

By: Representative Dixon

To: Appropriations

## HOUSE BILL NO. 1046

1 AN ACT TO AMEND SECTION 17-25-25, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THAT PROPERTY ACQUIRED THROUGH THE RURAL FIRE TRUCK  
3 ACQUISITION ASSISTANCE PROGRAM AND THE SUPPLEMENTARY RURAL FIRE  
4 TRUCK ACQUISITION ASSISTANCE PROGRAM MUST FIRST BE OFFERED FOR  
5 SALE, TRANSFER OR TRADE TO OTHER GOVERNING AUTHORITIES OR STATE  
6 AGENCIES OF THE STATE OF MISSISSIPPI BEFORE IT MAY BE OFFERED FOR  
7 SALE, TRANSFER OR TRADE TO ANY FEDERAL AGENCY OR AUTHORITY, OR TO  
8 A STATE AGENCY OR GOVERNING AUTHORITY OF ANOTHER STATE; TO REQUIRE  
9 THAT ANY PROPERTY ACQUIRED THROUGH EITHER PROGRAM MUST BE SOLD AT  
10 PUBLIC SALE FOR FAIR MARKET VALUE; TO AMEND SECTION 31-7-13,  
11 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** Section 17-25-25, Mississippi Code of 1972, is  
14 amended as follows:

15 17-25-25. (1) **General.** The governing authority of a county  
16 or municipality may sell or dispose of any personal property  
17 belonging to the governing authority when the property has ceased  
18 to be used for public purposes or when, in the authority's  
19 judgment, a sale thereof would promote the best interest of the  
20 governing authority.

21 (2) **Public sale.** At least ten (10) days before bid opening,  
22 the governing authority shall advertise its acceptance of bids by



23 posting notices at three (3) public places located in the county  
24 or municipality that the governing authority serves. One (1) of  
25 the three (3) notices shall be posted at the governing authority's  
26 main office. The governing authority may designate the manner by  
27 which the bids will be received, including, but not limited to,  
28 bids sealed in an envelope, bids made electronically or bids made  
29 by any other method that promotes open competition. The proceeds  
30 of the sale shall be placed in a properly approved depository to  
31 the credit of the proper fund.

32       (3) **Private sale.** Where the personal property does not  
33 exceed One Thousand Dollars (\$1,000.00) in value, the governing  
34 authority, by a unanimous approval of its members, may sell or  
35 dispose of the property at a private sale. The proceeds of the  
36 sale shall be placed in a properly approved depository to the  
37 credit of the proper fund.

38       (4) If the governing authority finds that the fair market  
39 value of the personal property is zero and this finding is entered  
40 on the minutes of the authority, then the governing authority may  
41 dispose of the personal property in the manner it deems  
42 appropriate and in its best interest, but no official or employee  
43 of the governing authority shall derive any personal economic  
44 benefit from such disposal.

45       (5) If the personal property may be of use or benefit to any  
46 federal agency or authority, another governing authority or state  
47 agency of the State of Mississippi, or a state agency or governing



48 authority of another state, it may be disposed of in accordance  
49 with Section 31-7-13(m) (vi). Property acquired through the Rural  
50 Fire Truck Acquisition Assistance Program created under Section  
51 17-23-1 and property acquired through the Supplementary Rural Fire  
52 Truck Acquisition Assistance Program created under Section  
53 17-23-11 must first be offered for sale, transfer or trade to  
54 other governing authorities or state agencies of the State of  
55 Mississippi before it may be offered for sale, transfer or trade  
56 to any federal agency or authority, or to a state agency or  
57 governing authority of another state. Any property acquired  
58 through either program must be sold at public sale for fair market  
59 value.

60 (6) Nothing contained in this section shall be construed to  
61 prohibit, restrict or to prescribe conditions with regard to the  
62 authority granted under Section 17-25-3.

63 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is  
64 amended as follows:

65 31-7-13. All agencies and governing authorities shall  
66 purchase their commodities and printing; contract for garbage  
67 collection or disposal; contract for solid waste collection or  
68 disposal; contract for sewage collection or disposal; contract for  
69 public construction; and contract for rentals as herein provided.

