;method other than reverse auction, then" at the beginning of the fourth sentence, and therein, substituted "designate the other methods" for "designate the methods," deleted "bids received via a reverse auction" following "received electronically in a secure system," and added the last two sentences; added "Electronic bids" at the beginning of (c)(v); substituted "subparagraph (i) of this paragraph (d)" for "paragraph (d)(i)" near the beginning of (d)(ii) and (iii); added the last sentence of the last paragraph of (j); and substituted "subparagraph (v) of this paragraph (m)" for "subparagraph (v) of this section" at the end of the second sentence of (m)(vi).

The third 2017 amendment (ch. 411), effective January 1, 2018, in (c)(i)2, added the first three sentences, added "If the Public Procurement Review Board ...;method other than reverse auction, then" at the beginning of the fourth sentence, and therein, substituted "designate the other methods" for "designate the methods," deleted "bids received via a reverse auction" following "received electronically in a secure system," and added the last two

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sentences; rewrote (c)(v), which read: "Agencies and governing authorities may establish secure procedures by which bids may be submitted via electronic means"; substituted "subparagraph (i) of this paragraph (d)" for "paragraph (d)(i)" near the beginning of (d)(ii) and (iii); added the last sentence of the last paragraph of (j); and in (m), substituted "subparagraph (v) of this paragraph (m)" for "subparagraph (v) of this section" at the end of the second paragraph of (vi), and added (xxxvi).

The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added (m)(xxxvii).

JUDICIAL DECISIONS

1. In general.
2. Factors considered.
3. Amendment of bid price.
4. Cancellation of a contract.
5. Relationship to other laws.
6. Exemption from bidding process.
- 7.-9. [Reserved for future use.]
10. Under former §§ 31-7-43, 31-7-45.

1. In general.

Circuit court erred in affirming a city's conditional award of a contract for a public construction project to bidder whose bid exceeded the project's allocated funds by more than 10 percent because the city's actions in making the bid dependent upon the city obtaining additional public funds to match the bid were not provided by law, it could not be argued fairly that the city's actions were necessarily implied by the statute, and the foundational principles underlying the statutory requirements of competitive bidding negated any inference that the city could obtain additional public funds post-bid opening. [*Hemphill Constr. Co. v. City of Clarksdale*, 250 So. 3d 1258, 2018 Miss. LEXIS 356 \(Miss. 2018\)](#).

Trial court properly remanded to the board of supervisors to provide a caterer with a due-process hearing and to consider evidence to determine if its prior contract rescission was justified because a supplementation of the factual basis of the board's justification after the hearing was required to allow for judicial review of the board's decision. [*Howell v. Bd. of Supervisors*, 179 So. 3d 34, 2015 Miss. App. LEXIS 187 \(Miss. Ct. App.\)](#), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 566 (Miss. 2015).

Circuit court properly ruled that a contractor's appeal of the decision of a county board of supervisors to award a contract to another was moot because the circuit court gave the board an opportunity to decide that it would reject all previous bids and reopen the request-for-proposals process, and the board decided to reject all bids and reopen the request-for-proposals process; any error that resulted from the circuit court's decision to remand for reconsideration of the matter by the board was harmless because the circuit court could have ordered the board to reject all bids and reopen the request-for-proposals process. [*Precision Communs., Inc. v. Hinds County*, 74 So. 3d 366, 2011 Miss. App. LEXIS 252 \(Miss. Ct. App.\)](#), cert. denied, 73 So. 3d 1168, 2011 Miss. LEXIS 548 (Miss. 2011).

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In a construction company's breach of contract action, a trial court erred in granting summary judgment to the Mississippi Transportation Commission because the last sentence of a diesel fuel and asphalt cost (FAC) provision in the parties' completion agreement should have been stricken because it contravened the requirements of Miss. Code Ann. § [31-7-13\(i\)](#) (Rev. 2008). While the FAC provision was unambiguous, and the plain meaning of the words used in the FAC supported the Commission's interpretation of the contract, the last sentence of the FAC impermissibly locked in reimbursements to the construction company based on the price of petroleum as of the expiration of contract time. [Hill Bros. Constr. Co. v. Miss. Transp. Comm'n.](#) 42 So. 3d 497, 2010 Miss. LEXIS 308 (Miss. 2010).

Circuit court properly dismissed a company's challenge to the City's decision to award a sewer improvement project to the second lowest bidder as the City complied with Miss. Code Ann. § [31-7-13\(d\)\(i\)](#), did not violate the company's due process rights, and did not act arbitrarily and capriciously in rejecting the company's lowest bid. Because the City rejected the company's bid for reasons that could not be reduced to "detailed calculations," the City's minutes provided the minimal, requisite "detailed calculations" pursuant to § [31-7-13\(d\)\(i\)](#) by citing the dollar amounts of the lowest bid and the accepted bid. [Nelson v. City of Horn Lake.](#) 968 So. 2d 938, 2007 Miss. LEXIS 636 (Miss. 2007).

Circuit court properly dismissed a company's challenge to the City's decision to award a sewer improvement project to the second lowest bidder as the City complied with Miss. Code Ann. § [31-7-13\(d\)\(i\)](#), did not violate the company's due process rights, and did not act arbitrarily and capriciously in rejecting the company's lowest bid. Because the City's advertisement for bids allowed for consideration of bidders' "responsibility," and because the City also reserved the right to investigate bidders, the City had the right to reject the company's bid based on numerous complaints regarding the company's prior work. [Nelson v. City of Horn Lake.](#) 968 So. 2d 938, 2007 Miss. LEXIS 636 (Miss. 2007).

H.B. 1671, Reg. Sess. (Miss. 2006), was a private law which enabled the city to obtain municipal parking facilities in exchange for the conveyance of air and development rights; the last sentences of sections 3 and 4 were unconstitutional under Miss. Const. Art. IV, § [87](#), as exempting the bill from compliance with Miss. Code Ann. §§ [21-17-1](#) and [31-7-13](#) and were not merely procedural and minor. [Oxford Asset Partners, LLC v. City of Oxford.](#) 970 So. 2d 116, 2007 Miss. LEXIS 575 (Miss. 2007).

The Mississippi Emergency Management Law, §§ [33-15-1](#) et seq., is not to be read in pari materia with subsection (k) of this section; during an emergency, the Emergency Management Law controls. [Bolivar County v. Wal-Mart Stores, Inc.](#) 797 So. 2d 790, 1999 Miss. LEXIS 333 (Miss. 1999).

