

Descriptor Term: BIDS AND QUOTATIONS

Descriptor Code: DJED

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The term "purchase" shall mean the total amount of money encumbered by a single purchase order. Nothing in this section shall be construed as authorizing any purchase not authorized by law.

Each "notice to bidders" shall contain the following language:

1. the school board reserves the right to reject any and all bids.
2. the school board reserves the right to waive any irregularities.

“Competitive” shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

§ 31-7-13 (b) (2003)

The results of all competitive bid openings shall be tabulated and presented to the school board at its next regular or special meeting.

GENERAL AUTHORITY

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. Nothing in this section shall be construed as authorizing any purchase not authorized by law. § 31-7-13 (2002)

BIDDING PROCEDURES

A. \$5,000.00 or Less

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

shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand (\$5,000.00) or less. § 31-7-13 (a) (2007) To the extent practical, purchases will be distributed equitably among qualified suppliers. The purchase must be considered reasonable.

- B. Purchases Over (\$5,000.00) but Not Over \$75,000.00: See § 31-7-13 (b).
- C. Purchases Over \$75,000.00: See § 31-7-13 (c).
- D. Lowest and Best Bid Decision Procedure: See § 31-7-13 (d).
- E. Lease-Purchase Authorization: See § 31-7-13 (e).
- F. Alternate Bid Authorization: See § 31-7-13 (f).
- G. Construction Contract Change Authorization: See § 31-7-13 (g).
- H. Petroleum Purchase Alternative: See § 31-7-13 (h).
- I. Road Construction Petroleum Products Price Adjustment Clause Authorization: See § 31-7-13 (i).
- J. Governing Authority Emergency Purchase Procedure: See § 31-7-13 (k).
- K. Exceptions From Bidding Requirements: See § 31-7-13 (m).
- L. Term Contract Authorization: See § 31-7-13 (n).
- M. Purchase Law Violation Prohibition and Vendor Penalty: See § 31-7-13 (o).
- N. Electrical Utility Petroleum-Based Equipment Purchase Procedure: See § 31-7-13 (p).
- O. Fuel Management System Bidding Procedure: See § 31-7-13 (q).
- P. Solid Waste Contract Proposal Procedure: See § 31-7-13 (r).
- Q. Minority Set Aside Authorization: See § 31-7-13 (s).
- R. Construction Punch List Restriction: See § 31-7-13 (t).

NOTES: For master-lease purchase program, see § 31-7-10. For purchase of commodities, see § 31-7-12. See also the annual Purchase Law Update available from the Office of the State Auditor, Department of Technical Assistance.

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PREFERENCE

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

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

§ 31-7-15 (1992)

In the letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, nation or political subdivision of domicile of the nonresident. § 31-7-47 (1995)

EXEMPTIONS

Supplies that are perishable or foods purchased for use in connection with the school lunch and homemaking programs shall be exempt from competitive bid requirements. However, each school board shall adopt and place in its minutes definite policies for guidance of agents of such boards in connection with purchases of perishable supplies or foods which are unstable or variable in price. Such policies shall have the effect of law and any violations shall be subject to the penalties as provided by law. § 37-39-15 (1987)

Purchases of items regularly used in connection with school operation shall not be made in small quantities for the purpose of circumventing the law requiring competitive bids or quotations, but shall be purchased by contract when feasible. School boards shall have the authority, however, to award such contracts for supplies or equipment to be delivered to different points in the school district or county, to different bidders, when the best interests of the district or county warrant such action. Reasons for awarding such contracts to different bidders for different areas in the district shall be recorded on the minutes of the school board. In no event shall the price paid exceed the lowest and best bid received. § 37-39-17 (1981)

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GRATUITIES

Any rebates, refunds, coupons, merit points, gratuities or any article of value tendered or received by their school district from any vendor of material, supplies, equipment or other articles shall inure to the benefit of this school district. This school district may, in accordance with its best interest, either take delivery of the article of value tendered and use the same or convert it to cash by selling it for its fair and reasonable value, making use of the proceeds from such sale for the exclusive benefit of the school district. § 31-7-23 (1981)

It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for this school board or any designated purchasing agent for this school district to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

Except as otherwise provided in subsection (4) of § 31-7-55, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

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

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

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

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§ 31-7-55 (1988)

PERSONAL LIABILITY

The superintendent, any employee or agent of this school board, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally for up to the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure, to be recovered by suit in the name of the school board or in the name of any person who is a taxpayer suing for the use of the school board, and such taxpayer shall be liable for costs in such case. In the case of the school board, only the individual members of the board who voted for the appropriation or authorization for expenditure shall be liable under this subsection.

No individual member of this school board, or agent of this school board shall let contracts or purchase commodities or equipment except in the manner provided by law; nor shall this school board ratify any such contract or purchase made by any individual member, employee or agent thereof, or pay for the same out of public funds unless such contract or purchase was made in the manner provided by law; provided, however, that any vendor who, in good faith, delivers commodities or printing or performs any services under a contract to or for the school board shall be entitled to recover the fair market value of such commodities, printing or services, notwithstanding some error or failure by this school board to follow the law, if the contract was for an object authorized by law and the vendor had no control of, participation in, or actual knowledge of the error or failure by this school board.

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

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

Any sum recovered under the provisions hereof shall be credited to the account from which such

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unlawful expenditure was made.

Except as otherwise provided, any individual member of the school board as defined in Section §31-7-1 shall not be individually liable under this section if he voted against payment for contracts let or purchases made contrary to law and had his vote recorded in the official minutes of the school at the time of such vote, or was absent at the time of such vote. § 31-7-57 (1997)

LEGAL REF.: MS CODE as cited

CROSS REF.: Policies DJE-E C Purchase Law Policies

DJEA C Purchasing Authority

DJEG C Purchase Orders and Contracts