

By: Representatives White, Gibbs (72nd),  
Reynolds

To: Public Health and Human  
Services; Ways and Means

HOUSE BILL NO. 926  
(As Sent to Governor)

1 AN ACT TO AUTHORIZE THE UNIVERSITY OF MISSISSIPPI MEDICAL  
2 CENTER SUBJECT TO APPROVAL BY THE BOARD OF TRUSTEES OF STATE  
3 INSTITUTIONS OF HIGHER LEARNING TO ENTER INTO JOINT-PURCHASING  
4 ARRANGEMENTS, JOINT VENTURES, JOINT-OPERATING AGREEMENTS, OR  
5 SIMILAR ARRANGEMENTS WITH COMMUNITY HOSPITALS OR OTHER PUBLIC OR  
6 PRIVATE HEALTH-RELATED ORGANIZATIONS IN ORDER TO PARTICIPATE IN  
7 FINANCIAL OR CLINICAL INTEGRATION OR CLINICALLY INTEGRATED  
8 NETWORKS AND TO PROVIDE FOR CONTRACTS OF EMPLOYMENT, SERVICES AND  
9 OWNERSHIP OF PROPERTY UNDER SUCH ARRANGEMENTS; TO AMEND SECTION  
10 11-46-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT HEALTH CARE  
11 PRACTITIONERS WORKING UNDER SUCH ARRANGEMENTS ARE COVERED BY THE  
12 TORT CLAIMS ACT; TO AMEND SECTIONS 31-7-1 AND 31-7-13, MISSISSIPPI  
13 CODE OF 1972, TO PROVIDE FOR THE APPLICATION OF THE PUBLIC  
14 PURCHASING LAWS TO SUCH ARRANGEMENTS; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** For purposes of this act, the following terms  
17 shall have the following meanings:

18 (a) "Academic medical center" means the teaching,  
19 research, and clinical facilities and services provided,  
20 established, or operated by a public university under Chapter 115,  
21 Title 37, Mississippi Code of 1972.

22 (b) "Health sciences school" means any school of  
23 medicine, dentistry, nursing, pharmacy and any other health



24 care-related educational program operated or provided by an  
25 academic medical center in this state.

26 **SECTION 2.** Subject to the approval of the Board of Trustees  
27 of State Institutions of Higher Learning, the University of  
28 Mississippi Medical Center (hereafter known as the "academic  
29 medical center") is authorized to directly or indirectly enter  
30 into joint-purchasing arrangements, however structured, on terms  
31 customary in the market or required by the organization and to  
32 enter into joint ventures, joint-operating agreements, or similar  
33 arrangements with community hospitals or other public or private  
34 health-related organizations, or with for-profit or nonprofit  
35 corporations or other organizations, to establish arrangements for  
36 the academic medical center to participate in financial  
37 integration and/or clinical integration or clinically integrated  
38 networks with a joint venture, with community hospitals or other  
39 public or private health-related organizations, or with other  
40 for-profit or nonprofit corporations or other organizations, or  
41 through a joint-operating agreement, and to provide for contracts  
42 of employment or contracts for services and ownership of property  
43 on terms that will protect the public interest.

44 **SECTION 3.** Section 11-46-1, Mississippi Code of 1972, is  
45 amended as follows:

46 11-46-1. As used in this chapter, the following terms shall  
47 have the meanings ascribed unless the context otherwise requires:



48           (a) "Claim" means any demand to recover damages from a  
49 governmental entity as compensation for injuries.

50           (b) "Claimant" means any person seeking compensation  
51 under the provisions of this chapter, whether by administrative  
52 remedy or through the courts.

53           (c) "Board" means the Mississippi Tort Claims Board.

54           (d) "Department" means the Department of Finance and  
55 Administration.

56           (e) "Director" means the executive director of the  
57 department who is also the executive director of the board.

58           (f) "Employee" means any officer, employee or servant  
59 of the State of Mississippi or a political subdivision of the  
60 state, including elected or appointed officials and persons acting  
61 on behalf of the state or a political subdivision in any official  
62 capacity, temporarily or permanently, in the service of the state  
63 or a political subdivision whether with or without compensation,  
64 including firefighters who are members of a volunteer fire  
65 department that is a political subdivision. The term "employee"  
66 shall not mean a person or other legal entity while acting in the  
67 capacity of an independent contractor under contract to the state  
68 or a political subdivision; and

69           (i) For purposes of the limits of liability  
70 provided for in Section 11-46-15, the term "employee" shall  
71 include:



72                   1. Physicians under contract to provide  
73 health services with the State Board of Health, the State Board of  
74 Mental Health or any county or municipal jail facility while  
75 rendering services under the contract;

76                   2. Any physician, dentist or other health  
77 care practitioner employed by the University of Mississippi  
78 Medical Center (UMMC) and its departmental practice plans who is a  
79 faculty member and provides health care services only for patients  
80 at UMMC or its affiliated practice sites, including any physician  
81 or other health care practitioner employed by UMMC under an  
82 arrangement with a public or private health-related organization;

83                   3. Any physician, dentist or other health  
84 care practitioner employed by any university under the control of  
85 the Board of Trustees of State Institutions of Higher Learning who  
86 practices only on the campus of any university under the control  
87 of the Board of Trustees of State Institutions of Higher Learning;

88                   4. Any physician, dentist or other health  
89 care practitioner employed by the State Veterans Affairs Board and  
90 who provides health care services for patients for the State  
91 Veterans Affairs Board;

92                   (ii) The term "employee" shall also include  
93 Mississippi Department of Human Services licensed foster parents  
94 for the limited purposes of coverage under the Tort Claims Act as  
95 provided in Section 11-46-8; and



96 (iii) The term "employee" also shall include any  
97 employee or member of the governing board of a charter school but  
98 shall not include any person or entity acting in the capacity of  
99 an independent contractor to provide goods or services under a  
100 contract with a charter school.

101 (g) "Governmental entity" means the state and political  
102 subdivisions.

103 (h) "Injury" means death, injury to a person, damage to  
104 or loss of property or any other injury that a person may suffer  
105 that is actionable at law or in equity.

