

APPENDIX 3

PURCHASING

Ronald Robinson

I. WHY MUNICIPALITIES MAKE PURCHASES

State law allows municipalities to provide certain services. These services include providing utilities, streets, parks, fire protection, etc. Sometimes state law is specific regarding what may be purchased; but, usually, purchasing is simply implied. This means purchasing of commodities and services related to accomplishing functions of municipal government is necessary and legal.

II. HOW MUNICIPALITIES MAKE PURCHASES

State law does not directly prescribe a purchasing system that must be used by municipalities. Therefore, a municipal governing authority (Board of Aldermen, City Council, City Commission, Board of Selectmen, etc.) must develop its own purchasing procedure and policies.

III. MUNICIPAL PURCHASING POLICIES

A. Who May Make Purchases

The purchasing policy should specify who may make purchases and the limits of their purchasing authority. The policy may include appointment of a purchasing clerk or authorization of department heads or others to purchase. If a purchasing clerk is appointed, a requisition procedure (ideally in written form) should be defined to allow designated employees to communicate purchase requirements (specifications, justifications, knowledge of vendors, etc.) from municipal departments to the purchase clerk. To the extent practical, purchasing authority should be separated from requisitioning and receiving to reduce the opportunity for theft.

B. Limits to a Purchasing Agent's Authority

Section 25-1-43 of the *Code* prohibits municipal officers from entering into contracts without authorization by the governing authority. This means the purchasing policy of the governing authority should establish clear guidelines defining what contracts

may be entered into with or without approval of the governing authority. For example, a contract with negotiated terms should be approved by the governing authority and documented on its minutes.

C. How Contracts Are Documented

There must be an obligation for a governing authority to approve a claim (§ 21-39-9 of the *Code*). Section 66 of the *Mississippi Constitution* and § 21-17-5 of the *Code* prohibit donations unless there is specific authority in state law to make the donation. A purchasing policy should include a procedure for assuring the governing authority that a purchase obligation exists.

1. Purchase Orders

Municipalities are not required by state law to use written purchase orders. However, municipal policy should consider use of written purchase orders as evidence of contract terms and for control of expenditures and budgets. If written purchase orders are not used, authorized purchasing agents should provide the governing authority with verification (preferably written) that a purchase was authorized. Such verification may be as simple as a department head signing the invoice filed as a claim. A good purchase order system will help prevent unauthorized payments, such as double payments on statements where invoices were already paid.

2. Receiving Reports

As with purchase orders, state law does not require municipalities to use written receiving reports. However, municipal policy should provide a method of assurance (similar to purchase orders) for governing authority claim approvals that goods and services were received as contracted.

D. Charging Budgets For Purchases

Section 21-35-17 of the *Code* imposes liability upon a responsible official for exceeding the budget. Therefore, municipal policy should require a system to provide information to show that when a purchase is made there is money in the budget to pay for the

purchase and that the department whose budget will be charged has authorized the purchase. Also, Section 21-35-13 of the *Code* requires the municipal clerk to provide a monthly report to the governing authority showing the effect claims (including claims for purchases) will have upon the budget.

E. Accounting For Purchases

Expenditures must be accounted for in the books of the municipality (§§ 21-35-11 and 21-15-21 of the *Code*). **This means purchasing policy must assure that all necessary information is obtained in the purchasing process to account for the services and good acquired. For example, the Municipal Audit and Accounting Guide, prescribed by the State Auditor, requires equipment costing more than \$500 and all real property be placed in inventory.**

F. Special Purchasing Authorities

State law provides for special purchasing options. Municipal policy should address when and how these options may be used. [All section or sections (§ or §§) found below are references to the *Code*.]

- ▶ State Contracts – See § 31-7-12 for a description of when such contracts may be used and when local purchases may be made for an amount less than state contract, etc.
- ▶ Information Technology Contracts (Computers) – See § 31-7-13 (m)(xi) for when Express Product List purchase should be made, etc.
- ▶ Municipal Term Contracts – See § 31-7-13 (n) for when the governing authority should enter such contracts and terms of such contracts.
- ▶ Interlocal Agreement Purchasing Contracts – See § 17-13-9 for a discussion of joint purchase contracts with a county, other municipalities, etc.
- ▶ State Surplus Property – See § 29-9-9 for when to use and how to account for purchases of surplus property.
- ▶ Emergency Purchases – See § 31-7-13 (k) for the process to authorize and report such purchases.

- ▶ Disaster Purchases – See §§ 33-15-17 and 33-15-31 for the requirements to authorize and account (reimbursements possible) for such purchases.
- ▶ Government Auctions–See § 31-7-13 (m)(v) for the authorization and payment process.
- ▶ Mississippi Government Negotiations – See § 31-7-13 (m)(vi) for a discussion of governing authority agreements.
- ▶ Sole Source Purchases – See § 31-7-13 (m)(vii).
- ▶ Local Motor Vehicle Purchases – See § 31-7-18.
- ▶ Minority and Other Preference Purchasing – See § 31-7-13 (s).

G. Purchase Specification Development

Municipal policy should provide for how specifications will be developed, when the purchasing clerk may proceed with specifications for a purchase, when the governing authority must approve specifications, and when professionals (engineers, architects, etc.) must approve the specifications (see § 73-13-45 of the *Code*).

H. Advertising For Bids

Municipal policy should provide for how advertisement services will be used, who may authorize advertisements, what newspaper or newspapers will be used for advertisements, etc. [§§ 21-39-3, 13-3-31, 31-7-13 (c), etc.]

IV. PURCHASING/LEASING REAL PROPERTY

- A.** Section 21-17-1 of the *Code* authorizes municipalities to purchase real property (inside or outside the municipal corporate limits) for all proper municipal purposes.
- B.** Section 31-8-1 of the *Code* authorizes municipalities to lease real property for the purposes listed.
- C.** Section 43-37-3 of the *Code* requires an appraisal be made and provided to the seller of real property.
- D.** Section 57-1-23 of the *Code* (and other special laws and local and

private laws) authorizes acquisition of real property for industrial, commercial, etc. purposes.

V. BIDDING PURCHASES

State Law requires purchases of commodities, printing, construction, and solid waste disposal services to be made pursuant to a specific bidding process. The procedure for this process is presented in § 31-7-13 of the *Code*. Sections 31-7-55 and 31-7-57 of the *Code* impose civil and criminal penalties for failure to follow state bidding procedures. An overview of state bidding requirements may be found on the State Auditor's web site (www.osa.state.ms.us) under the heading of "Technical Assistance." A "hard copy" of the purchase laws found on this web site may be obtained from the Office of the State Auditor, telephone number 1-800-321-1275, or from the Center for Governmental Training & Technology (see Appendix 9).

State law does not require municipalities to bid for the purchase of real property, employment services, or services not specified in § 31-7-13 of the *Code*. Therefore, municipal governing authorities should develop their own policies regarding how these services will be solicited.

VI. BIDDER QUALIFICATIONS

Section 31-3-21 of the *Code* requires bidders for construction and certain public works contracts to demonstrate they hold a qualified Certificate of Responsibility issued by the State Board of Public Contractors. Other qualifications should be addressed as a matter of board policy or purchase specifications.

VII. PURCHASER BONDS AND INSURANCE

A. Required Bonds and Insurance

Section 31-5-51 of the *Code* requires bidders for construction and public works contracts to have certain performance and payment bonds and liability insurance to protect the municipality from potential losses.

B. Optional Bonds and Insurance

Other bonds (such as bid bonds) and insurance which may be required by individual board policy.

