

Waldemar K. Ćwikliński, Jacek W. Kaczmar***

STATUTORY REGULATION ON PUBLIC PROCUREMENT IN THE STATE OF MISSISSIPPI IN THE U.S.A.

In this paper the authors endeavor to present laws on public procurement of the State of Mississippi in the United States of America. Statutory regulation of this field of public activity is contained in the *Mississippi Code on Public Businesses, Bonds and Obligations*. Its spacious and casuistic text produces a thorough and specific guidelines to be applied in the process of public procurement. Crucial role in enforcing public procurement laws is vested into the State Board of Public Contracts. Public works contracts received a comprehensive and precise depiction. Furthermore, there are separate extensive provisions concerning public purchases. And finally the authors point out which Mississippian public procurement regulations are worth paying attention while amending Polish laws on public procurement.

1. INTRODUCTION

The dramatic change of local administration introduced by self-governmental reform in Poland effective from 1990 called for a specific and detailed law regulation on spending public funds by municipalities and communes. This resulted in embracing a new law on public procurement in force from January 1st 1995. It is a set of laws consisting of an Act of Parliament of June 10th 1994 in this matter, with further amendments, and several delegated legislature acts, adopted by the Polish government implementing specific issues defined by the above mentioned statute.

It is both useful and interesting to have a look at Americans who, no doubt, have considerably longer experience in making and implementing laws on public procurement. Therefore let us review American laws in that field, contained in the *Mississippi Code on Public Businesses, Bonds and Obligations*, i.e. Title 31 of the Code. The Title sets out the statutory framework for that what is called in Poland "public procurement", and in fact the same term is used in U.S. Federal regulations.

* Law Office in Wilczyn.

** Department of Financial Investments and Insurance, Wrocław University of Economics.

2. MISSISSIPPI CODE ON PUBLIC BUSINESSES, BONDS AND OBLIGATIONS

2.1. State Board of Public Contracts

2.1.1. Declaration of Purpose

An important role in enforcing rules is played by the State Board of Public Contractors. Its purpose is to protect the health, safety and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors.

2.1.2. Composition of Board

The Board consists of seven (7) members appointed by the Governor. All appointments require the advice and consent of the Senate. Two (2) road contractors; two (2) building contractors; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; one (1) water and sewer contractor compose the board. Each member must be an actual resident of the State of Mississippi and must have been actually engaged in the contracting business for a period of not less than ten (10) years before appointment.

Upon the expiration of the term of office of any member of the board, the Governor shall appoint a new member for a term of five (5) years, provided always that the above shown composition of members representing different vocations will be maintained. The Governor may remove any member of the board for misconduct, incompetency or willful neglect of duty.

2.1.3. Powers and Duties

The Board has the following powers and responsibilities:

a) To receive applications for certificates of responsibility, to investigate and examine applicants for same by holding hearings and securing information, to conduct examinations, and to issue certificates of responsibility to such contractors as the board finds to be responsible. The certificates must be renewed every year. No certificate of responsibility or any renewal there of shall be issued until the applicant furnishes to the board his Mississippi state sales tax number or Mississippi state use tax number and his state income tax identification numbers. It is the duty of the board to conduct an objective, standardized examination of an applicant for a certificate to ascertain the ability of the applicant to make practical application of his knowledge of the profession of business of construction in the category or categories for which he has applied for a certificate of responsibility.

b) To conduct thorough investigations of all applicants seeking renewal of their licenses and of all complaints filed with the board concerning the performance of a contractor on a public or private project.

c) To obtain information concerning the responsibility of any applicant for a certificate of responsibility or a holder of a certificate of responsibility under this chapter. Such information may be obtained by investigation, by hearings or by any other reasonable and lawful means. The board keeps such information appropriately filed and shall disseminate same to any interested person. The board has the power of subpoena.

d) To maintain a list of contractors to whom certificates of responsibility are issued, refused, revoked, or suspended, which list is available to any interested person. Such list indicates the kind or kinds of work or projects for which a certificate of responsibility was issued, refused, revoked, or suspended.