106 (i) "Political subdivision" means any body politic or  
107 body corporate other than the state responsible for governmental  
108 activities only in geographic areas smaller than that of the  
109 state, including, but not limited to, any county, municipality,  
110 school district, charter school, volunteer fire department that is  
111 a chartered nonprofit corporation providing emergency services  
112 under contract with a county or municipality, community hospital  
113 as defined in Section 41-13-10, airport authority, or other  
114 instrumentality of the state, whether or not the body or  
115 instrumentality has the authority to levy taxes or to sue or be  
116 sued in its own name.

117 (j) "State" means the State of Mississippi and any  
118 office, department, agency, division, bureau, commission, board,  
119 institution, hospital, college, university, airport authority or  
120 other instrumentality thereof, whether or not the body or



121 instrumentality has the authority to levy taxes or to sue or be  
122 sued in its own name.

123 (k) "Law" means all species of law, including, but not  
124 limited to, any and all constitutions, statutes, case law, common  
125 law, customary law, court order, court rule, court decision, court  
126 opinion, court judgment or mandate, administrative rule or  
127 regulation, executive order, or principle or rule of equity.

128 **SECTION 4.** Section 31-7-1, Mississippi Code of 1972, is  
129 amended as follows:

130 31-7-1. The following terms are defined for the purposes of  
131 this chapter to have the following meanings:

132 (a) "Agency" means any state board, commission,  
133 committee, council, university, department or unit thereof created  
134 by the Constitution or statutes if such board, commission,  
135 committee, council, university, department, unit or the head  
136 thereof is authorized to appoint subordinate staff by the  
137 Constitution or statute, except a legislative or judicial board,  
138 commission, committee, council, department or unit thereof; except  
139 a charter school authorized by the Mississippi Charter School  
140 Authorizer Board; and except the Mississippi State Port Authority.  
141 An academic medical center or health sciences school as defined in  
142 Section 1 of this act is not an "agency" for those purchases of  
143 commodities as defined in this section that are used for clinical  
144 purposes and (i) intended for use in the diagnosis of disease or  
145 other conditions or in the cure, mitigation, treatment or



146 prevention of disease, and (ii) medical devices, biological, drugs  
147 and radiation emitting devices as defined by the United States  
148 Food and Drug Administration.

149 (b) "Governing authority" means boards of supervisors,  
150 governing boards of all school districts, all boards of directors  
151 of public water supply districts, boards of directors of master  
152 public water supply districts, municipal public utility  
153 commissions, governing authorities of all municipalities, port  
154 authorities, Mississippi State Port Authority, commissioners and  
155 boards of trustees of any public hospitals, boards of trustees of  
156 public library systems, district attorneys, school attendance  
157 officers and any political subdivision of the state supported  
158 wholly or in part by public funds of the state or political  
159 subdivisions thereof, including commissions, boards and agencies  
160 created or operated under the authority of any county or  
161 municipality of this state. The term "governing authority" shall  
162 not include economic development authorities supported in part by  
163 private funds, or commissions appointed to hold title to and  
164 oversee the development and management of lands and buildings  
165 which are donated by private individuals to the public for the use  
166 and benefit of the community and which are supported in part by  
167 private funds. The term "governing authority" also shall not  
168 include the governing board of a charter school.

169 (c) "Purchasing agent" means any administrator,  
170 superintendent, purchase clerk or other chief officer so



171 designated having general or special authority to negotiate for  
172 and make private contract for or purchase for any governing  
173 authority or agency, including issue purchase orders, invitations  
174 for bid, requests for proposals, and receive and accept bids.

175 (d) "Public funds" means and includes any appropriated  
176 funds, special funds, fees or any other emoluments received by an  
177 agency or governing authority.

178 (e) "Commodities" means and includes the various  
179 commodities, goods, merchandise, furniture, equipment, automotive  
180 equipment of every kind, and other personal property purchased by  
181 the agencies of the state and governing authorities, but not  
182 commodities purchased for resale or raw materials converted into  
183 products for resale.

184 (i) "Equipment" shall be construed to include:  
185 automobiles, trucks, tractors, office appliances and all other  
186 equipment of every kind and description.

187 (ii) "Furniture" shall be construed to include:  
188 desks, chairs, tables, seats, filing cabinets, bookcases and all  
189 other items of a similar nature as well as dormitory furniture,  
190 appliances, carpets and all other items of personal property  
191 generally referred to as home, office or school furniture.

192 (f) "Emergency" means any circumstances caused by fire,  
193 flood, explosion, storm, earthquake, epidemic, riot, insurrection  
194 or caused by any inherent defect due to defective construction, or  
195 when the immediate preservation of order or of public health is





196 necessary by reason of unforeseen emergency, or when the immediate  
197 restoration of a condition of usefulness of any public building,  
198 equipment, road or bridge appears advisable, or in the case of a  
199 public utility when there is a failure of any machine or other  
200 thing used and useful in the generation, production or  
201 distribution of electricity, water or natural gas, or in the  
202 transportation or treatment of sewage; or when the delay incident  
203 to obtaining competitive bids could cause adverse impact upon the  
204 governing authorities or agency, its employees or its citizens; or  
205 in the case of a public airport, when the delay incident to  
206 publishing an advertisement for competitive bids would endanger  
207 public safety in a specific (not general) manner, result in or  
208 perpetuate a specific breach of airport security, or prevent the  
209 airport from providing specific air transportation services.

210 (g) "Construction" means the process of building,  
211 altering, improving, renovating or demolishing a public structure,  
212 public building, or other public real property. It does not  
213 include routine operation, routine repair or regularly scheduled  
214 maintenance of existing public structures, public buildings or  
215 other public real property.

216 (h) "Purchase" means buying, renting, leasing or  
217 otherwise acquiring.

218 (i) "Certified purchasing office" means any purchasing  
219 office in which fifty percent (50%) or more of the purchasing  
220 agents hold a certification from the Universal Public Purchasing



221 Certification Council or other nationally recognized purchasing  
222 certification, and in which, in the case of a state agency  
223 purchasing office, in addition to the national certification, one  
224 hundred percent (100%) of the purchasing officials hold a  
225 certification from the State of Mississippi's Basic or Advanced  
226 Purchasing Certification Program.

227 (j) "Certified Mississippi Purchasing Agent" means a  
228 state agency purchasing official who holds a certification from  
229 the Mississippi Basic Purchasing Certification Program as  
230 established by the Office of Purchasing, Travel and Fleet  
231 Management.