This section regulates the process by which boards of supervisors may purchase heavy equipment for road maintenance and other related purposes. [Canton Farm Equipment, Inc. v. Richardson.](#) 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

Although a county board of supervisors may advertise for purchase of equipment pursuant to this section, the board is not invariably required to accept the lowest bid, rather, the law contemplates that the board, if it accepts any bids at all, will accept the lowest and best bid and, if it accepts a bid that is not dollarwise the lowest, the board must place on its minutes the detailed calculations in a narrative summary explaining why the accepted bid was determined to be the lowest and best bid. [Canton Farm Equipment, Inc. v. Richardson.](#) 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

2. Factors considered.

That appellant's suppliers were protected by a payment bond given under Miss. Code Ann. § 85-7-185 [repealed] did not preclude a school board, which awarded the contract to the next lowest bidder, from considering appellant's prior payment disputes with suppliers. [Rod Cooke Constr. Co. v. Lamar County Sch. Bd.](#), 135 So. 3d 902, 2013 Miss. App. LEXIS 641 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

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School board's award of contract to appellant's competitor, though appellant was the lowest bidder, was not arbitrary or capricious, because the board was not statutorily obligated to accept the lowest bid, and the bid documents stated that the board could award a contract to an entity other than the lowest bidder if it determined it was "best" to do so. [*Rod Cooke Constr. Co. v. Lamar County Sch. Bd.*, 135 So. 3d 902, 2013 Miss. App. LEXIS 641 \(Miss. Ct. App. 2013\)](#), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 204 (Miss. 2014).

Decision by a county board of supervisors to award a public contract to construct a jail to a bidder who was the third lowest bidder was not arbitrary and capricious because the board had the discretion to consider a bidder's prior experience when awarding the contract, Miss. Code Ann. § 31-7-13, and the lowest bidder never submitted any documentation of prior experience and the second lowest bidder's documentation of prior experience did not meet the prior experience requirement. [*Murphy & Sons, Inc. v. DeSoto County Bd. of Supervisors*, 122 So. 3d 87, 2013 Miss. App. LEXIS 58 \(Miss. Ct. App.\)](#), cert. denied, 121 So. 3d 918, 2013 Miss. LEXIS 506 (Miss. 2013).

Request by a county board of supervisors that bidders provide a list of prior jail-construction experience did not amount to an impermissible prequalification of bidders, Miss. Code Ann. § 31-7-13, because the prior-experience requirement: (1) did not violate any of the purposes of the competitive bidding process; (2) was not unreasonably restrictive to bidders; and (3) left discretion to the board to consider bids that did not conform to the bid specifications. [*Murphy & Sons, Inc. v. DeSoto County Bd. of Supervisors*, 122 So. 3d 87, 2013 Miss. App. LEXIS 58 \(Miss. Ct. App.\)](#), cert. denied, 121 So. 3d 918, 2013 Miss. LEXIS 506 (Miss. 2013).

County board of supervisors' consideration of a local company's promise to employ local residents and provide special services to the elderly in awarding a contract for solid waste disposal, when it had failed to include them in the request for proposals, was a violation of Miss. Code Ann. ' 31-7-13(r), requiring the bid process to be reinitiated. [*Preferred Transp. Co., LLC v. Claiborne County Bd. of Supervisors*, 32 So. 3d 549, 2010 Miss. App. LEXIS 170 \(Miss. Ct. App. 2010\)](#).

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that there was no justification in awarding the winning company the contract because the services company's proposal was the lowest price. Pursuant to Miss. Code Ann. § 31-7-13(r), price was just one factor for the authority to consider. [*Wastewater Plant Serv. Co. v. Harrison County Util. Auth.*, 28 So. 3d 686, 2010 Miss. App. LEXIS 97 \(Miss. Ct. App. 2010\)](#).

Agency's argument that competitive bidding laws prohibited it from paying the contractor for changes or modifications to the construction contract because the changes were not "commercially reasonable" as required by Miss. Code Ann. § 31-7-13(g) was improper because the contractor made the agency aware of the complications. The contractor did not wait until the project had overrun before approaching the agency for change orders. [*Tupelo Redevelopment Agency v. Gray Corp.*, 972 So. 2d 495, 2007 Miss. LEXIS 577 \(Miss. 2007\)](#).

Trial court properly upheld a county board of supervisors' award of a construction contract to a resident contractor because a nonresident contractor, whose bid was the lowest, had some negative references. Pursuant to Miss. Code Ann. § 31-7-13(d)(i), the board was free to consider the experience, skill, and reputation of the competing firms in determining which bid was the "lowest and best." [*Billy E. Burnett, Inc. v. Pontotoc County Bd. of Supervisors*, 940 So. 2d 241, 2006 Miss. App. LEXIS 138 \(Miss. Ct. App.\)](#), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 627 (Miss. 2006).

3. Amendment of bid price.

A governing authority cannot accept a bid price increase after sealed bids are opened, except where the error and the intended correct bid are evident on the face of the bid document. [*Hemphill Constr. Co. v. City of Laurel*, 760 So. 2d 720, 2000 Miss. LEXIS 111 \(Miss. 2000\)](#).

4. Cancellation of a contract.

Board of supervisors' capricious rescission of a caterer's contract for prisoner catering services was in error because it was arbitrarily based upon consideration of matters outside of the bid specifications; the board rescinded the award of the contract despite the caterer's compliance with bid requirements and certifications, and it based its decision upon the testimony of the sheriff, which lacked a credible basis upon which it could base its decision. [Howell v. Bd. of Supervisors, 179 So. 3d 34, 2015 Miss. App. LEXIS 187 \(Miss. Ct. App.\), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 566 \(Miss. 2015\).](#)

In a 42 U.S.C.S. § 1983 case in which a contract was extended for 24 months by a former mayor and board of aldermen (board) and the contract was cancelled by the new mayor and board, the contractor and the assignee argued unsuccessfully that the cancellation violated the Contracts Clause, U.S. Const. art. I, § 10. Even if it was determined that the cancellation of the contract constituted a substantial impairment and was not justified by a legitimate public purpose, the continuance of the contract against the wishes of the successor municipal board would have violated the board's sovereignty as provided by Mississippi common law and Miss. Code Ann. § [31-7-13\(n\)\(i\)](#). [ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 \(N.D. Miss. 2009\), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 \(5th Cir. Miss. 2010\).](#)

In a case in which a contractor and its assignee argued that a new mayor and board of alderman ratified the contract extension made by the former mayor and board of alderman when they modified the contract, given the disclaimer in the mayor's letter to the contractor, the contractor and its assignee failed to create a genuine issue of material fact establishing that the successor board of aldermen ratified the former board of aldermen's agreement to extend the term of the maintenance contract. Pursuant to Miss. Code Ann. § [31-7-13\(n\)\(i\)](#) and Mississippi common law, the voiding of the maintenance contract by the successor board of aldermen did not offend Mississippi law. [ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 \(N.D. Miss. 2009\), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 \(5th Cir. Miss. 2010\).](#)

5. Relationship to other laws.

Substantial evidence supported a school district's conservator's decision to terminate a superintendent because the evidence showed the superintendent violated district policy and state law by obtaining vehicles without required competitive bids or approval of the district's board of trustees and did not properly supervise an employee who acquired the vehicles. [Leigh v. Aberdeen Sch. Dist., 207 So. 3d 1276, 2016 Miss. App. LEXIS 307 \(Miss. Ct. App. 2016\)](#), writ denied, 207 So. 3d 1240, 2017 Miss. LEXIS 22 (Miss. 2017).