e) To revoke by order entered on its minutes a certificate of responsibility upon a finding by the board that a particular contractor is not responsible, and to suspend such certificate of responsibility in particular cases pending investigation, upon cause to be stated in the board's order or suspension. No such revocation or suspension may be ordered without a hearing conducted upon not less than ten (10) days' notice to such certificate holder by certified or registered mail, wherein the holder of the certificate of responsibility shall be given an opportunity to present all lawful evidence which he may offer.

f) To adopt rules and regulations setting forth the requirements for certificates of responsibility, the revocation or suspension thereof and all other matters concerning same; rules and regulations governing the conduct of the business of the board and its employees; and such other rules and regulations as the board finds necessary for the proper administration of this chapter, including those for the conduct of its hearings on the revocation or suspension of certificates of responsibility.

g) The board has the power and responsibility to classify the kind or kinds of works or projects that a contractor is qualified and entitled to perform under the certificate of responsibility issued to him. Such classification must be specified in the certificate of responsibility.

The powers of the State Board of Contractors does not extend to fixing a maximum limit in the bid amount of any contractor, or the bonding capacity, or a maximum amount of work which a contractor may have under contract at any time, except as stated above in paragraph (a); and the Board of Contractors shall not have jurisdiction or the power or authority to determine the maximum bond a contractor may be capable of obtaining. The board, in determining the qualifications of an applicant for an original certificate of responsibility or any renewal thereof, must, among other things, take into consideration the following: (1) experience and ability, (2) character,

(3) the manner of performance of previous contracts, (4) financial condition, (5) equipment, (6) personnel, (7) work completed, (8) work in hand, (9) ability to perform satisfactorily work under contract at the time of an application for a certificate of responsibility or a renewal thereof, (10) default in complying with provisions of this law, and any other law of the state, and (11) the results of objective, standardized examinations. A record shall be made and preserved by the board of each examination of an applicant desiring to appeal from any order or decision of the board.

h) The board is obligated to enter on its minutes an order or decision upon each application filed with it, and it may state in such order or decision the reason or reasons for its order or decision.

Upon failure of the board to enter an order or decision on its minutes as to any application within one hundred eighty (180) days from the date of filing such application, the applicant shall have right of appeal as described below.

2.1.4. Certificates of Responsibility Required For Bid

No contract for public or private projects can be issued or awarded to any contractor who does not have a current certificate of responsibility issued by said board at the time of submission of the bid, or a similar certificate issued by a similar board of another state which recognizes certificated issued by said board. Any contract issued or awarded in violation of this requirement shall be null and void.

2.1.5. Bidding and Awards

It is unlawful for any person who does not hold a certificate of responsibility issued under this chapter, or a similar certificate issued by another state recognizing such certificate issued by the State of Mississippi, to submit a bid, enter into a contract, or otherwise engage in or continue in this state in the business of a contractor, as defined in this chapter. Any bid which is submitted without certificate of responsibility number issued by the board and without that number appearing on the exterior on the bid envelope at the time designated for the opening of such bid, shall not be considered further, and the person or public agency soliciting bids shall not enter into a contract with a contractor submitting a bid in violation of this section.

In addition, any person violating this section by knowingly and willfully submining a bid for projects without having a certificate of responsibility number issued under this chapter, as and if required, at the time of submission or opening of such bid shall be guilty of a misdemeanor.

In the letting of public contracts preference shall be given to resident contractors, and a nonresident bidder domiciled in a state having laws granting preference to local contractors may be awarded Mississippi public contracts

only on the same basis as the nonresidential bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and residents contractors actually domiciled in Mississippi, be the 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 of domicile of the nonresident. When a nonresident contractor submits a bid for a public project, he shall attach a copy of his resident state's current law pertaining to such state's treatment of nonresident contractors. As used here the term "resident contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for two (2) years prior to January 1, 1986, and the subsidiaries and affiliates of such a person, firm or corporation. Any public agency awarding a contract shall promptly report to the State Tax Commission the following informations:

- a) The amount of the contract.
- b) The name and address of the contractor reviewing the contract.
- c) The name and location of the project.