232 (k) "Certified Mississippi Procurement Manager" means a  
233 state agency purchasing official who holds a certification from  
234 the Mississippi Advanced Purchasing Certification Program as  
235 established by the Office of Purchasing, Travel and Fleet  
236 Management.

237 **SECTION 5.** Section 31-7-13, Mississippi Code of 1972, is  
238 amended as follows:

239 31-7-13. All agencies and governing authorities shall  
240 purchase their commodities and printing; contract for garbage  
241 collection or disposal; contract for solid waste collection or  
242 disposal; contract for sewage collection or disposal; contract for  
243 public construction; and contract for rentals as herein provided.

244 (a) **Bidding procedure for purchases not over \$5,000.00.**

245 Purchases which do not involve an expenditure of more than Five



246 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
247 charges, may be made without advertising or otherwise requesting  
248 competitive bids. However, nothing contained in this paragraph  
249 (a) shall be construed to prohibit any agency or governing  
250 authority from establishing procedures which require competitive  
251 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

252 (b) **Bidding procedure for purchases over \$5,000.00 but**  
253 **not over \$50,000.00.** Purchases which involve an expenditure of  
254 more than Five Thousand Dollars (\$5,000.00) but not more than  
255 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
256 shipping charges, may be made from the lowest and best bidder  
257 without publishing or posting advertisement for bids, provided at  
258 least two (2) competitive written bids have been obtained. Any  
259 state agency or community/junior college purchasing commodities or  
260 procuring construction pursuant to this paragraph (b) may  
261 authorize its purchasing agent, or his designee, to accept the  
262 lowest competitive written bid under Fifty Thousand Dollars  
263 (\$50,000.00). Any governing authority purchasing commodities  
264 pursuant to this paragraph (b) may authorize its purchasing agent,  
265 or his designee, with regard to governing authorities other than  
266 counties, or its purchase clerk, or his designee, with regard to  
267 counties, to accept the lowest and best competitive written bid.  
268 Such authorization shall be made in writing by the governing  
269 authority and shall be maintained on file in the primary office of  
270 the agency and recorded in the official minutes of the governing



271 authority, as appropriate. The purchasing agent or the purchase  
272 clerk, or their designee, as the case may be, and not the  
273 governing authority, shall be liable for any penalties and/or  
274 damages as may be imposed by law for any act or omission of the  
275 purchasing agent or purchase clerk, or their designee,  
276 constituting a violation of law in accepting any bid without  
277 approval by the governing authority. The term "competitive  
278 written bid" shall mean a bid submitted on a bid form furnished by  
279 the buying agency or governing authority and signed by authorized  
280 personnel representing the vendor, or a bid submitted on a  
281 vendor's letterhead or identifiable bid form and signed by  
282 authorized personnel representing the vendor. "Competitive" shall  
283 mean that the bids are developed based upon comparable  
284 identification of the needs and are developed independently and  
285 without knowledge of other bids or prospective bids. Any bid item  
286 for construction in excess of Five Thousand Dollars (\$5,000.00)  
287 shall be broken down by components to provide detail of component  
288 description and pricing. These details shall be submitted with  
289 the written bids and become part of the bid evaluation criteria.  
290 Bids may be submitted by facsimile, electronic mail or other  
291 generally accepted method of information distribution. Bids  
292 submitted by electronic transmission shall not require the  
293 signature of the vendor's representative unless required by  
294 agencies or governing authorities.

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



296 (i) **Publication requirement.**

297 1. Purchases which involve an expenditure of  
298 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
299 freight and shipping charges, may be made from the lowest and best  
300 bidder after advertising for competitive bids once each week for  
301 two (2) consecutive weeks in a regular newspaper published in the  
302 county or municipality in which such agency or governing authority  
303 is located. However, all American Recovery and Reinvestment Act  
304 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
305 shall be bid. All references to American Recovery and  
306 Reinvestment Act projects in this section shall not apply to  
307 programs identified in Division B of the American Recovery and  
308 Reinvestment Act.

309 2. The purchasing entity may designate the  
310 method by which the bids will be received, including, but not  
311 limited to, bids sealed in an envelope, bids received  
312 electronically in a secure system, bids received via a reverse  
313 auction, or bids received by any other method that promotes open  
314 competition and has been approved by the Office of Purchasing and  
315 Travel. However, reverse auction shall not be used for any public  
316 contract for design or construction of public facilities,  
317 including buildings, roads and bridges.

318 3. The date as published for the bid opening  
319 shall not be less than seven (7) working days after the last  
320 published notice; however, if the purchase involves a construction



321 project in which the estimated cost is in excess of Fifty Thousand  
322 Dollars (\$50,000.00), such bids shall not be opened in less than  
323 fifteen (15) working days after the last notice is published and  
324 the notice for the purchase of such construction shall be  
325 published once each week for two (2) consecutive weeks. However,  
326 all American Recovery and Reinvestment Act projects in excess of  
327 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
328 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
329 under the American Recovery and Reinvestment Act, publication  
330 shall be made one (1) time and the bid opening for construction  
331 projects shall not be less than ten (10) working days after the  
332 date of the published notice. The notice of intention to let  
333 contracts or purchase equipment shall state the time and place at  
334 which bids shall be received, list the contracts to be made or  
335 types of equipment or supplies to be purchased, and, if all plans  
336 and/or specifications are not published, refer to the plans and/or  
337 specifications on file. If there is no newspaper published in the  
338 county or municipality, then such notice shall be given by posting  
339 same at the courthouse, or for municipalities at the city hall,  
340 and at two (2) other public places in the county or municipality,  
341 and also by publication once each week for two (2) consecutive  
342 weeks in some newspaper having a general circulation in the county  
343 or municipality in the above-provided manner. On the same date  
344 that the notice is submitted to the newspaper for publication, the  
345 agency or governing authority involved shall mail written notice



