

STATE OF MISSISSIPPI STATE AND LOCAL GOVERNMENTS

Information on how to purchase

This document is intended to be used as a starting point in understanding the state and local government purchasing process. There is no way to cover all aspects of the process in a few pages. You are urged to review the various laws and manuals which are referenced herein as well as visit the various websites. The document is arranged as follows:

GENERAL

- **Who are you?**
- **What do you want to buy?**
- **The Competitive Bid Process**
- **General guidelines for state agencies**
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EMERGENCY PURCHASING

- **The Laws – definition and procedures**
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GENERAL

Because the laws and requirements are varied depending upon the type of governmental entity that is doing the purchasing and the items/services to be purchased, the following brief definitions and discussions are given here as clarification.

WHO ARE YOU?

- "State agency" is intended to mean any agency or institution which is created by the Constitution or statute except a legislative or judicial board or unit thereof.
- "Governing authority" is intended to mean any political subdivision such as counties, cities, schools, port authorities, etc.

WHAT DO YOU WANT TO BUY?

- **Commodities, Supplies and Equipment (other than Computer related items)** - Contact the Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (OPTFM), 701 Woolfolk Building, Suite A, 501 North West Street, Jackson, MS 39201, 601-359-3409. You can review the State Contracts at <http://www.dfa.state.ms.us/Purchasing/Contracts.html>. If there is no State Contract, you may contact OPTFM and they will be able to advise you on how the state and local entities should purchase the product(s). If the items are not on a state contract, state purchasing laws should be followed.
- **Computer and Telecommunications Equipment, Software and Services** - Contact the Department of Information Technology Services (ITS) – Procurement Help Desk, 601-432-8166, <http://www.its.ms.gov>. ITS uses various procurement mechanisms which state and local entities may use. ITS will be able to tell you if there are standing Requests for Proposals (RFPs) or Express Products Lists (EPLs) for your required products/services and if so, how to use these agreements. If there is no standing procurement vehicle, ITS will be able to advise you on how state and local entities should purchase the products/services.
- **Construction** - Most state construction is done thru the Department of Finance and Administration, Office of Building, Grounds and Real Property Management, 601-359-3621. Some of the state agencies have adequate appropriations to do construction on their own. The Office of Purchasing, Travel, and Fleet Management can also provide some guidance in the area of construction. If you do not have expertise on staff, it is recommended that you hire an architect with experience in governmental construction contracting.
- **Service Contracts** - Most state agencies fall under the jurisdiction of the Personal Service Contract Review Board, <http://www.spb.state.ms.us>, and must follow formal bidding procedures for contracts over \$100,000. Some agencies (Universities and MDOT) and most Governing Authorities are not required to comply with any competitive process for services yet many do implement a competitive procedure.
- **Travel** - Contact the Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management (OPTFM), 701

Woolfolk Building, Suite A, 501 North West Street, Jackson, MS 39201 601-359-3647 The Office will be able to tell you if there is a State Contract for your required travel services. If there is no State Contract, the Office will be able to advise you on how the state and local entities should procure the service(s).

- **Vehicle Purchases/Disposals** - Contact the OPTFM - Bureau of Fleet Management, 701 Woolfolk Building, Suite A, 501 North West Street, Jackson, MS 39201, 601-359-9335. Below are the general guidelines set forth for state agencies (excluding the IHL and Governing Authorities) to purchase or dispose of state owned vehicles:
 - In accordance with Senate Bill 2398, the Bureau of Fleet Management has the power and duty to coordinate and promote efficiency and economy in the purchase, lease, rental, acquisition, use, maintenance, and disposal of all state owned vehicles which require a tag. No state agency, department or institution shall purchase, lease, rent, acquire, or dispose of any vehicle regardless of the source of funds from which the vehicle is to be purchased, except under authority granted by the Bureau of Fleet Management.
 - The state agency, department, or institution shall maintain proper electronic documentation which provides the intended use of the vehicle and the basis for choosing the vehicle.
 - The state agency, department, or institution must first obtain approval from the Bureau of Fleet Management using the Authority to Purchase Form (P-1) which shall include a completed and signed Vehicle Request form (VR-1) detailing why this vehicle is needed.
 - State owned vehicles which become surplus to the needs of a state agency may not be disposed of, without the approval of the Bureau of Fleet Management.

THE COMPETITIVE BID PROCESS

- (Section 31-7-13 (a), (b), or (c))
- \$0 to \$5,000 – no bids required
 - \$5,000.01 to \$50,000—at least two written quotes
 - Over \$50,000 – Formal sealed bids required (advertised)

All purchases in excess of \$50,000 must be advertised in a local paper and a copy of the notification must be sent to the Mississippi

Procurement Technical Assistance Center email bids@mississippi.org or Fax 601-359-5290.