70 (a) **Bidding procedure for purchases not over \$5,000.00.**  
71 Purchases which do not involve an expenditure of more than Five  
72 Thousand Dollars (\$5,000.00), exclusive of freight or shipping



73 charges, may be made without advertising or otherwise requesting  
74 competitive bids. However, nothing contained in this paragraph  
75 (a) shall be construed to prohibit any agency or governing  
76 authority from establishing procedures which require competitive  
77 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

78 (b) **Bidding procedure for purchases over \$5,000.00 but**  
79 **not over \$50,000.00.** Purchases which involve an expenditure of  
80 more than Five Thousand Dollars (\$5,000.00) but not more than  
81 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
82 shipping charges may be made from the lowest and best bidder  
83 without publishing or posting advertisement for bids, provided at  
84 least two (2) competitive written bids have been obtained. Any  
85 state agency or community/junior college purchasing commodities or  
86 procuring construction pursuant to this paragraph (b) may  
87 authorize its purchasing agent, or his designee, to accept the  
88 lowest competitive written bid under Fifty Thousand Dollars  
89 (\$50,000.00). Any governing authority purchasing commodities  
90 pursuant to this paragraph (b) may authorize its purchasing agent,  
91 or his designee, with regard to governing authorities other than  
92 counties, or its purchase clerk, or his designee, with regard to  
93 counties, to accept the lowest and best competitive written bid.  
94 Such authorization shall be made in writing by the governing  
95 authority and shall be maintained on file in the primary office of  
96 the agency and recorded in the official minutes of the governing  
97 authority, as appropriate. The purchasing agent or the purchase



98 clerk, or their designee, as the case may be, and not the  
99 governing authority, shall be liable for any penalties and/or  
100 damages as may be imposed by law for any act or omission of the  
101 purchasing agent or purchase clerk, or their designee,  
102 constituting a violation of law in accepting any bid without  
103 approval by the governing authority. The term "competitive  
104 written bid" shall mean a bid submitted on a bid form furnished by  
105 the buying agency or governing authority and signed by authorized  
106 personnel representing the vendor, or a bid submitted on a  
107 vendor's letterhead or identifiable bid form and signed by  
108 authorized personnel representing the vendor. "Competitive" shall  
109 mean that the bids are developed based upon comparable  
110 identification of the needs and are developed independently and  
111 without knowledge of other bids or prospective bids. Any bid item  
112 for construction in excess of Five Thousand Dollars (\$5,000.00)  
113 shall be broken down by components to provide detail of component  
114 description and pricing. These details shall be submitted with  
115 the written bids and become part of the bid evaluation criteria.  
116 Bids may be submitted by facsimile, electronic mail or other  
117 generally accepted method of information distribution. Bids  
118 submitted by electronic transmission shall not require the  
119 signature of the vendor's representative unless required by  
120 agencies or governing authorities.

121 (c) **Bidding procedure for purchases over \$50,000.00.**

122 (i) **Publication requirement.**



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. The purchasing entity may designate the method by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, bids received via a reverse auction, 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.

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



173 Mississippi Procurement Technical Assistance Program under the  
174 Mississippi Development Authority that contains the same  
175 information as that in the published notice. Submissions received  
176 by the Mississippi Procurement Technical Assistance Program for  
177 projects funded by the American Recovery and Reinvestment Act  
178 shall be displayed on a separate and unique Internet Web page  
179 accessible to the public and maintained by the Mississippi  
180 Development Authority for the Mississippi Procurement Technical  
181 Assistance Program. Those American Recovery and Reinvestment Act  
182 related submissions shall be publicly posted within twenty-four  
183 (24) hours of receipt by the Mississippi Development Authority and  
184 the bid opening shall not occur until the submission has been  
185 posted for ten (10) consecutive days. The Department of Finance  
186 and Administration shall maintain information regarding contracts  
187 and other expenditures from the American Recovery and Reinvestment  
188 Act, on a unique Internet Web page accessible to the public. The  
189 Department of Finance and Administration shall promulgate rules  
190 regarding format, content and deadlines, unless otherwise  
191 specified by law, of the posting of award notices, contract  
192 execution and subsequent amendments, links to the contract  
193 documents, expenditures against the awarded contracts and general  
194 expenditures of funds from the American Recovery and Reinvestment  
195 Act. Within one (1) working day of the contract award, the agency  
196 or governing authority shall post to the designated Web page  
197 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 agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) Agencies and governing authorities may establish secure procedures by which bids may be submitted via electronic means.