346 to, or provide electronic notification to the main office of the  
347 Mississippi Procurement Technical Assistance Program under the  
348 Mississippi Development Authority that contains the same  
349 information as that in the published notice. Submissions received  
350 by the Mississippi Procurement Technical Assistance Program for  
351 projects funded by the American Recovery and Reinvestment Act  
352 shall be displayed on a separate and unique Internet web page  
353 accessible to the public and maintained by the Mississippi  
354 Development Authority for the Mississippi Procurement Technical  
355 Assistance Program. Those American Recovery and Reinvestment Act  
356 related submissions shall be publicly posted within twenty-four  
357 (24) hours of receipt by the Mississippi Development Authority and  
358 the bid opening shall not occur until the submission has been  
359 posted for ten (10) consecutive days. The Department of Finance  
360 and Administration shall maintain information regarding contracts  
361 and other expenditures from the American Recovery and Reinvestment  
362 Act, on a unique Internet web page accessible to the public. The  
363 Department of Finance and Administration shall promulgate rules  
364 regarding format, content and deadlines, unless otherwise  
365 specified by law, of the posting of award notices, contract  
366 execution and subsequent amendments, links to the contract  
367 documents, expenditures against the awarded contracts and general  
368 expenditures of funds from the American Recovery and Reinvestment  
369 Act. Within one (1) working day of the contract award, the agency  
370 or governing authority shall post to the designated web page



371 maintained by the Department of Finance and Administration, notice  
372 of the award, including the award recipient, the contract amount,  
373 and a brief summary of the contract in accordance with rules  
374 promulgated by the department. Within one (1) working day of the  
375 contract execution, the agency or governing authority shall post  
376 to the designated web page maintained by the Department of Finance  
377 and Administration a summary of the executed contract and make a  
378 copy of the appropriately redacted contract documents available  
379 for linking to the designated web page in accordance with the  
380 rules promulgated by the department. The information provided by  
381 the agency or governing authority shall be posted to the web page  
382 for the duration of the American Recovery and Reinvestment Act  
383 funding or until the project is completed, whichever is longer.

384 (ii) **Bidding process amendment procedure.** If all  
385 plans and/or specifications are published in the notification,  
386 then the plans and/or specifications may not be amended. If all  
387 plans and/or specifications are not published in the notification,  
388 then amendments to the plans/specifications, bid opening date, bid  
389 opening time and place may be made, provided that the agency or  
390 governing authority maintains a list of all prospective bidders  
391 who are known to have received a copy of the bid documents and all  
392 such prospective bidders are sent copies of all amendments. This  
393 notification of amendments may be made via mail, facsimile,  
394 electronic mail or other generally accepted method of information  
395 distribution. No addendum to bid specifications may be issued





396 within two (2) working days of the time established for the  
397 receipt of bids unless such addendum also amends the bid opening  
398 to a date not less than five (5) working days after the date of  
399 the addendum.

400 (iii) **Filing requirement.** In all cases involving  
401 governing authorities, before the notice shall be published or  
402 posted, the plans or specifications for the construction or  
403 equipment being sought shall be filed with the clerk of the board  
404 of the governing authority. In addition to these requirements, a  
405 bid file shall be established which shall indicate those vendors  
406 to whom such solicitations and specifications were issued, and  
407 such file shall also contain such information as is pertinent to  
408 the bid.

409 (iv) **Specification restrictions.**

410 1. Specifications pertinent to such bidding  
411 shall be written so as not to exclude comparable equipment of  
412 domestic manufacture. However, if valid justification is  
413 presented, the Department of Finance and Administration or the  
414 board of a governing authority may approve a request for specific  
415 equipment necessary to perform a specific job. Further, such  
416 justification, when placed on the minutes of the board of a  
417 governing authority, may serve as authority for that governing  
418 authority to write specifications to require a specific item of  
419 equipment needed to perform a specific job. In addition to these  
420 requirements, from and after July 1, 1990, vendors of relocatable



421 classrooms and the specifications for the purchase of such  
422 relocatable classrooms published by local school boards shall meet  
423 all pertinent regulations of the State Board of Education,  
424 including prior approval of such bid by the State Department of  
425 Education.

426                   2. Specifications for construction projects  
427 may include an allowance for commodities, equipment, furniture,  
428 construction materials or systems in which prospective bidders are  
429 instructed to include in their bids specified amounts for such  
430 items so long as the allowance items are acquired by the vendor in  
431 a commercially reasonable manner and approved by the  
432 agency/governing authority. Such acquisitions shall not be made  
433 to circumvent the public purchasing laws.

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

437                   (d) **Lowest and best bid decision procedure.**

438                   (i) **Decision procedure.** Purchases may be made  
439 from the lowest and best bidder. In determining the lowest and  
440 best bid, freight and shipping charges shall be included.  
441 Life-cycle costing, total cost bids, warranties, guaranteed  
442 buy-back provisions and other relevant provisions may be included  
443 in the best bid calculation. All best bid procedures for state  
444 agencies must be in compliance with regulations established by the  
445 Department of Finance and Administration. If any governing



446 authority accepts a bid other than the lowest bid actually  
447 submitted, it shall place on its minutes detailed calculations and  
448 narrative summary showing that the accepted bid was determined to  
449 be the lowest and best bid, including the dollar amount of the  
450 accepted bid and the dollar amount of the lowest bid. No agency  
451 or governing authority shall accept a bid based on items not  
452 included in the specifications.

453 (ii) **Decision procedure for Certified Purchasing**  
454 **Offices.** In addition to the decision procedure set forth in \* \* \*  
455 subparagraph (i) of this paragraph (d), Certified Purchasing  
456 Offices may also use the following procedure: Purchases may be  
457 made from the bidder offering the best value. In determining the  
458 best value bid, freight and shipping charges shall be included.  
459 Life-cycle costing, total cost bids, warranties, guaranteed  
460 buy-back provisions, documented previous experience, training  
461 costs and other relevant provisions, including, but not limited  
462 to, a bidder having a local office and inventory located within  
463 the jurisdiction of the governing authority, may be included in  
464 the best value calculation. This provision shall authorize  
465 Certified Purchasing Offices to utilize a Request For Proposals  
466 (RFP) process when purchasing commodities. All best value  
467 procedures for state agencies must be in compliance with  
468 regulations established by the Department of Finance and  
469 Administration. No agency or governing authority shall accept a  
470 bid based on items or criteria not included in the specifications.