GENERAL GUIDELINES FOR STATE AGENCIES

- If a commodity is on a **competitive bid contract**, state agencies must buy the contract item from the contract vendor unless they get prior approval from the Office of Purchasing, Travel and Fleet Management.
- If a commodity is on a **negotiated contract**, state agencies may buy from any of the contract vendors, or state agencies may purchase the item from other than the contract vendor provided that they must follow the applicable procedures set forth in Section 31-7-13 (a), (b), or (c) and that the price paid shall not exceed the negotiated contract price.
- If a commodity is **not covered by any contract**, state agencies must follow statutory bid procedures which are set forth in Section 31-7-13 of the Mississippi Code (see above). Purchases which exceed \$50,000 may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks and that the date of the bid opening is not less than seven (7) working days after the last published notice.
- For **construction contracts** in excess of \$50,000, the date of the bid opening shall not be less than fifteen (15) working days after the last published notice.
- For purchases in excess of \$50,000 not covered by state contract, state agencies are required to obtain approval from the Office of Purchasing, Travel and Fleet Management prior to issuing a purchase order.

GENERAL GUIDELINES FOR GOVERNING AUTHORITIES

- If a commodity is on **any contract** approved by the Office of Purchasing, Travel, and Fleet Management, governing authorities may buy the contract item from the contract vendor; or they may buy the identical item from any source provided that the price does not exceed the state contract price; or they may ignore the contract and purchase under the guidelines set forth in Section 31-7-13 of the Mississippi Code as outlined above.

- If a commodity is **not covered by any contract**, governing authorities must follow statutory bid procedures which are set forth in Section 31-7-13 of the Mississippi Code.
- Governing authorities are not required to obtain approval from the Office of Purchasing, Travel and Fleet Management.

MASTER LEASE PURCHASE PROGRAM FOR STATE AGENCIES AND SCHOOL DISTRICTS (K-12 AND JUNIOR COLLEGE)

The Department of Finance and Administration administers the Master Lease Purchase Programs. These programs allow DFA to combine the equipment needs of multiple state agencies or school districts and obtain financing at rates which are based upon the combined volume of all of the needs. These programs allow the state agency or the school district to acquire equipment (computers, school buses, etc.) at rates which are typically much lower than the individual agency or school district could obtain on their own. For more information visit <http://www.dfa.state.ms.us/Purchasing/MasterLeasePurchaseProgram.html>

PROCUREMENT CARD PROGRAM

The Office of Purchasing, Travel, and Fleet Management maintains a contract for a Small Purchase Procurement Card Program (Specific guidelines for using the Small Purchase Procurement Card are listed in the Procurement Manual Chapter X, Section 10.113 <http://www.dfa.state.ms.us/Purchasing/ProcurementManual/chapter10.pdf> The intent of this Procurement Card program is to allow government entities to make small purchases of commodities, repairs, or services easier and more economical. This charge card is accepted by a wide variety of businesses offering goods and services. Government entities may use the Small Purchase Procurement Card to make purchases which are bona fide needs of the entity. The maximum amount of a single purchase transaction shall be \$5000 (entities may establish stricter guidelines). There is no purchase order required for credit card, procurement card, or membership card transactions. Information related to signing up for the program is available at: <http://www.dfa.state.ms.us/Purchasing/ProcurementCardServices.html>

EMERGENCY PURCHASING

In an emergency situation the requirements for purchasing may change. There are potentially three different emergency declarations that could take place;

- The agency or governing authority head could declare an emergency;

- The Governor could declare an emergency; or,
- The President could declare an emergency.

The following is intended to be a quick guide and may not cover all situations that are possible.

THE LAWS

In the case of an agency or governing authority head declaration of an emergency, the entity should comply with Sections 31-7-1 and 31-7-13 of the Mississippi Code as shown below:

The **definition of “Emergency”** is set forth in Section 31-7-1 (f) of the Mississippi Code as follows:

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

The appropriate procedures are also set forth in the Mississippi Code as follows:

For State Agencies Emergency Purchase Procedures, Section 31-7-13(j)

State agency emergency purchase procedure. If the governing board or the executive head, or his designee, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be

authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency, or his designee, shall, at the earliest possible date following such emergency purchase, 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, if applicable. On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.

For Governing Authorities Emergency Purchase Procedures, Section 31-7-13 (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 therefore in making such purchase or repair shall approve the bill presented therefore, 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.

DECLARATION OF EMERGENCY

Emergency Declared by the Governor;

The agency or governing authority should follow the same process as set forth above but there is no requirement for the agency or governing authority head to declare an emergency.

Emergency Declared by the President;

If the President declares an emergency the Governor will also issue a declaration. In this case, it is possible that agencies and governing authorities may later seek reimbursement for some or all of their costs. If reimbursement will be requested the buying entity is urged to take the following issues into consideration:

- FEMA usually requires record of some form of competition or an adequate justification why no competition was obtained. Thus, while state law does not require a second or third quote in an emergency situation, entities are urged to seek competition (telephone quotes, written quotes, bids) to be sure they are getting a good value and to enhance their opportunities for reimbursement at a later date. If competition is not available it is recommended that the entity document the situation and justification for not obtaining a second price quote.
- FEMA usually will reimburse for the rental of equipment but will not normally reimburse for the purchase of equipment that will be useable after the immediate emergency subsides.
- FEMA usually will reimburse for the replacement of equipment at the value prior to the emergency. For example, if an agency has a 15 year old bus, FEMA would reimburse the value of a 15 year old bus, not a new bus.