(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 paragraph (d)(i), 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 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 paragraph (d)(i), where purchase involves renovation, restoration,



298 or both, of the State Capitol Building or any other historical  
299 building designated for at least five (5) years as a Mississippi  
300 Landmark by the Board of Trustees of the Department of Archives  
301 and History under the authority of Sections 39-7-7 and 39-7-11,  
302 the agency or governing authority may use the following procedure:  
303 Purchases may be made from the lowest and best prequalified  
304 bidder. Prequalification of bidders shall be determined not less  
305 than fifteen (15) working days before the first published notice  
306 of bid opening. Prequalification criteria shall be limited to  
307 bidder's knowledge and experience in historical restoration,  
308 preservation and renovation. In determining the lowest and best  
309 bid, freight and shipping charges shall be included. Life-cycle  
310 costing, total cost bids, warranties, guaranteed buy-back  
311 provisions and other relevant provisions may be included in the  
312 best bid calculation. All best bid and prequalification  
313 procedures for state agencies must be in compliance with  
314 regulations established by the Department of Finance and  
315 Administration. If any governing authority accepts a bid other  
316 than the lowest bid actually submitted, it shall place on its  
317 minutes detailed calculations and narrative summary showing that  
318 the accepted bid was determined to be the lowest and best bid,  
319 including the dollar amount of the accepted bid and the dollar  
320 amount of the lowest bid. No agency or governing authority shall  
321 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





397 authority with respect to any public construction contract shall  
398 have the authority, when granted by an agency or governing  
399 authority, to authorize changes or modifications to the original  
400 contract without the necessity of prior approval of the agency or  
401 governing authority when any such change or modification is less  
402 than one percent (1%) of the total contract amount. The agency or  
403 governing authority may limit the number, manner or frequency of  
404 such emergency changes or modifications.

405           (h) **Petroleum purchase alternative.** In addition to  
406 other methods of purchasing authorized in this chapter, when any  
407 agency or governing authority shall have a need for gas, diesel  
408 fuel, oils and/or other petroleum products in excess of the amount  
409 set forth in paragraph (a) of this section, such agency or  
410 governing authority may purchase the commodity after having  
411 solicited and obtained at least two (2) competitive written bids,  
412 as defined in paragraph (b) of this section. If two (2)  
413 competitive written bids are not obtained, the entity shall comply  
414 with the procedures set forth in paragraph (c) of this section.  
415 In the event any agency or governing authority shall have  
416 advertised for bids for the purchase of gas, diesel fuel, oils and  
417 other petroleum products and coal and no acceptable bids can be  
418 obtained, such agency or governing authority is authorized and  
419 directed to enter into any negotiations necessary to secure the  
420 lowest and best contract available for the purchase of such  
421 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 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.

(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.

(1) **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 (1), 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



497 financially feasible to purchase the necessary equipment or  
498 services. Any such contract for the lease of equipment or  
499 services executed by the commissioners or board shall not exceed a  
500 maximum of five (5) years' duration and shall include a  
501 cancellation clause based on unavailability of funds. If such  
502 cancellation clause is exercised, there shall be no further  
503 liability on the part of the lessee. Any such contract for the  
504 lease of equipment or services executed on behalf of the  
505 commissioners or board that complies with the provisions of this  
506 subparagraph (ii) shall be excepted from the bid requirements set  
507 forth in this section.

508 (m) **Exceptions from bidding requirements.** Excepted  
509 from bid requirements are:

510 (i) **Purchasing agreements approved by department.**  
511 Purchasing agreements, contracts and maximum price regulations  
512 executed or approved by the Department of Finance and  
513 Administration.

514 (ii) **Outside equipment repairs.** Repairs to  
515 equipment, when such repairs are made by repair facilities in the  
516 private sector; however, engines, transmissions, rear axles and/or  
517 other such components shall not be included in this exemption when  
518 replaced as a complete unit instead of being repaired and the need  
519 for such total component replacement is known before disassembly  
520 of the component; however, invoices identifying the equipment,  
521 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.