(iii) **Decision procedure for Mississippi**

472 **Landmarks.** In addition to the decision procedure set forth  
473 in \* \* \* subparagraph (i) of this paragraph (d), where purchase  
474 involves renovation, restoration, or both, of the State Capitol  
475 Building or any other historical building designated for at least  
476 five (5) years as a Mississippi Landmark by the Board of Trustees  
477 of the Department of Archives and History under the authority of  
478 Sections 39-7-7 and 39-7-11, the agency or governing authority may  
479 use the following procedure: Purchases may be made from the  
480 lowest and best prequalified bidder. Prequalification of bidders  
481 shall be determined not less than fifteen (15) working days before  
482 the first published notice of bid opening. Prequalification  
483 criteria shall be limited to bidder's knowledge and experience in  
484 historical restoration, preservation and renovation. In  
485 determining the lowest and best bid, freight and shipping charges  
486 shall be included. Life-cycle costing, total cost bids,  
487 warranties, guaranteed buy-back provisions and other relevant  
488 provisions may be included in the best bid calculation. All best  
489 bid and prequalification procedures for state agencies must be in  
490 compliance with regulations established by the Department of  
491 Finance and Administration. If any governing authority accepts a  
492 bid other than the lowest bid actually submitted, it shall place  
493 on its minutes detailed calculations and narrative summary showing  
494 that the accepted bid was determined to be the lowest and best  
495 bid, including the dollar amount of the accepted bid and the



496 dollar amount of the lowest bid. No agency or governing authority  
497 shall accept a bid based on items not included in the  
498 specifications.

499 (iv) **Construction project negotiations authority.**

500 If the lowest and best bid is not more than ten percent (10%)  
501 above the amount of funds allocated for a public construction or  
502 renovation project, then the agency or governing authority shall  
503 be permitted to negotiate with the lowest bidder in order to enter  
504 into a contract for an amount not to exceed the funds allocated.

505 (e) **Lease-purchase authorization.** For the purposes of  
506 this section, the term "equipment" shall mean equipment, furniture  
507 and, if applicable, associated software and other applicable  
508 direct costs associated with the acquisition. Any lease-purchase  
509 of equipment which an agency is not required to lease-purchase  
510 under the master lease-purchase program pursuant to Section  
511 31-7-10 and any lease-purchase of equipment which a governing  
512 authority elects to lease-purchase may be acquired by a  
513 lease-purchase agreement under this paragraph (e). Lease-purchase  
514 financing may also be obtained from the vendor or from a  
515 third-party source after having solicited and obtained at least  
516 two (2) written competitive bids, as defined in paragraph (b) of  
517 this section, for such financing without advertising for such  
518 bids. Solicitation for the bids for financing may occur before or  
519 after acceptance of bids for the purchase of such equipment or,  
520 where no such bids for purchase are required, at any time before



521 the purchase thereof. No such lease-purchase agreement shall be  
522 for an annual rate of interest which is greater than the overall  
523 maximum interest rate to maturity on general obligation  
524 indebtedness permitted under Section 75-17-101, and the term of  
525 such lease-purchase agreement shall not exceed the useful life of  
526 equipment covered thereby as determined according to the upper  
527 limit of the asset depreciation range (ADR) guidelines for the  
528 Class Life Asset Depreciation Range System established by the  
529 Internal Revenue Service pursuant to the United States Internal  
530 Revenue Code and regulations thereunder as in effect on December  
531 31, 1980, or comparable depreciation guidelines with respect to  
532 any equipment not covered by ADR guidelines. Any lease-purchase  
533 agreement entered into pursuant to this paragraph (e) may contain  
534 any of the terms and conditions which a master lease-purchase  
535 agreement may contain under the provisions of Section 31-7-10(5),  
536 and shall contain an annual allocation dependency clause  
537 substantially similar to that set forth in Section 31-7-10(8).  
538 Each agency or governing authority entering into a lease-purchase  
539 transaction pursuant to this paragraph (e) shall maintain with  
540 respect to each such lease-purchase transaction the same  
541 information as required to be maintained by the Department of  
542 Finance and Administration pursuant to Section 31-7-10(13).  
543 However, nothing contained in this section shall be construed to  
544 permit agencies to acquire items of equipment with a total  
545 acquisition cost in the aggregate of less than Ten Thousand



546 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
547 equipment, and the purchase thereof by any lessor, acquired by  
548 lease-purchase under this paragraph and all lease-purchase  
549 payments with respect thereto shall be exempt from all Mississippi  
550 sales, use and ad valorem taxes. Interest paid on any  
551 lease-purchase agreement under this section shall be exempt from  
552 State of Mississippi income taxation.

553           (f) **Alternate bid authorization.** When necessary to  
554 ensure ready availability of commodities for public works and the  
555 timely completion of public projects, no more than two (2)  
556 alternate bids may be accepted by a governing authority for  
557 commodities. No purchases may be made through use of such  
558 alternate bids procedure unless the lowest and best bidder cannot  
559 deliver the commodities contained in his bid. In that event,  
560 purchases of such commodities may be made from one (1) of the  
561 bidders whose bid was accepted as an alternate.

562           (g) **Construction contract change authorization.** In the  
563 event a determination is made by an agency or governing authority  
564 after a construction contract is let that changes or modifications  
565 to the original contract are necessary or would better serve the  
566 purpose of the agency or the governing authority, such agency or  
567 governing authority may, in its discretion, order such changes  
568 pertaining to the construction that are necessary under the  
569 circumstances without the necessity of further public bids;  
570 provided that such change shall be made in a commercially



571 reasonable manner and shall not be made to circumvent the public  
572 purchasing statutes. In addition to any other authorized person,  
573 the architect or engineer hired by an agency or governing  
574 authority with respect to any public construction contract shall  
575 have the authority, when granted by an agency or governing  
576 authority, to authorize changes or modifications to the original  
577 contract without the necessity of prior approval of the agency or  
578 governing authority when any such change or modification is less  
579 than one percent (1%) of the total contract amount. The agency or  
580 governing authority may limit the number, manner or frequency of  
581 such emergency changes or modifications.