In a 42 U.S.C.S. § 1983 case in which a contractor and its assignee sued a city following the cancellation of a contract which had been extended for 24 months by the former mayor and board of alderman (board) and cancelled by the new mayor and board, the contractor and its assignee unsuccessfully argued that Miss. Code Ann. § [21-7-7](#) authorized the original board to agree to the term extension. Under Miss. Code Ann. § [31-7-13\(n\)\(i\)](#), the contract extension was an ultra vires act in the sense that the former mayor and board could not legally agree to bind the new mayor and board to the contract. [ECO Res., Inc. v. City of Horn Lake, 640 F. Supp. 2d 826, 2009 U.S. Dist. LEXIS 55280 \(N.D. Miss. 2009\), aff'd, 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 \(5th Cir. Miss. 2010\).](#)

6. Exemption from bidding process.

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company unsuccessfully argued that the authority violated Miss. Code Ann. § [31-7-13\(c\)](#) and (d) by not re-opening the bidding so that other bidders could modify their bids and by not stating the reasons for not choosing the lowest bid. Neither subsection applied to the contract because the contract was for a wastewater-treatment system and was

exempt from bidding requirements pursuant to Miss. Code Ann. § [31-7-13\(m\)\(xxii\)](#). [Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686, 2010 Miss. App. LEXIS 97 \(Miss. Ct. App. 2010\)](#).

7.-9. [Reserved for future use.]

10. Under former §§ 31-7-43, 31-7-45.

A suit for bills of lumber, totaling over \$1,400, sold to a member of a board of supervisors, without competitive bids having been secured, was dismissed, in the absence of a showing that any emergency existed suspending the requirement of the statute, notwithstanding it might be conceded that the account was susceptible of a breaking down into separate and independent items each less than \$100. [Duncan v. Board of Sup'rs, 4 So. 2d 219 \(Miss. 1941\)](#).

A special act of the Legislature authorizing the board of supervisors of a designated county to reimburse a former sheriff thereof for expense incurred in purchasing disinfectants for the county jail, which claim had previously been disallowed by the board of supervisors, was void as being within the prohibition of this section [Code 1942, § 9027] in suspending the operation of a general law (Code 1942, § 9027) relating to the purchase of supplies by the county which expressly requires contracts for the purchase of supplies, etc., to be let upon competitive bids and prohibits any individual members of the board from making such purchases. [Beall v. Board of Supervisors, 191 Miss. 470, 3 So. 2d 839, 1941 Miss. LEXIS 171 \(Miss. 1941\)](#).

The statute was not complied with so as to permit recovery against a county for lumber supplies to a county supervisor for the repair of bridges in his district, one of which consumed more than \$100 of such lumber, by dividing the bill for the total amounts of lumber into lots of less than \$100 each, there being no emergency. [Bigham v. Lee County, 184 Miss. 138, 185 So. 818, 1939 Miss. LEXIS 48 \(Miss. 1939\)](#).

"Emergency" in statute authorizing members of board of supervisors to make emergency expenditures is unforeseen occurrence of combination of circumstances calling for immediate action. [Attala County v. Mississippi Tractor & Equipment Co., 162 Miss. 564, 139 So. 628, 1932 Miss. LEXIS 146 \(Miss. 1932\)](#).

Statute empowering members of board of supervisors to make emergency expenditures held inapplicable, where articles were purchased as needed for county's road machinery. [Attala County v. Mississippi Tractor & Equipment Co., 162 Miss. 564, 139 So. 628, 1932 Miss. LEXIS 146 \(Miss. 1932\)](#).

When price of disinfectants for jail and courthouse exceeded one hundred dollars, individual member of board of supervisors had no authority to contract therefor. [Franklin County v. American Disinfectant Co., 153 Miss. 583, 121 So. 271, 1929 Miss. LEXIS 59 \(Miss. 1929\)](#).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL

Regardless of format, copyright library materials intended for circulation, including books, periodicals, maps, microforms, films, filmstrips, video tapes, audio tapes, records, and compact discs, are exempt from bid requirements. 1990 Miss. Op. Att'y Gen. 55.

If City of Tupelo requests and receives letter from State Auditor's Department documenting Neilsen/Data Quest price on certain piece of equipment, City may then purchase such equipment from adjacent state agency if state agency price does not exceed Neilsen/Data Quest price; if piece of equipment is not listed, then city may purchase by negotiation. 1990 Miss. Op. Att'y Gen. 177.

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Pearl River Valley Water Supply District is, in specific and limited context of state purchasing laws, governing authority, and as such may exercise discretionary authority afforded other governing authorities with respect to purchase of liability insurance. 1992 Miss. Op. Att'y Gen. 716.

Fact that port commission failed to take official action on emergency repair resolution "at the board meeting next" within subsection (k) of this section is not fatal to contract but is, at worst, harmless error; therefore, emergency repair bill may be lawfully considered for payment, provided all other requisites of subsection (k) of this section were, consistent with fact, adjudicated and spread on port commission minutes at either of commission's next two meetings. 1993 Miss. Op. Att'y Gen. 1008.

Any purchase of materials by school board would have to be made in accordance with this section which provides that only expenditures of less than \$5,000 may be made without advertising for bids; if school board elects to make multiple purchases connected to single project, it must exercise care not to split invoices or otherwise act so as to circumvent preceding provisions. 1993 Miss. Op. Att'y Gen. 27.

Lease-purchase of equipment by counties is governed by subsection (e) of this section which does not address refinancing arrangement; however, nothing in this statute appears to prohibit refinancing if in fact county can do so at more favorable terms, taking into consideration costs of refinancing, if any; if county desires to consider such, it will be bound by same provisions and limitations enumerated by subsection (e) of this section that apply to initial financing, including requirement that county obtain at least two written competitive bids. 1993 Miss. Op. Att'y Gen. 189.

Subsection (m)(viii) of this section exempts from bid requirements items available from only one source; therefore, Central Data Processing Authority is authorized to approve sole-source acquisitions of data processing equipment; accordingly, upon finding that operating system upgrade for Public Employees' Retirement System is available from one source only, acquisition is exempt from competitive bidding requirements. 1993 Miss. Op. Att'y Gen. 366.