(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 section. 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. However, property acquired through the Rural Fire Truck Acquisition Assistance Program created under Section 17-23-1 and property acquired through the Supplementary Rural Fire Truck Acquisition Assistance Program created under Section 17-23-11 must be sold at public sale for fair market value.

(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.

(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,





597 ownership, operation and/or maintenance of such facilities,  
598 wherein such requests for proposals when issued shall contain  
599 terms and conditions relating to price, financial responsibility,  
600 technology, environmental compatibility, legal responsibilities  
601 and such other matters as are determined by the governing  
602 authority or agency to be appropriate for inclusion; and after  
603 responses to the request for proposals have been duly received,  
604 the governing authority or agency may select the most qualified  
605 proposal or proposals on the basis of price, technology and other  
606 relevant factors and from such proposals, but not limited to the  
607 terms thereof, negotiate and enter contracts with one or more of  
608 the persons or firms submitting proposals.

609                   (x) **Hospital group purchase contracts.** Supplies,  
610 commodities and equipment purchased by hospitals through group  
611 purchase programs pursuant to Section 31-7-38.

612                   (xi) **Information technology products.** Purchases  
613 of information technology products made by governing authorities  
614 under the provisions of purchase schedules, or contracts executed  
615 or approved by the Mississippi Department of Information  
616 Technology Services and designated for use by governing  
617 authorities.

618                   (xii) **Energy efficiency services and equipment.**  
619 Energy efficiency services and equipment acquired by school  
620 districts, community and junior colleges, institutions of higher  
621 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, video cassette tapes, filmstrips and slides; recorded audio tapes, 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



647 lease-purchase of facilities and equipment and the employment of  
648 personnel for providing multichannel interactive video systems  
649 (ITSF) in the school districts of this state.

650 (xviii) **Purchases of prison industry products.**

651 From and after January 1, 1991, purchases made by state agencies  
652 or governing authorities involving any item that is manufactured,  
653 processed, grown or produced from the state's prison industries.

654 (xix) **Undercover operations equipment.** Purchases  
655 of surveillance equipment or any other high-tech equipment to be  
656 used by law enforcement agents in undercover operations, provided  
657 that any such purchase shall be in compliance with regulations  
658 established by the Department of Finance and Administration.

659 (xx) **Junior college books for rent.** Purchases by  
660 community or junior colleges of textbooks which are obtained for  
661 the purpose of renting such books to students as part of a book  
662 service system.

663 (xxi) **Certain school district purchases.**

664 Purchases of commodities made by school districts from vendors  
665 with which any levying authority of the school district, as  
666 defined in Section 37-57-1, has contracted through competitive  
667 bidding procedures for purchases of the same commodities.

668 (xxii) **Garbage, solid waste and sewage contracts.**

669 Contracts for garbage collection or disposal, contracts for solid  
670 waste collection or disposal and contracts for sewage collection  
671 or disposal.



672                   (xxiii)   **Municipal water tank maintenance**  
673 **contracts.** Professional maintenance program contracts for the  
674 repair or maintenance of municipal water tanks, which provide  
675 professional services needed to maintain municipal water storage  
676 tanks for a fixed annual fee for a duration of two (2) or more  
677 years.

678                   (xxiv)   **Purchases of Mississippi Industries for the**  
679 **Blind products.** Purchases made by state agencies or governing  
680 authorities involving any item that is manufactured, processed or  
681 produced by the Mississippi Industries for the Blind.

682                   (xxv)   **Purchases of state-adopted textbooks.**  
683 Purchases of state-adopted textbooks by public school districts.

684                   (xxvi)   **Certain purchases under the Mississippi**  
685 **Major Economic Impact Act.** Contracts entered into pursuant to the  
686 provisions of Section 57-75-9(2), (3) and (4).

687                   (xxvii)   **Used heavy or specialized machinery or**  
688 **equipment for installation of soil and water conservation**  
689 **practices purchased at auction.** Used heavy or specialized  
690 machinery or equipment used for the installation and  
691 implementation of soil and water conservation practices or  
692 measures purchased subject to the restrictions provided in  
693 Sections 69-27-331 through 69-27-341. Any purchase by the State  
694 Soil and Water Conservation Commission under the exemption  
695 authorized by this subparagraph shall require advance  
696 authorization spread upon the minutes of the commission to include



697 the listing of the item or items authorized to be purchased and  
698 the maximum bid authorized to be paid for each item or items.