582           (h) **Petroleum purchase alternative.** In addition to  
583 other methods of purchasing authorized in this chapter, when any  
584 agency or governing authority shall have a need for gas, diesel  
585 fuel, oils and/or other petroleum products in excess of the amount  
586 set forth in paragraph (a) of this section, such agency or  
587 governing authority may purchase the commodity after having  
588 solicited and obtained at least two (2) competitive written bids,  
589 as defined in paragraph (b) of this section. If two (2)  
590 competitive written bids are not obtained, the entity shall comply  
591 with the procedures set forth in paragraph (c) of this section.  
592 In the event any agency or governing authority shall have  
593 advertised for bids for the purchase of gas, diesel fuel, oils and  
594 other petroleum products and coal and no acceptable bids can be  
595 obtained, such agency or governing authority is authorized and





596 directed to enter into any negotiations necessary to secure the  
597 lowest and best contract available for the purchase of such  
598 commodities.

599           (i) **Road construction petroleum products price**  
600 **adjustment clause authorization.** Any agency or governing  
601 authority authorized to enter into contracts for the construction,  
602 maintenance, surfacing or repair of highways, roads or streets,  
603 may include in its bid proposal and contract documents a price  
604 adjustment clause with relation to the cost to the contractor,  
605 including taxes, based upon an industry-wide cost index, of  
606 petroleum products including asphalt used in the performance or  
607 execution of the contract or in the production or manufacture of  
608 materials for use in such performance. Such industry-wide index  
609 shall be established and published monthly by the Mississippi  
610 Department of Transportation with a copy thereof to be mailed,  
611 upon request, to the clerks of the governing authority of each  
612 municipality and the clerks of each board of supervisors  
613 throughout the state. The price adjustment clause shall be based  
614 on the cost of such petroleum products only and shall not include  
615 any additional profit or overhead as part of the adjustment. The  
616 bid proposals or document contract shall contain the basis and  
617 methods of adjusting unit prices for the change in the cost of  
618 such petroleum products.

619           (j) **State agency emergency purchase procedure.** If the  
620 governing board or the executive head, or his designees, of any



621 agency of the state shall determine that an emergency exists in  
622 regard to the purchase of any commodities or repair contracts, so  
623 that the delay incident to giving opportunity for competitive  
624 bidding would be detrimental to the interests of the state, then  
625 the head of such agency, or his designees, shall file with the  
626 Department of Finance and Administration (i) a statement  
627 explaining the conditions and circumstances of the emergency,  
628 which shall include a detailed description of the events leading  
629 up to the situation and the negative impact to the entity if the  
630 purchase is made following the statutory requirements set forth in  
631 paragraph (a), (b) or (c) of this section, and (ii) a certified  
632 copy of the appropriate minutes of the board of such agency  
633 requesting the emergency purchase, if applicable. Upon receipt of  
634 the statement and applicable board certification, the State Fiscal  
635 Officer, or his designees, may, in writing, authorize the purchase  
636 or repair without having to comply with competitive bidding  
637 requirements.

638         If the governing board or the executive head, or his  
639 designees, of any agency determines that an emergency exists in  
640 regard to the purchase of any commodities or repair contracts, so  
641 that the delay incident to giving opportunity for competitive  
642 bidding would threaten the health or safety of any person, or the  
643 preservation or protection of property, then the provisions in  
644 this section for competitive bidding shall not apply, and any  
645 officer or agent of the agency having general or specific



646 authority for making the purchase or repair contract shall approve  
647 the bill presented for payment, and he shall certify in writing  
648 from whom the purchase was made, or with whom the repair contract  
649 was made.

650 Total purchases made under this paragraph (j) shall only be  
651 for the purpose of meeting needs created by the emergency  
652 situation. Following the emergency purchase, documentation of the  
653 purchase, including a description of the commodity purchased, the  
654 purchase price thereof and the nature of the emergency shall be  
655 filed with the Department of Finance and Administration.

656 (k) **Governing authority emergency purchase procedure.**

657 If the governing authority, or the governing authority acting  
658 through its designee, shall determine that an emergency exists in  
659 regard to the purchase of any commodities or repair contracts, so  
660 that the delay incident to giving opportunity for competitive  
661 bidding would be detrimental to the interest of the governing  
662 authority, then the provisions herein for competitive bidding  
663 shall not apply and any officer or agent of such governing  
664 authority having general or special authority therefor in making  
665 such purchase or repair shall approve the bill presented therefor,  
666 and he shall certify in writing thereon from whom such purchase  
667 was made, or with whom such a repair contract was made. At the  
668 board meeting next following the emergency purchase or repair  
669 contract, documentation of the purchase or repair contract,  
670 including a description of the commodity purchased, the price



671 thereof and the nature of the emergency shall be presented to the  
672 board and shall be placed on the minutes of the board of such  
673 governing authority.

674           (1) **Hospital purchase, lease-purchase and lease**  
675 **authorization.**

676                   (i) The commissioners or board of trustees of any  
677 public hospital may contract with such lowest and best bidder for  
678 the purchase or lease-purchase of any commodity under a contract  
679 of purchase or lease-purchase agreement whose obligatory payment  
680 terms do not exceed five (5) years.

681                   (ii) In addition to the authority granted in  
682 subparagraph (i) of this paragraph (1), the commissioners or board  
683 of trustees is authorized to enter into contracts for the lease of  
684 equipment or services, or both, which it considers necessary for  
685 the proper care of patients if, in its opinion, it is not  
686 financially feasible to purchase the necessary equipment or  
687 services. Any such contract for the lease of equipment or  
688 services executed by the commissioners or board shall not exceed a  
689 maximum of five (5) years' duration and shall include a  
690 cancellation clause based on unavailability of funds. If such  
691 cancellation clause is exercised, there shall be no further  
692 liability on the part of the lessee. Any such contract for the  
693 lease of equipment or services executed on behalf of the  
694 commissioners or board that complies with the provisions of this



695 subparagraph (ii) shall be excepted from the bid requirements set  
696 forth in this section.

697 (m) **Exceptions from bidding requirements.** Excepted  
698 from bid requirements are:

699 (i) **Purchasing agreements approved by department.**

700 Purchasing agreements, contracts and maximum price regulations  
701 executed or approved by the Department of Finance and  
702 Administration.

703 (ii) **Outside equipment repairs.** Repairs to  
704 equipment, when such repairs are made by repair facilities in the  
705 private sector; however, engines, transmissions, rear axles and/or  
706 other such components shall not be included in this exemption when  
707 replaced as a complete unit instead of being repaired and the need  
708 for such total component replacement is known before disassembly  
709 of the component; however, invoices identifying the equipment,  
710 specific repairs made, parts identified by number and name,  
711 supplies used in such repairs, and the number of hours of labor  
712 and costs therefor shall be required for the payment for such  
713 repairs.