Board of supervisors could utilize properly bid and awarded term contract with vendor to provide asphalt, labor and equipment to overlay county roads where all preparatory work was to be performed by county employees with county equipment, and vendor was to merely deliver and install asphalt. 1993 Miss. Op. Att'y Gen. 468.

Board of supervisors may execute change order and pay contractor for any additional work performed pursuant to previously approved change order but when there has been no official action approving in advance additional work by contractor, board of supervisors is without authority to make payment for that additional work. 1993 Miss. Op. Att'y Gen. 458.

Statute does not contemplate or permit use of change orders to complete second phase of public construction project where contract and specifications were limited to first phase of construction and it was known during bidding of contract that substantial additional construction not provided for was contemplated at later time; second phase of renovation of hospital was not necessary or incidental to completion of first phase of construction and must be treated as new undertaking outside scope of contract and therefore hospital board had to solicit competitive bids in order to complete second phase of planned renovations. 1993 Miss. Op. Att'y Gen. 502.

Whether or not emergency situation exists such as to warrant raising this section exemption from bids is factual determination that must be made by municipal governing board, not attorney general. 1993 Miss. Op. Att'y Gen. 584.

Governing boards of counties and cities are not required to open bids during official meeting of board; governing boards in their discretion may direct that bids be received and opened on date and at time and place specified by board in request for bids by designated agent of board, such as clerk, deputy clerk or purchasing agent; such agent would, of course, only be authorized to open and announce bids in open, public proceeding where bidders, their representatives and general public could be present, could then be arranged, recorded and tabulated and then presented to governing boards at later official meeting for acceptance or rejection. 1993 Miss. Op. Att'y Gen. 781.

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If proposed contract is to survey and reappraise plan proposed by county, [Section 27-35-101](#) expressly requires competitive bidding but if contract is strictly to provide a professional service to county, it does not require competitive bidding under this section. Gex, Jan. 5, 1994, A.G.Op #93-0970.

There is no statutory or precedential prohibition that would preclude convicted felon from bidding on public contracts. 1994 Miss. Op. Att'y Gen. 38.

Although subsection (n)(ii) of this section provides for purchases to be made pursuant to purchase order from vendor for commodities by board of supervisors, there is no statutory authority within provisions of public purchases law for board of supervisors to expend public funds for membership fees and administrative fees for the privilege of purchasing from an individual vendor. 1994 Miss. Op. Att'y Gen. 914.

Governing authorities have obligation to carefully scrutinize each bid for not only amount of bid, but quality of bid and insolvency or delinquency of taxpayer vendor is factor to consider. 1994 Miss. Op. Att'y Gen. 964.

Subsection (m) of this section would permit a regional airport authority to transfer surplus equipment to the county without the necessity of competitive bids and upon such terms and conditions the authority deems appropriate so long as the authority receives fair market value therefor. 1995 Miss. Op. Att'y Gen. 112.

The awarding of a contract for services only does not necessitate competitive bidding under this section. 1995 Miss. Op. Att'y Gen. 175.

The provisions of [Section 19-11-27](#) shall not apply to a contract, lease or lease-purchase contract entered into pursuant to this section. 1995 Miss. Op. Att'y Gen. 256.

Expenditure of gaming funds for road and bridge construction is subject to the limitation of [Section 19-11-27](#) that the board, during the last three months of the last year of their term, shall not expend or authorize the expenditure of more than 25% of that item of the budget, except contracts, leases or lease-purchase agreements entered into pursuant to this section. 1995 Miss. Op. Att'y Gen. 256.

A governmental entity may exercise an option to renew a contract, entered into pursuant to subsection (n)(i) of this section and for a period of less than twenty-four months, for the time remaining in the twenty-four month period without rebidding the contract. 1995 Miss. Op. Att'y Gen. 290.

Pursuant to subsection (c) of this section, the county may not advertise and accept bids without proper authorization by the board of supervisors. Before any advertisement for bids is made, the board must adopt a resolution stating its intention to make a purchase, stating the specifications for the purchase and authorizing the bids. 1995 Miss. Op. Att'y Gen. 488.

Subsection (c) of this section, which requires advertisement for competitive sealed bids for certain purchases, makes no signature requirement. 1995 Miss. Op. Att'y Gen. 667.

If the one bid offered was for an automobile with a smaller engine than that specified for in the publication, then that bid cannot be accepted by the Town pursuant to subsection (d) of this section because other potential bidders were not put on notice that they might also submit bids for an automobile with a smaller engine. 1996 Miss. Op. Att'y Gen. 19.

Where a change is made by a governing authority in the plans and specifications of a proposed purchase, that any time after advertisement for bids and prior to acceptance, the procedure set out in this section must start anew. 1996 Miss. Op. Att'y Gen. 19.

There is no prohibition found in this section for constructing a proposed conference/convention center building in two phases to be spread over two or three years in the future, so long as it is commercially and fiscally reasonable. 1996 Miss. Op. Att'y Gen. 849.

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Since there is no statute similar to [Section 21-39-3](#) on county publishing contracts, the county may negotiate for such contracts, or may bid them out using this section and/or [Section 19-3-35](#) as a guideline. 1996 Miss. Op. Att'y Gen. 135.

Where the bid specifications are stated in the advertisement itself and not referred to as on file with the clerk, a change in the specifications would require the procedure set out in this section to start anew, but, where the specifications are merely referred to in the advertisement as on file with the clerk, and where the right is reserved in the advertisement to amend the specifications upon reasonable notice to all who have examined or requested copies of those specifications from the clerk, readvertisement for bids following an amendment to the specifications would not be required. 1996 Miss. Op. Att'y Gen. 168.

Based on this section, the prices of individual items to be purchased by a city for landscape purposes are not controlling in determining the proper purchasing/bidding procedure. 1996 Miss. Op. Att'y Gen. 330.

Pursuant to subsection (m)(v) of this section, the governing authority may authorize in general terms the item or items that are to be purchased and the maximum bid authorized, and leave flexibility with the persons attending the public auction as to which particular item should be purchased for the governing authority. 1996 Miss. Op. Att'y Gen. 422.

The change order procedure under subsection (g) of this section cannot be utilized to amend contracts for the purchase of classroom furniture such as desks and chairs. 1996 Miss. Op. Att'y Gen. 569.

If proposed contractual changes are within the scope of the construction contract, then the procedure authorized by subsection (g) of this section could be utilized. However, if the contract is a separate one for the purchase of commodities as defined by [Section 31-7-1\(e\)](#), then the change order procedure could not be used. 1996 Miss. Op. Att'y Gen. 569.