In addition to any other penalties provided in this chapter, and upon a finding of a violation of this chapter, the State Board of Contractors may, after notice of hearing, issue an order of abatement directing the contractor to stop all work at any construction project which has been bid or is being performed in violation of this chapter.

2.1.6. Appeals

Any person aggrieved by any order or decision of the board may appeal within ten (10) days from the date of adjournment of the session at which the board rendered such order or decision, and may embody the facts, order and decision in a bill of exceptions which shall be signed by the person acting as chairman of the board. The executive secretary shall transmit the bill of exceptions to the chancery court of the country of residence of the appellant, and the court or chancellor shall hear and determine the same either in term-time or in vacation, on the case as presented by the bill of exceptions, as an appellate court, and shall affirm or reverse the judgment. If the judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases. The board may employ counsel to defend such appeals, to be paid out of the funds in the State Board of Contractors Fund.

The remedies provided under this chapter for any aggrieved applicant shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or equity, whether by injunction or otherwise.

2.2. Public Works Contracts

2.2.1. Bond for Payment of Taxes, Licenses, etc.

Any person, firm or corporation entering into a formal contract with this state, any county thereof, municipality therein, or any public board, department, commission, or political subdivision of this state, for the construction or maintenance of public buildings, works or projects or the doing of repairs to any public building, works or projects shall be required before commencing same to execute the usual bond with good and sufficient sureties, as required by law, with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, damages, penalties, and interests thereon, when and as the same may lawfully be due to this state, or any county, municipality, board, department, commission or political subdivision thereof by reason of and directly connected with the performance of such contract or any part thereof.

In default of the prompt payment of all such taxes, licenses, assessments, contributions, damages, penalties and interest thereon as maybe due by any such contractor, a direct proceeding on said bond may be brought in any court of competent jurisdiction by the proper officer or agency having lawful authority so to do to enforce such payment, the right to so process being cumulative and in addition to such other remedies as may be provided by law.

2.2.2. Withdrawal by Contractor of Amounts Retained on Public Contracts by Furnishing Different Security

Under any public contract awarded by the State of Mississippi, any of its agency or department, or by any political subdivision thereof, the contractor may, with the written consent of his or its surety, from time to time, withdraw the whole or any portion of the amount retained from payments due the contractor pursuant to the terms of the contract by depositing with the state treasurer of the State of Mississippi or the treasurer or secretary of the political subdivision of the State of Mississippi holding funds belonging to the contractor. In such a case the contractor must furnish another security in an amount equal to or in excess of the amount so withdrawn, to be accepted at the time of deposit at market value, but not in excess of par value, to wit.

1) U.S. Treasury Bonds, U.S. Treasury Notes, U.S. Treasury Certificated of Indebtedness, or U.S. Treasury Certificates of Indebtedness, or U.S. Treasury Bills, or

2) Bonds or notes of the State of Mississippi, or

3) Bonds of any political subdivision of the State of Mississippi, or

4) Certificates of deposit issued by commercial banks located in the State of Mississippi, provided that such certificate is negotiable or is accompanied by the power of attorney executed by the owner of the certificate in favor of the treasurer or the secretary of the State of Mississippi or the treasurer or the secretary of the political subdivision involved, or

5) Certificates of deposit issued by savings and loan associations located in the State of Mississippi, the accounts of which are insured by a company approved by the state board of savings and loan associations, provided that such certificate is made payable with accrued interest on demand and is accompanied by a power of attorney executed by the owner of the certificate in favor of the State of Mississippi.

2.2.3. Resident Labor used on Public Works

Every public officer, contractor, superintendent, or agent engaged in or in charge of the construction of any state or public building or public work of any kind for the State of Mississippi or for any board, city commission, governmental agency, or municipality of the State of Mississippi may employ only workmen and laborers who have actually resided in Mississippi for two years next preceding such employment.