AGENCY OR GOVERNING AUTHORITY RESPONSIBILITY

All agencies and governing authorities are reminded that it is their responsibility to purchase the commodities, equipment and services which their agency needs to fulfill its mission during an emergency situation. Only after all internal resources and capabilities have been expended should the entity submit a request to the MEMA Emergency Operations Center. Municipalities should submit their requests to their county EOC where it will be prioritized and forwarded to the MEMA EOC. Counties should work with their EOC to submit requests. State agencies should submit their requests to their agency Emergency Operations Coordinator who will submit the request in the MEMA on-line request system.

VEHICLE USE DURING AN EMERGENCY

State Agency and Governing Authority Vehicles

State Agency and Governing Authority vehicles should be the “vehicle of choice” in emergency situations. These vehicles are properly marked and are more likely to be properly identified as government vehicles. The users should follow standard fueling and maintenance policies and should maintain proper records of activities as required by their entity.

Rental Vehicles

Vehicles may be rented under the terms of the State of Mississippi contract:

<http://www.dfa.state.ms.us/Purchasing/StateContracts/VehicleRentalInStateContract975.pdf> or

<http://www.dfa.state.ms.us/Purchasing/StateContracts/VehicleRentalOutofStateContract975.pdf>). Entities are urged to obtain fuel cards to

be used with rental vehicles so that costs can be tracked and the entity can take advantage of the prices and reporting capabilities associated with the Fuel card contract:

<http://www.dfa.state.ms.us/Purchasing/StateContracts/FuelAccessContract946.pdf>)

Employee’s Personal Vehicles

Employee’s personal owned vehicles (POV) may be used in an emergency situation but employees are urged to check with their own insurance agent to determine if there are any issues or limitations with this type usage. Tort Claims is the primary liability insurer of POVs when used on state business. This would be the case whether in a disaster area or not. Tort Claims does not offer any physical damage (collision/comprehensive) coverage to any vehicle, whether state owned or POV. The employee’s personal insurance coverage would need to cover areas not covered by Tort Claims. We have found that most insurance companies’ policies will meet these needs.

Public fuel (fuel owned by a government entity) may be provided to private vehicles only in those cases of extreme necessity to serve the governments’ purposes when fuel is otherwise unavailable for private purchase. Adequate records should be kept documenting the amount of fuel provided, the name of the person, the vehicle tag number, and the public purpose. In addition, to the extent possible, the fuel provided should be limited to the amount necessary for the public purposes to avoid donations of fuel to private individuals. If fuel is

otherwise available for purchase, public fuel should not be provided to private vehicles whether owned by private citizens or public employees. If public fuel is provided, the employee shall not be paid mileage reimbursement.

Contract Workers Use of State Owned Vehicles

Contract workers may operate state owned vehicles. Tort Claims does cover liability for contract workers. Tort Claims does **not** cover liability for independent contractors. If an independent contractor needs to operate a state owned vehicle, proof of auto liability insurance must be on file before operation.

SAAS Use Related to Emergency Purchases

Most State Agencies use the Statewide Automated Accounting System (SAAS) to issue purchase orders and make payments related to purchases. The following is for those agencies which utilize SAAS.

Agency emergency purchases that are approved by the PPRB or that need to be approved should be sent to the OPTFM as a P1 or through GENIE. OPTFM staff will need to know about any approvals obtained by agencies before the P1/GENIE is sent to OPTFM.

Once this information is received by OPTFM and PPRB approval has been obtained, OPTFM will enter the information in SAAS following current procedures. Agencies will still process the purchasing document in SAAS as either a PG (via GENIE) or PC (P1) depending on the method of submission to OPTFM.

If agencies follow the emergency purchase rules for contractual services, the information should still be submitted to PSCRB and an SC entered into SAAS. Emergency purchase procedures are in the procedures manual for the PSCRB.

The usual purchasing documents used for ITS should be used for emergency purchases.

ADDITIONAL EMERGENCY PURCHASING TIPS

- Prior to an emergency consider what your needs may be
- Determine if the items you need are on a state contract
- Contact potential suppliers and get contact names, phone numbers and email addresses
- Make sure you have 24/7 contacts for the suppliers

- Contact potential suppliers and establish a payment method (you don't want to be doing a credit check in the middle of an emergency)
- Make copies of all information prior to an emergency, give to several people, have hard copy, put it on a computer disk, have it on a flash drive
- Develop a generic request for quotes form to be used during an emergency
- Develop a generic services contract form to be used during an emergency
- Think ahead. Don't order what you need today, by the time it gets here it will be tomorrow or beyond. Order what you will need so you can have it when the need develops

If you have any questions you may contact the Department of Finance and Administration, Office of Purchasing, Travel and Fleet Management, 601-359-3409. On the web, go to:

<http://www.dfa.state.ms.us/Purchasing/Home.html>.