The procedure for requesting proposals set out in subsection (t) of this section applies only to contracts with private waste disposal firms and does not apply to contracts between public agencies and solid waste management authorities, which are governed by [Section 17-17-321](#). 1996 Miss. Op. Att'y Gen. 607.

Pursuant to this section a city may negotiate and sell surplus vehicles to the school district; however, the city must obtain fair market value for the vehicles. The vehicles may not be donated. 1996 Miss. Op. Att'y Gen. 572.

There is no legal authority, statutory or otherwise, for public school districts to delegate the duties set out in this section, concerning advertising and accepting bids for public purchases to a private nonprofit corporation. 1996 Miss. Op. Att'y Gen. 559.

Under the plain language of [Section 31-7-38](#), if the University of Mississippi Medical Center does organize or participate in a group purchase program with other hospitals, then its purchases of supplies, commodities and equipment made through such program would be exempt from the provisions of [Section 31-7-12](#) and this section. 1996 Miss. Op. Att'y Gen. 692.

Based on [Sections 31-27-3](#), [31-27-5](#), [31-27-11](#), [31-27-13](#), [31-27-17](#) and the intent and policy of the Refinancing Act as announced by the Legislature, the certificates evidencing the debt of the District on the building constructed under the Lease-Purchase Act are bonds within the meaning of the statute and may be refunded by the issuance of general obligation refunding bonds. 1996 Miss. Op. Att'y Gen. 707.

As provided by [Section 31-7-38](#), University Medical Center purchases of supplies, commodities and equipment made through a group purchasing program would be exempt from this section requirements, including competitive bidding. 1996 Miss. Op. Att'y Gen. 755.

Based on subsection (n)(ii) of this section and § [31-7-109](#), there is no requirement that a separate receiving report be prepared for each and every delivery, load or shipment of gravel or other similar commodity received. Instead, statutory requirements are satisfied where a signed load ticket or receipt is issued evidencing each delivery, load or

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shipment received at and on the various delivery points and dates throughout each month. All of these signed tickets or receipts, in turn, are then attached to the receiving report covering the applicable period—a day, a week or any other reasonable time period not exceeding one month. 1996 Miss. Op. Att'y Gen. 768.

If a contract for solid waste collection will exceed \$50,000.00, the provisions of subsection (t) of this section must be followed. 1996 Miss. Op. Att'y Gen. 816.

Amounts allocated for a public construction or renovation project include architectural fees or other costs if those fees and costs are included in the notice to receive written sealed proposals that are directed to bidders. 1997 Miss. Op. Att'y Gen. 277.

In negotiating with the lowest bidder to enter a public contract within allocated funds, subsection (d)(ii) of this section only allows the lowest bidder to reduce its bid to come within the amount of funds allocated and does not authorize an agency or governing authority to make reductions to plans or specifications. 1997 Miss. Op. Att'y Gen. 277.

Subject to review by a court of competent jurisdiction, a municipality has the authority to forgo advertising and bidding requirements and enter into an emergency repair contract upon a finding by the governing authority that an appropriate emergency exists, but the municipality may not forgive monthly rentals due under a lease to pay for such repairs. 1997 Miss. Op. Att'y Gen. 395.

Although a construction or architectural firm may not be paid twice for the same services, government entities may contract with a firm that is providing architectural services to also provide construction management services without advertising for bids either by entering into an additional contract or by amending the existing contract. 1997 Miss. Op. Att'y Gen. 471.

Giving the word "negotiate" its common and ordinary acceptance and meaning, subsection (d)(ii) of this section must be interpreted to allow the governing authority, in negotiating with the lowest bidder to enter a public contract within allocated funds, to make alterations to the plans and specifications for the construction project, as well as the price (modifying opinion to Webb dated May 23, 1997). 1997 Miss. Op. Att'y Gen. 577.

A governing body may, without the necessity of competitive bids, and upon such terms and conditions as the governing authority deems appropriate, sell and transfer property to other governing authorities at prices below market value if the selling governing authority finds as a matter of fact, and encompasses such finding upon its minutes, that the sale at below market value is in the best interest of the taxpayers of the state. 1997 Miss. Op. Att'y Gen. 770.

A county may enter into a contract with a computer company to develop a computer program and may sell its rights to such a program, but a county cannot develop a computer program solely for the purpose of sale for a profit; such a contract is permissible only as an incident to development of a product with a legitimate county or governmental purpose. 1998 Miss. Op. Att'y Gen. 787.

The only minority set-aside permitted in Mississippi is that which is found in statutory provision requiring that 20% of anticipated annual expenditures by agencies and governing authorities be set aside for purchase of commodities from minority businesses and that set-aside purchases be made from the lowest and best minority business bidder. 1998 Miss. Op. Att'y Gen. 838.

Funds collected, managed, and expended by the Chancery Clerk in connection with a preliminary engineering and environmental assessment phase of a thoroughfare project will be subject to the statute. 1998 Miss. Op. Att'y Gen. 195.

Where a private group donates funds collected to pay for a monument to the city, the city may not then use the funds donated to have the monument constructed. 1998 Miss. Op. Att'y Gen. 308.

Pursuant to *Section 25-53-5(o)*, the Mississippi Department of Information Technology Services could utilize the State Contract Price list to acquire equipment, systems, and related services when applicable; however, this would

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not raise the advertisement for bids threshold to \$10,000.00 as provided in the amendment to this section contained in Senate Bill 2193. 1998 Miss. Op. Att'y Gen. 288.

The general purchasing statute, this section, applies to purchases by the Department of Finance and Administration and thus, arguably, to Mississippi Department of Information Technology Services (ITS) under *Section 25-53-5(o)*, but this general statute must yield to the specific requirements of 25-53-5(n), which sets out the threshold for advertising for bids by ITS. 1998 Miss. Op. Att'y Gen. 288.

Where a county solicits proposals for disposal of waste, but does not include a request for a proposal that would also include hauling or transportation of the waste, in order to let a contract for collection or transportation of waste, the county would have to solicit proposals first in accordance with the statute. 1998 Miss. Op. Att'y Gen. 310.

If the expenditure for the collection of trash will exceed \$50,000.00, the bidding requirements set forth in subsection (t) must be followed. 1998 Miss. Op. Att'y Gen. 510.

The occasional rental of heavy equipment by a city does not come within the categories of contract or expenditure listed in the statute and, therefore, so long as the rental equipment is not used in the construction or installation of new facilities, and so does not constitute part of a construction contract, bidding is not required; the equipment use remains in the nature of a service contract which does not come within the restrictions of the statute. 1998 Miss. Op. Att'y Gen. 705.