699 (xxviii) **Hospital lease of equipment or services.**

700 Leases by hospitals of equipment or services if the leases are in  
701 compliance with paragraph (1)(ii).

702 (xxix) **Purchases made pursuant to qualified**

703 **cooperative purchasing agreements.** Purchases made by certified  
704 purchasing offices of state agencies or governing authorities  
705 under cooperative purchasing agreements previously approved by the  
706 Office of Purchasing and Travel and established by or for any  
707 municipality, county, parish or state government or the federal  
708 government, provided that the notification to potential  
709 contractors includes a clause that sets forth the availability of  
710 the cooperative purchasing agreement to other governmental  
711 entities. Such purchases shall only be made if the use of the  
712 cooperative purchasing agreements is determined to be in the best  
713 interest of the governmental entity.

714 (xxx) **School yearbooks.** Purchases of school  
715 yearbooks by state agencies or governing authorities; provided,  
716 however, that state agencies and governing authorities shall use  
717 for these purchases the RFP process as set forth in the  
718 Mississippi Procurement Manual adopted by the Office of Purchasing  
719 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.

(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.

(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



819 qualified proposal or proposals on the basis of price, technology  
820 and other relevant factors and from such proposals, but not  
821 limited to the terms thereof, negotiate and enter into contracts  
822 with one or more of the persons or firms submitting proposals. If  
823 the governing authority or agency deems none of the proposals to  
824 be qualified or otherwise acceptable, the request for proposals  
825 process may be reinitiated. Notwithstanding any other provisions  
826 of this paragraph, where a county with at least thirty-five  
827 thousand (35,000) nor more than forty thousand (40,000)  
828 population, according to the 1990 federal decennial census, owns  
829 or operates a solid waste landfill, the governing authorities of  
830 any other county or municipality may contract with the governing  
831 authorities of the county owning or operating the landfill,  
832 pursuant to a resolution duly adopted and spread upon the minutes  
833 of each governing authority involved, for garbage or solid waste  
834 collection or disposal services through contract negotiations.

835           (s) **Minority set-aside authorization.** Notwithstanding  
836 any provision of this section to the contrary, any agency or  
837 governing authority, by order placed on its minutes, may, in its  
838 discretion, set aside not more than twenty percent (20%) of its  
839 anticipated annual expenditures for the purchase of commodities  
840 from minority businesses; however, all such set-aside purchases  
841 shall comply with all purchasing regulations promulgated by the  
842 Department of Finance and Administration and shall be subject to  
843 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



869 completion and one (1) final list immediately before final  
870 completion and final payment.

871           (u)   **Procurement of construction services by state**  
872 **institutions of higher learning.** Contracts for privately financed  
873 construction of auxiliary facilities on the campus of a state  
874 institution of higher learning may be awarded by the Board of  
875 Trustees of State Institutions of Higher Learning to the lowest  
876 and best bidder, where sealed bids are solicited, or to the  
877 offeror whose proposal is determined to represent the best value  
878 to the citizens of the State of Mississippi, where requests for  
879 proposals are solicited.

880           (v)   **Insurability of bidders for public construction or**  
881 **other public contracts.** In any solicitation for bids to perform  
882 public construction or other public contracts to which this  
883 section applies including, but not limited to, contracts for  
884 repair and maintenance, for which the contract will require  
885 insurance coverage in an amount of not less than One Million  
886 Dollars (\$1,000,000.00), bidders shall be permitted to either  
887 submit proof of current insurance coverage in the specified amount  
888 or demonstrate ability to obtain the required coverage amount of  
889 insurance if the contract is awarded to the bidder. Proof of  
890 insurance coverage shall be submitted within five (5) business  
891 days from bid acceptance.



892                   (w)   **Purchase authorization clarification.**   Nothing in  
893   this section shall be construed as authorizing any purchase not  
894   authorized by law.

895           **SECTION 3.**   This act shall take effect and be in force from  
896   and after July 1, 2013.