2.2.4. Procedure if Resident Labor not Available

If resident labor as described above is unavailable then the contractor, officer, superintendent, agent, or person in charge of such work must notify in writing the mayor of the city in which said work is being done, the president of the board of supervisors of the county in which said work is being done, the governor where said work is being done for the State of Mississippi, and the president, chairman, or executive officer of such board, city commission, or governmental agency for which said work is being done, of such fact. Unless the mayor, governor, president, executive officer, or chairman aforesaid, as the case may be, shall forthwith supply such contractor, officer, superintendent, agent, or person in charge of said works with the satisfactory workmen or laborers needed, said contractor, officer, superintendent, agent, or person is authorized to employ workmen or laborers who are not qualified under the above mentioned provisions to make up the deficiency. However, the latter may not be construed to prevent the State of Mississippi, any county, municipality, board, or commission from placing or letting and contract for the erection or construction of any public building or public work in the open market, or soliciting bids from persons, firms, or corporations without the State of Mississippi. Any contractor from without, the State of Mississippi that may obtain such contracts must comply with the cited regulations.

2.2.5. Penalty

Any contractor, officer, superintendent, agent, or person in charge of said work who violates any provisions relating to mandatory use of resident labor, shall be liable upon conviction before a court of competent jurisdiction to a fine of not more than \$100.00 or to imprisonment of not more than sixty days, or both at the discretion of the court; and every day's employment of each workman or laborer in such violation shall constitute a separate offence.

2.2.6. State Products used in Public Works

In the construction of any building, highway, road, bridge, or other public work or improvement by the State of Mississippi or any of its political subdivisions, or municipalities, only materials grown, produced, prepared, made and/or manufactured within the State of Mississippi may be used. Paint, varnish, and lacquer may be used which shall contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine may be used as solvent or thinner, all of which said products are produced in Mississippi. However, preference shall not be given to materials grown, produced, prepared, made and/or manufactured in the State of Mississippi when other materials of like quality produced without the State of Mississippi may be purchased or secured at less cost, or any other materials of better quality produced without the State of Mississippi can be secured at a reasonable cost.

It is the duty of all public officers or bodies having the right to contract for the purchase of materials for any such public work to be paid by the State of Mississippi or any of its political subdivisions or municipalities to faithfully observe the provisions of this section.

All contracts hereinafter let to any person, firm or corporation for the construction or doing of any public work must contain a provision enjoining a like duty upon the contractor with respect to the purchase of materials as would have rested upon the public officer or body letting the contract had he or it done the work and purchased the materials.

2.2.7. Time for Full and Final Payment to Contractors

All sums due contractors under all public construction contracts shall be paid as follows:

a) Partial, progress of interim payments: all partial, progress or interim payments or monies owed contractors shall be paid when due and payable under the terms of the contract. If they are not paid within sixty (60) calendar days from the day they were due date until paid at the rate of one percent (1%) per month until fully paid.

b) Final payments: The final payment of all monies owed contractors shall be due and payable:

(i) At the completion of the project or after the work has been substantially completed in accordance with the terms and provisions of the contract;

(ii) When the owner beneficially uses or occupies the project except in the case where the project involves renovation or alteration to an existing facility in which the owner maintains beneficial use or occupancy during the course of the project;

(iii) When the project is certified as having been completed by the architect or engineer authorized to make such certification; or

(iv) When the project is certified as having been completed by the contracting authority representing the State of Mississippi or any of its political subdivisions, whichever event shall first occur.

If the contractor is not paid in full within sixty (60) calendar days from the first occurrence of one of the above mentioned events, then said final payment shall bear interest from the date of the said first occurrence at the rate of one percent (1%) per month until fully paid.

2.2.8. Payment of Interest on Delinquent Accounts

When a contractor receives any payment under a public construction contract, the contractor shall, upon receipt of that payment, pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor or material supplier.

If for any reason the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a *pro rata* basis those funds received, which the contractor, subcontractors and material suppliers each received a prorated portion based on the amount due on payment.