Where the lowest and best bid received is more than ten percent (10%) above the amount of funds allocated, subsection (d)(ii) does not permit a school district to negotiate with such low bidder in order to enter into a contract. 1998 Miss. Op. Att'y Gen. 764.

Where a school board already allocated a sum certain for a building and elected to solicit bids for the building, but did not include all buildings in one bid solicitation, the board could not later add allocations for other unbid construction to its budget allocation and consider the bid already received as within the limits permitted by subsection (d)(ii). 1998 Miss. Op. Att'y Gen. 764.

A county purchase clerk may purchase equipment or supplies that are less than \$1,500.00 at an equipment/supply auction subject to the subsequent approval of the claim by the board of supervisors. 1999 Miss. Op. Att'y Gen. 784.

A "bid" should be a firm offer to sell for a certain price, and a bid that is made "subject to availability" does not constitute a competitive written bid as required by this section. 1999 Miss. Op. Att'y Gen. 784.

There is no limitation in this section or in case law that sets any absolute numerical or percentage limitation on the amount by which a contract may be increased by change order; the only standard is reasonableness under the circumstances. 1999 Miss. Op. Att'y Gen. 47.

A correctional facility authority board may sell property to the Department of Corrections for less than fair market value as long as it makes the required determination that such would be in the best interest of the taxpayers of the state and gains approval from Department of Finance and Administration; however, it may not make an outright donation of the property (modified by opinion to Bryant dated June 9, 1999). 1999 Miss. Op. Att'y Gen. 108.

A municipal contract for the professional services of a tree surgeon is not subject to this section. 1999 Miss. Op. Att'y Gen. 185.

[Section 31-7-1](#) and this section do not control in the purchase of personal property as part of the acquisition of an existing physical therapy and rehabilitation center. 1999 Miss. Op. Att'y Gen. 215.

A community hospital is authorized to purchase all tangible assets of a physical therapy and rehabilitation practice for no more than fair market value, without regard to this section and the general bid procedures set out therein; however, if real property is to be purchased as a part of this transaction, such purchase must be ratified by the governing authorities constituting the owner or owners of the hospital; further, no consideration may be paid for intangible assets of the practice. 1999 Miss. Op. Att'y Gen. 215.

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There is no statutory requirement that a bid to supply commodities to a county must be dated. 1999 Miss. Op. Att'y Gen. 413.

A city cannot purchase personal property at public auction. 1999 Miss. Op. Att'y Gen. 600.

If a purchase of motor vehicles or other equipment from a federal or state agency or another governing authority at a public auction falls within the parameters of [Section 31-7-13\(m\)\(v\)](#), the governing authorities may make the purchase. 1999 Miss. Op. Att'y Gen. 600.

[Section 61-3-15\(c\)](#) cannot override the provisions of [Section 31-7-13\(g\)](#) regarding the ability to enter into change orders without board approval. 1999 Miss. Op. Att'y Gen. 647.

A county board of supervisors was required to advertise for the additional services of cleaning around garbage receptacles and hauling off excess garbage since the services would likely involve an expenditure of more than \$50,000. 2000 Miss. Op. Att'y Gen. 1.

Where the board had developed and documented justification in accordance with the statute for requiring a single make and model of pump, the board could issue specifications limiting bidding to only that single make and model of pump. 2000 Miss. Op. Att'y Gen. 199.

A town may not enter into separate contracts in increments that will not exceed \$10,000 for the purpose of circumventing the bid requirements of the statute. 2000 Miss. Op. Att'y Gen. 223.

The governing authorities of a city were required to advertise pursuant to subsection (t) for the additional service of providing customers with rolling containers, since this service would likely involve an expenditure of more than \$50,000.00. 2000 Miss. Op. Att'y Gen. 320.

The statute should be read as requiring only two working days rather than 48 working hours with regard to issuance of addenda to bid specifications. 2000 Miss. Op. Att'y Gen. 390.

A contract with a city under which a company would provide the manpower, equipment, and expertise necessary to efficiently recover from a hurricane or other disaster was subject to requirements for advertising and taking bids since only contracts that are made during the time of an emergency are exempt from state laws governing construction, solid waste contracts and purchasing. 2000 Miss. Op. Att'y Gen. 579.

A municipality must comply with the statute if the municipality extends a water system or makes capital improvements to the system. 2000 Miss. Op. Att'y Gen. 673.

A county was required to readvertise for proposals in order to amend a solid waste collection and disposal contract to allow the county to utilize the county's credit in order to obtain a more favorable lease-purchase price for garbage carts that would be used by customers. 2001 Miss. Op. Att'y Gen. 72.

Governing authorities may not accept a bid submitted after the time established for the receipt of bids in the notice, and the governing authorities must make the factual determination as to the actual time that bids are received for a contract for public construction or purchases of equipment. 2001 Miss. Op. Att'y Gen. 149.

A contract between Mississippi Department of Corrections and a private medical provider for healthcare services at a private prison is not subject to the state's public bid law. 2001 Miss. Op. Att'y Gen. 652.

A contract allowing for the placement of a vending machine on the premises of a school under the management of the county school board does not fall within the purchases and/or rentals covered by the statute. 2001 Miss. Op. Att'y Gen. 670.

Provided the county board of supervisors has declared an emergency, construction at a regional correctional facility to repair tornado and windstorm damage falls into the category of a repair contract, which does not require bids in emergency situations. 2001 Miss. Op. Att'y Gen. 744.

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A contract between a municipality and a company to manage the city waste water treatment plant, to maintain and repair water and sewer lines, pumps, wells, etc., to read meters and to assist the water department with customer relations falls within the ambit of subsection (r), even if the municipality owns the waste water treatment plant and all of the infrastructure. 2002 Miss. Op. Att'y Gen. 147.

Motor vehicles and equipment purchased at public auction by those entities which come under the public purchasing laws must be offered by a state agency or governing authority of the state of Mississippi. 2002 Miss. Op. Att'y Gen. 169.

The Port Authority does not have to require a certificate of responsibility for demolition contractors to bid on public projects; however, in its discretion, it may require contractors to have a certificate of responsibility prior to bidding on such projects. 2002 Miss. Op. Att'y Gen. 207.

A board of supervisors may establish a policy requiring bidding where state law does not require bidding but cannot establish a purchasing policy that supercedes state law. 2002 Miss. Op. Att'y Gen. 452.

A county office must obtain a purchase order through the centralized purchasing system of the county or a contract for the purchase as authorized by the board of supervisors; moreover, the board ultimately approve the purchase through the claims docket and/or by recital of the contract in their minutes. 2002 Miss. Op. Att'y Gen. 452.