714 (iii) **In-house equipment repairs.** Purchases of  
715 parts for repairs to equipment, when such repairs are made by  
716 personnel of the agency or governing authority; however, entire  
717 assemblies, such as engines or transmissions, shall not be  
718 included in this exemption when the entire assembly is being  
719 replaced instead of being repaired.



720 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
721 of gravel or fill dirt which are to be removed and transported by  
722 the purchaser.

723 (v) **Governmental equipment auctions.** Motor  
724 vehicles or other equipment purchased from a federal agency or  
725 authority, another governing authority or state agency of the  
726 State of Mississippi, or any governing authority or state agency  
727 of another state at a public auction held for the purpose of  
728 disposing of such vehicles or other equipment. Any purchase by a  
729 governing authority under the exemption authorized by this  
730 subparagraph (v) shall require advance authorization spread upon  
731 the minutes of the governing authority to include the listing of  
732 the item or items authorized to be purchased and the maximum bid  
733 authorized to be paid for each item or items.

734 (vi) **Intergovernmental sales and transfers.**  
735 Purchases, sales, transfers or trades by governing authorities or  
736 state agencies when such purchases, sales, transfers or trades are  
737 made by a private treaty agreement or through means of  
738 negotiation, from any federal agency or authority, another  
739 governing authority or state agency of the State of Mississippi,  
740 or any state agency or governing authority of another state.  
741 Nothing in this section shall permit such purchases through public  
742 auction except as provided for in subparagraph (v) of this \* \* \*  
743 paragraph (m). It is the intent of this section to allow  
744 governmental entities to dispose of and/or purchase commodities



745 from other governmental entities at a price that is agreed to by  
746 both parties. This shall allow for purchases and/or sales at  
747 prices which may be determined to be below the market value if the  
748 selling entity determines that the sale at below market value is  
749 in the best interest of the taxpayers of the state. Governing  
750 authorities shall place the terms of the agreement and any  
751 justification on the minutes, and state agencies shall obtain  
752 approval from the Department of Finance and Administration, prior  
753 to releasing or taking possession of the commodities.

754 (vii) **Perishable supplies or food.** Perishable  
755 supplies or food purchased for use in connection with hospitals,  
756 the school lunch programs, homemaking programs and for the feeding  
757 of county or municipal prisoners.

758 (viii) **Single source items.** Noncompetitive items  
759 available from one (1) source only. In connection with the  
760 purchase of noncompetitive items only available from one (1)  
761 source, a certification of the conditions and circumstances  
762 requiring the purchase shall be filed by the agency with the  
763 Department of Finance and Administration and by the governing  
764 authority with the board of the governing authority. Upon receipt  
765 of that certification the Department of Finance and Administration  
766 or the board of the governing authority, as the case may be, may,  
767 in writing, authorize the purchase, which authority shall be noted  
768 on the minutes of the body at the next regular meeting thereafter.  
769 In those situations, a governing authority is not required to



770 obtain the approval of the Department of Finance and  
771 Administration. Following the purchase, the executive head of the  
772 state agency, or his designees, shall file with the Department of  
773 Finance and Administration, documentation of the purchase,  
774 including a description of the commodity purchased, the purchase  
775 price thereof and the source from whom it was purchased.

776 (ix) **Waste disposal facility construction**  
777 **contracts.** Construction of incinerators and other facilities for  
778 disposal of solid wastes in which products either generated  
779 therein, such as steam, or recovered therefrom, such as materials  
780 for recycling, are to be sold or otherwise disposed of; however,  
781 in constructing such facilities, a governing authority or agency  
782 shall publicly issue requests for proposals, advertised for in the  
783 same manner as provided herein for seeking bids for public  
784 construction projects, concerning the design, construction,  
785 ownership, operation and/or maintenance of such facilities,  
786 wherein such requests for proposals when issued shall contain  
787 terms and conditions relating to price, financial responsibility,  
788 technology, environmental compatibility, legal responsibilities  
789 and such other matters as are determined by the governing  
790 authority or agency to be appropriate for inclusion; and after  
791 responses to the request for proposals have been duly received,  
792 the governing authority or agency may select the most qualified  
793 proposal or proposals on the basis of price, technology and other  
794 relevant factors and from such proposals, but not limited to the





795 terms thereof, negotiate and enter contracts with one or more of  
796 the persons or firms submitting proposals.

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

800           (xi) **Information technology products.** Purchases  
801 of information technology products made by governing authorities  
802 under the provisions of purchase schedules, or contracts executed  
803 or approved by the Mississippi Department of Information  
804 Technology Services and designated for use by governing  
805 authorities.

806           (xii) **Energy efficiency services and equipment.**  
807 Energy efficiency services and equipment acquired by school  
808 districts, community and junior colleges, institutions of higher  
809 learning and state agencies or other applicable governmental  
810 entities on a shared-savings, lease or lease-purchase basis  
811 pursuant to Section 31-7-14.

812           (xiii) **Municipal electrical utility system fuel.**  
813 Purchases of coal and/or natural gas by municipally owned electric  
814 power generating systems that have the capacity to use both coal  
815 and natural gas for the generation of electric power.

816           (xiv) **Library books and other reference materials.**  
817 Purchases by libraries or for libraries of books and periodicals;  
818 processed film, videocassette tapes, filmstrips and slides;  
819 recorded audiotapes, cassettes and diskettes; and any such items



820 as would be used for teaching, research or other information  
821 distribution; however, equipment such as projectors, recorders,  
822 audio or video equipment, and monitor televisions are not exempt  
823 under this subparagraph.

824 (xv) **Unmarked vehicles.** Purchases of unmarked  
825 vehicles when such purchases are made in accordance with  
826 purchasing regulations adopted by the Department of Finance and  
827 Administration pursuant to Section 31-7-9(2).

828 (xvi) **Election ballots.** Purchases of ballots  
829 printed pursuant to Section 23-15-351.

830 (xvii) **Multichannel interactive video systems.**  
831 From and after July 1, 1990, contracts by Mississippi Authority  
832 for Educational Television with any private educational  
833 institution or private nonprofit organization whose purposes are  
834 educational in regard to the construction, purchase, lease or  
835 lease-purchase of facilities and equipment and the employment of  
836 personnel for providing multichannel interactive video systems  
837 (ITSF) in the school districts of this state.