If the contractor without reasonable cause fails to make any payment to his subcontractors and material suppliers within fifteen (15) days after the receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to payment due them, a penalty in the amount of onehalf percent (1/2 of 1%) per day of the delinquency, calculated from the expiration of the 15-day period until fully paid. The total penalty shall not exceed fifteen percent (15%) of the outstanding balance due.

2.2.9. Amount of Retainage which may be Withheld

In any contract for a construction, repair, alteration or demolition of any building, structure or facility awarded by the State of Mississippi, or any agency, unit or department of the State of Mississippi, or by any political

subdivision thereof, which contract provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contract proceeds to be retained by the state agency, unit or department, or by the political subdivision or contractor pending completion of the contract, such retainage must be ten percent (10%), and the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the state, or any agency, unit or department of the state, or by any political subdivision thereof, from the prime contractor.

**2.2.10. "Hold Harmless" Clauses in Construction Contracts are Void;
Exceptions**

With respect to all public or private contracts or agreements, for the construction, alteration, repair or maintenance of buildings, structures, highway bridges, viaducts, water, sewer or gas distribution systems, or other work dealing with construction, or for any moving, demolition or excavation connected therewith, every covenant, promise and/or agreement contained therein to indemnify or hold harmless another person from that person's own negligence is void as against public policy and wholly unenforceable.

**2.2.11. Performance and Payment Bonds; Persons Entitled to sue
on Payment Bond**

1) Any person entering into a formal contract with the state or any county, city or political subdivision thereof, or other public authority for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to such public body bonds with good and sufficient surety as follows:

a) A performance bond payable to, in favor of or for the protection of such public body, as owner, for the work to be done in an amount not less than the amount of contract, conditioned for the full and faithful performance of the contract;

b) A payment bond payable to such public body but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person, in an amount not less than the amount of the contract; and

c) The bonds herein provided may be made by any surety company authorized to do business in the State of Mississippi.

2) Every person who has furnished labor or material used in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed by him or the last of the materials was furnished by him

and for which such claim is made, provided the same has been approved, where required, by the public authority shall have right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgement.

3) Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing such payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied.

4) The only persons protected by such payment bond are:

- a) Subcontractors and material suppliers of the contractor,
- b) Subcontractors and material suppliers to the a/m subcontractors,
- c) Laborers who have performed work on the project site.

2.2.12. Time for Bringing suit on Bond; Venue

When suit is instituted on a payment of performance bond, it shall be commenced with one (1) year after the performance and final settlement of the contract and not later, except that if the contractor quits or abandons the contract before completion, suit may be instituted on said bond and shall be commenced within one (1) year after such abandonment and not later. But said time for the institution of said action shall not begin to run until the obligee shall have made final settlement or determined said abandonment and published notice thereof in some newspaper published in a county in which the contract or some part thereof was performed or some newspaper having general circulation therein.

Venue on any such suit shall lie in the county in which service of process may be obtained upon either the principal or the surety on such bond.

2.3. Public Purchases

2.3.1. Lease-Purchase for State Agency Equipment; Participation by Local Governments; Master Lease-Purchase Program Fund

Section 31-7 of *Mississippi Code* defines and describes public purchases. Important duties in the process of public procurement are vested in Department of Finance and Administration.

- 1) Department of Finance and Administration has, among its other

powers, the authority to develop a master lease-purchase program, and pursuant to that program, has the authority to execute on behalf of the state master lease-purchase agreements for equipment to be used by an agency as provided by law. Each agency electing to acquire equipment by a lease-purchase agreement shall participate in the Department of Finance and Administration's master lease-purchase program, unless the Department makes a determination that such equipment cannot be obtained under the program or unless the equipment can be obtained elsewhere at an overall cost lower than that for which the equipment can be obtained under the program.

2) All funds designated by agencies for procurement of equipment and financing thereof under the master lease-purchase program shall be paid into a special fund created in the State Treasury known as the "Master Lease-Purchase Program Fund" which shall be used by the Department for payment to lessors for equipment acquired under master lease-purchase agreements.

3) Each master lease-purchase agreement must include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include covenants deemed necessary of desirable to protect the interests of the lessor.