Purchases of commodities under \$3,500.00 may be made without competitive bid pursuant to § [31-7-13\(a\)](#); however, contracts for services require prior approval of the board of supervisors regardless of amount. 2002 Miss. Op. Att'y Gen. 452.

County would have to re-advertise for proposals in order to implement amendments to existing contract terms for waste disposal and collection exceeding \$50,000.00. 2002 Miss. Op. Att'y Gen. 515.

Governing authorities of a municipality must comply with the procedures in [Section 31-7-13\(r\)](#) to enter into a contract for operation, management and maintenance of the city's combined water and sewer system, as such a contract includes services of sewage collection. 2002 Miss. Op. Att'y Gen. 670.

City may not renew an existing contract for sewage collection or disposal of more than \$ 50,000.00 but must follow the procedures set forth in [Section 31-7-13\(r\)](#) and request proposals. 2002 Miss. Op. Att'y Gen. 670.

An ordinance which prohibits potential contractors from the bidding process would be inconsistent with [Section 31-7-13](#), which sets forth specific requirements for advertising and soliciting bids. 2002 Miss. Op. Att'y Gen. 119.

A school district may transfer used school buses for less than fair market value upon a proper finding by the governing body of the selling entity that such a transfer would be in the best interests of the taxpayers. 2002 Miss. Op. Att'y Gen. 719.

[Section 31-7-14](#) does not include the procedure for contracting for water conservation systems and services, thus, a city was required to make two separate contracts, one under that section for the purchase and installation of energy efficiency equipment and systems, and one under this section for the purchase and installation of water conservation systems. 2002 Miss. Op. Att'y Gen. 708.

The Mississippi Industries for the Blind may sell products to state agencies that are manufactured, processed and produced by it in house, and these transactions are exempt from purchase law requirements set forth in [Section 31-7-13](#). 2003 Miss. Op. Att'y Gen. 157.

The adoption of rules by the Department of Information Technology Services governing exemptions of certain purchases of products or services from governmental entities is within the statutory authority and discretion granted to ITS by the Legislature. 2003 Miss. Op. Att'y Gen. 203.

The sealed bid requirement of this section cannot be waived. 2003 Miss. Op. Att'y Gen. 411.

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The failure to place the proper bid reference number on a bid appears to be a minor informality that can be waived, but it remains a question of fact. 2003 Miss. Op. Att'y Gen. 411.

If a school must disregard the low bidder whose bid did not comply in all respects with the bid proposal, the school may accept the next lowest bid or may reject and rebid the matter. 2003 Miss. Op. Att'y Gen. 411.

A domestic corporation must be duly incorporated and in good standing with the Secretary of State's office. Further, [Section 79-4-15.01](#) requires a foreign corporation to obtain a certificate of authority prior to transacting business in this state. Likewise, a dissolved corporation may not transact business in this state and is not subject to a bid award. 2003 Miss. Op. Att'y Gen. 411.

The Board of Trustees of State Institutions of Higher Learning and the universities under its management and control may hire or contract with a construction manager to perform services without the necessity of advertising for bids. 2003 Miss. Op. Att'y Gen. 562.

Where a performance bond was not included in bid specifications by a school board, the board should treat the bids as if the cost of the bond was included. The board thus has the authority to review the bids, consider the cost of the performance bond as already included in the bid submitted, and make a determination of lowest and best bid and reflect same as a finding on the board's minutes. 2003 Miss. Op. Att'y Gen. 494.

Educational building corporations (EBCs), are alter egos of the Board of Trustees of State Institutions of Higher Learning and are subject to the purchasing laws of the state of Mississippi in contracting for the acquisition and construction of EBC projects. 2004 Miss. Op. Att'y Gen. 656.

If a bidder presenting a valid certificate of responsibility (COR) number is a company with which Finance and Administration/Bureau of Building has no past experience or past performance history, DFA/BOB may consider past experience with or past performance of the company from which the bidder originated, the bidder's parent company, or the company with which the bidder merged, partnered, or changed names. If DFA/BOB determines it is reasonable to do so and thereafter accepts a bid other than the lowest bid submitted, it must place on its minutes the details of why it did not accept such bid, which details would include detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid. Alternatively, it may reject all bids and readvertise the project. 2004 Miss. Op. Att'y Gen. 649.

A high bidder may not withdraw a bid after the bids are opened unless the bidder advises the public body which has solicited the bids that an honest mistake has been made. 2004 Miss. Op. Att'y Gen. 640.

Pursuant to the plain language of subdivision (m)(xxix) of this section, state agencies are permitted to make purchases pursuant to qualified cooperative purchasing agreements. 2004 Miss. Op. Att'y Gen. 663.

A state agency may designate any of its personnel to be its purchasing agent. 2004 Miss. Op. Att'y Gen. 663.

The board of aldermen of a town may consider past performance of any of the contractors who have submitted bids for a construction project in making its determination of "lowest and best." If a bid which is not the lowest is accepted, the municipal governing authorities must clearly set out in the official minutes information as described in subdivision (d)(i) of this section. 2004 Miss. Op. Att'y Gen. 40.

Provided the proper factual findings are made and the minutes reflect the detail required by subdivision (d)(i) of this section, then a contract may be awarded to a bidder not having the lowest bid. 2004 Miss. Op. Att'y Gen. 150.

A city may rely on a term contract to a vendor to provide "hot mix asphalt, per ton - laid in place" for a bond issue paving project. However, the city may, in its discretion, choose to advertise separately for bids on the new project. 2004 Miss. Op. Att'y Gen. 168.

In the face of the explicit statement in subsection (r) of this section that 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)" be let only after publicly advertising for

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proposals for those services, an attempt to remove such a contract from the mandate of this section by limiting the services provided to "professional services" would be impermissible. 2004 Miss. Op. Att'y Gen. 326.

In consideration of demolition and removal service performed by county inmates, the State Board of Education, as governing authority for the Mississippi School for the Blind, may transfer the salvageable surplus materials to the county and such transfer would be exempt from bid requirements as an intergovernmental sale or transfer pursuant to subdivision (m)(v) of this section. 2004 Miss. Op. Att'y Gen. 233.

Under the provisions of the last paragraph of [§ 43-33-11](#), if a public housing authority awards contracts to other entities which will perform construction work in a public housing contract, those entities must comply with grant requirements but are not required to comply with the public purchasing laws, depending on the terms of the grant. 2004 Miss. Op. Att'y Gen. 528.

The Mississippi Department of Information Technology Services has the authority to establish reasonable rules, regulations and procedures to effectuate the utilization of cooperative purchasing agreements as provided in subdivision (m)(xxix) of this section for information technology purchases. 2004 Miss. Op. Att'y Gen. 572.

There no authority for the use of allowances under this section or any other provision of law governing public construction contracts in Mississippi. However, it would be permissible for a public owner, in developing plans and specifications for a public construction project, to instruct potential bidders that certain materials or equipment will be provided by the public owner during the construction process. Such materials or equipment could then be purchased during the course of construction by the public owner in the manner provided by law. 2004 Miss. Op. Att'y Gen. 586.

Where proposed changes to the original project would result in a substantially different project from that contemplated by the city or prospective bidders at the time that the original project was advertised for bids. Under these circumstances, the additional work cannot lawfully be accomplished through a change order to the existing contract. The city will be required be required to advertise forbids in accordance with this section. 2005 Miss. Op. Att'y Gen. 647.

There is no prohibition against a public owner advertising for bids for materials and later advertising for the installation of the materials as long as it is not done to circumvent the public purchasing and contracting laws. For example, if the project is split to steer the contract to a particular vendor or contractor, or if the project is split to avoid advertising or obtaining competitive written bids, then such activities would constitute a circumvention of the public purchasing and contracting laws and would be prohibited by subsection (o) of this section. 2005 Miss. Op. Att'y Gen. 12.

A governing authority may establish procedures for competitive bidding for purchases involving expenditures of less than \$3500. Additionally, purchases of parts for in-house repairs to equipment are exempt from bidding requirement pursuant to [Section 31-7-13\(m\)\(iii\)](#). 2005 Miss. Op. Att'y Gen. 73.

A firm manufacturing and selling "specialty vehicles" to public agencies under the provisions of the state public purchasing laws is not required to obtain a Mississippi Motor Vehicle Dealer License. 2005 Miss. Op. Att'y Gen. 163.

Even though there was no authority for a school board to make a contractual payment to a contractor, the contractor might be entitled to recover in court the fair market value of the services provided, if the circumstances meet the requirements of [Section 31-7-57\(2\)](#). 2005 Miss. Op. Att'y Gen. 397.

The Mississippi Department of Transportation (MDOT) has the authority in times of emergency to utilize the "design-build" process described in [Section 65-1-85](#) on bridge replacement projects, and, due to the emergency nature of the projects, MDOT is authorized to utilize the "design-build" process on more than one project even if the cost of each individually exceeds \$50,000,000.00. 2005 Miss. Op. Att'y Gen. 491.

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If a county loans drug testing equipment to another governmental entity, it may charge a “minimal fee” or charge for the cost of materials used in accordance with [Section 31-7-13\(m\)\(vi\)](#). 2005 Miss. Op. Att’y Gen. 598.

The Department of Finance and Administration may adopt as its own approved purchase agreements the cooperative agreements that have been developed by other states and local governments. 2006 Miss. Op. Att’y Gen. 159.

A contract for garbage collection may not contain a fuel adjustment charge. 2006 Miss. Op. Att’y Gen. 371.

A municipality may operate as its own “general contractor” and may “subcontract out” the work to build, remodel or repair fire stations within its jurisdiction, but only if it acts in accordance with all statutes regarding public construction and public purchasing. 2006 Miss. Op. Att’y Gen. 498.

Because the preparation or revision of the project specifications by the construction manager hired by a county would result in the manager’s firm or a related firm obtaining an unfair advantage over other potential bidders, a county would not be in compliance with public purchasing laws if it accepted a bid from the firm or a related firm. 2006 Miss. Op. Att’y Gen. 496.

When interpreting the provisions of [Section 31-7-13\(n\)\(iii\)](#) concerning the language “public construction,” the governing authority should refer to the definition of the term “construction” found in [Section 31-7-1\(q\)](#). 2006 Miss. Op. Att’y Gen. 581.

A term contract may be let for the purpose of performing all road projects, as long as the public work to be performed falls within the definition of “public construction” as defined in [Section 31-7-1](#) and the term contract comports with the provisions of [Section 31-7-13](#), including, but not limited to, [Section 31-7-13\(n\)\(iii\)](#). 2006 Miss. Op. Att’y Gen. 581.

A county or county park commission may contract construction and management of a county park to a third party, including a nonprofit corporation, but must first advertise and let the project for public bids under Miss. Code Ann. § [31-7-13](#). [2007 Miss. Op. Att’y Gen. 106](#), [2007 Miss. AG LEXIS 95](#).

Research References & Practice Aids

Cross References —

Purchase of computer or information technology equipment by department of information technology services, see §§ [25-53-5](#) and [25-53-21](#).

State contract price for public purchases, see § [31-7-12](#).

Qualifications based selection procedures as outlined in § [31-7-13.2\(10\)](#) or competitive sealed procedures as outlined in this section to be used when procuring construction management services, see § [31-7-13.2](#).

Public contracts for energy efficiency services, see § [31-7-14](#).

Exemption from the provision of this section of purchases by hospitals participating in group purchasing program, see § [31-7-38](#).

Penalties for violating the provisions of this chapter, see § [31-7-55](#).

Procedure on bids, see § [31-7-105](#).

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Provision that an audit upon the close of the fiscal year of a county shall review the county's compliance with certain requirements of this section, inter alia, see § [31-7-115](#).

Prohibition of boards of supervisors from purchasing items or services for their county, except as provided in this section, see § [31-7-119](#).

Purchase and use of relocatable classrooms, see § [37-1-13](#).

Purchase by school districts participating in group purchasing programs for procuring services, commodities, supplies and equipment provided under School Lunch and Child Nutrition programs, as subject to public bid requirements prescribed by this section, see § [37-11-7](#).

Mississippi Authority for Educational Television generally, see §§ [37-63-1](#) et seq.

Provisions governing prison industries, see §§ [47-5-531](#) through [47-5-575](#).

Duty of prison auditor with respect to bids, purchases, and sales, see § [47-5-35](#).

Application of definition of "minority" in Mississippi Small Business Assistance Act, see § [57-10-513](#).

Bidding and contracting procedures under Mississippi Superconducting Super Collider Act, see § [57-67-37](#).

Alternative bidding and contracting procedures under Mississippi Major Economic Impact Act, see § [57-75-21](#).

Amount of a bond by a successful bidder for a contract for the purchase of equipment by or on behalf of the Mississippi Transportation Commission, see § [65-1-85](#).

Contracts entered into by governmental entity under § [65-43-3](#) exempt from provisions of this section, see § [65-43-3](#).

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § [99-19-73](#).

Alyce G. Clarke Mississippi Lottery Law, see § [27-115-1](#) et seq.

Federal Aspects—

Class Life Asset Depreciation Range System, see note regarding former § 167(m) under 26 *USCS* § 167.

American Recovery and Reinvestment Act, see *Public Law 111-5*, 123 *Stat.* 115.