4) Interest paid on any master lease-purchase agreement is exempt from State of Mississippi income taxation. All equipment, and the purchase thereof by any lessor, acquired under the master lease-purchase program and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and *ad valorem* taxes.

2.3.2. State Contract Price for Purchase of Commodities

1) All governmental agencies must purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration.

2) Governing authorities may purchase commodities without regard to the state contract price established by the Department of Finance and Administration when such purchase involves an expenditure of Two Thousand Five Hundred Dollars (\$2,500.00) or less; provided that such purchase is made at the usual and customary price of such commodities within the locality involved and such price is not excessive.

3) It is the duty of Department of Finance and Administration to ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality of service, utilizing the reasonable standards established therefor by the Department. If the Department does not list an approved price for the particular item involved, purchase must be made according to statutory bidding and licensing requirements.

2.3.3. Bid requirements and exceptions; public auctions

All agencies and governing authorities shall purchase their commodities and printing; contract for fire insurance, automobile insurance, casualty insurance, and liability insurance; and contract for public but no more than Two Thousand Five Hundred Dollars (\$2,500.00) in the following manner:

a) purchases which do not involve expenditure of more than Five Hundred Dollars (\$500.00) may be made without advertising or otherwise requesting competitive bids. However, any agency or governing authority may always decide to employ procedures of competitive bids on purchases of Five Hundred Dollars (\$500.00) or less.

b) Purchases which involve an expenditure of more than Five Hundred Dollars (\$500.00) but no more than Two Thousand Five Hundred Dollars (\$2,500.00) may be made from the lower and best bidder without publishing or posting advertisement for bids, provided two (2) written bids have been obtained.

c) Purchases which involve an expenditure of more than Two Thousand Five Hundred Dollars (\$2,500.00) may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks published in the local newspaper, i.e. published in the county or municipality in which agency or governing authority is located. The date as published for the bid opening shall not be less than five working days after the last published notice.

d) Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping chargers shall be included. 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, including the dollar amount of the accepted bid and the dollar amount of the lowest bid.

e) If an emergency exists in regard to the purchase of any commodities or repair contracts no purchase may be made without prior verbal approval of the Department of Finance and Administration.

f) No purchase may be made for the purpose of circumventing the provisions of section 31-7-13 of the *Mississippi Code*, i.e. without competitive bids.

2.3.4. Preference for Awarding Contracts for Commodities; Procurement of Products Made from Recovered Materials

1) 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 whichever 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 must be given preference.

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

3) Preference in awarding contracts for commodities must be given in the following descending order of priority:

a) Commodities offered at a competitive price.

b) Commodities manufactured from materials recovered in Mississippi.

c) Recovered materials utilizing the highest percentage of post-consumer waste materials.

4) A decision not to procure products made from recovered materials must be based on a determination that such procurement:

a) Is not available within a reasonable period of time; or

b) Fails to meet the performance standards set forth in the applicable specifications; or

c) Is not available at a competitive price.

2.3.5. Preference to Resident Contractors

In the letting of public contracts, preference shall be given to resident contractors, and a non resident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidders's state awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individual or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extend as provided by the laws of the state of domicile of the nonresident.

3. CONCLUDING REMARKS

Mississippi state laws on public procurement present a good reflection of the market and the State legal system. In spite of its different construction from the Polish procurement laws caused, among the others, by the lack of American equivalent of the Polish *Civil Code* as well as the *Polish Civil Procedure Code*, it contains a worthy substance. There are so many interesting solutions that are worth pondering while amending Polish regulations on public procurement.

Among them are:

- mandatory employment of resident labor by public contractors, as mentioned here in chapter 2.2.3.
- compulsory use of state materials and products as reported in chapter 2.2.6. above,
- regulation on performance and payment bonds as referred to in chapter 2.2.11.; a unique directive according to Polish legal standards,
- statutory must to purchase products from recovered materials, as described in chapter 2.3.4.

However, a wider analysis of these interesting problems in Poland requires another article.

Source: *Mississippi Code on Public Businesses, Bonds and Obligations*, Title 31.