838 (xviii) **Purchases of prison industry products by**  
839 **the Department of Corrections, regional correctional facilities or**  
840 **privately owned prisons.** Purchases made by the Mississippi  
841 Department of Corrections, regional correctional facilities or  
842 privately owned prisons involving any item that is manufactured,  
843 processed, grown or produced from the state's prison industries.



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

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

853                   (xxi)   **Certain school district purchases.**  
854 Purchases of commodities made by school districts from vendors  
855 with which any levying authority of the school district, as  
856 defined in Section 37-57-1, has contracted through competitive  
857 bidding procedures for purchases of the same commodities.

858                   (xxii)   **Garbage, solid waste and sewage contracts.**  
859 Contracts for garbage collection or disposal, contracts for solid  
860 waste collection or disposal and contracts for sewage collection  
861 or disposal.

862                   (xxiii)   **Municipal water tank maintenance**  
863 **contracts.** Professional maintenance program contracts for the  
864 repair or maintenance of municipal water tanks, which provide  
865 professional services needed to maintain municipal water storage  
866 tanks for a fixed annual fee for a duration of two (2) or more  
867 years.



868 (xxiv) **Purchases of Mississippi Industries for the**  
869 **Blind products.** Purchases made by state agencies or governing  
870 authorities involving any item that is manufactured, processed or  
871 produced by the Mississippi Industries for the Blind.

872 (xxv) **Purchases of state-adopted textbooks.**  
873 Purchases of state-adopted textbooks by public school districts.

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

877 (xxvii) **Used heavy or specialized machinery or**  
878 **equipment for installation of soil and water conservation**  
879 **practices purchased at auction.** Used heavy or specialized  
880 machinery or equipment used for the installation and  
881 implementation of soil and water conservation practices or  
882 measures purchased subject to the restrictions provided in  
883 Sections 69-27-331 through 69-27-341. Any purchase by the State  
884 Soil and Water Conservation Commission under the exemption  
885 authorized by this subparagraph shall require advance  
886 authorization spread upon the minutes of the commission to include  
887 the listing of the item or items authorized to be purchased and  
888 the maximum bid authorized to be paid for each item or items.

889 (xxviii) **Hospital lease of equipment or services.**  
890 Leases by hospitals of equipment or services if the leases are in  
891 compliance with paragraph (1)(ii).



892                   (xxix)   **Purchases made pursuant to qualified**  
893 **cooperative purchasing agreements.** Purchases made by certified  
894 purchasing offices of state agencies or governing authorities  
895 under cooperative purchasing agreements previously approved by the  
896 Office of Purchasing and Travel and established by or for any  
897 municipality, county, parish or state government or the federal  
898 government, provided that the notification to potential  
899 contractors includes a clause that sets forth the availability of  
900 the cooperative purchasing agreement to other governmental  
901 entities. Such purchases shall only be made if the use of the  
902 cooperative purchasing agreements is determined to be in the best  
903 interest of the governmental entity.

904                   (xxx)   **School yearbooks.** Purchases of school  
905 yearbooks by state agencies or governing authorities; provided,  
906 however, that state agencies and governing authorities shall use  
907 for these purchases the RFP process as set forth in the  
908 Mississippi Procurement Manual adopted by the Office of Purchasing  
909 and Travel.

910                   (xxxi)   **Design-build method and dual-phase**  
911 **design-build method of contracting.** Contracts entered into under  
912 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

913                   (xxxii)   **Toll roads and bridge construction**  
914 **projects.** Contracts entered into under the provisions of Section  
915 65-43-1 or 65-43-3.



916 (xxxiii) **Certain purchases under Section 57-1-221.**  
917 Contracts entered into pursuant to the provisions of Section  
918 57-1-221.

919 (xxxiv) **Certain transfers made pursuant to the**  
920 **provisions of Section 57-105-1(7).** Transfers of public property  
921 or facilities under Section 57-105-1(7) and construction related  
922 to such public property or facilities.

923 (xxxv) **Certain purchases or transfers entered into**  
924 **with local electrical power associations.** Contracts or agreements  
925 entered into under the provisions of Section 55-3-33.

926 (xxxvi) **Certain purchases by an academic medical**  
927 **center or health sciences school.** Purchases by an academic  
928 medical center or health sciences school, as defined in Section 1  
929 of this act, of commodities that are used for clinical purposes  
930 and 1. intended for use in the diagnosis of disease or other  
931 conditions or in the cure, mitigation, treatment or prevention of  
932 disease, and 2. medical devices, biological, drugs and  
933 radiation-emitting devices as defined by the United States Food  
934 and Drug Administration.

935 (n) **Term contract authorization.** All contracts for the  
936 purchase of:

937 (i) All contracts for the purchase of commodities,  
938 equipment and public construction (including, but not limited to,  
939 repair and maintenance), may be let for periods of not more than  
940 sixty (60) months in advance, subject to applicable statutory



941 provisions prohibiting the letting of contracts during specified  
942 periods near the end of terms of office. Term contracts for a  
943 period exceeding twenty-four (24) months shall also be subject to  
944 ratification or cancellation by governing authority boards taking  
945 office subsequent to the governing authority board entering the  
946 contract.

947 (ii) Bid proposals and contracts may include price  
948 adjustment clauses with relation to the cost to the contractor  
949 based upon a nationally published industry-wide or nationally  
950 published and recognized cost index. The cost index used in a  
951 price adjustment clause shall be determined by the Department of  
952 Finance and Administration for the state agencies and by the  
953 governing board for governing authorities. The bid proposal and  
954 contract documents utilizing a price adjustment clause shall  
955 contain the basis and method of adjusting unit prices for the  
956 change in the cost of such commodities, equipment and public  
957 construction.

958 (o) **Purchase law violation prohibition and vendor**  
959 **penalty.** No contract or purchase as herein authorized shall be  
960 made for the purpose of circumventing the provisions of this  
961 section requiring competitive bids, nor shall it be lawful for any  
962 person or concern to submit individual invoices for amounts within  
963 those authorized for a contract or purchase where the actual value  
964 of the contract or commodity purchased exceeds the authorized  
965 amount and the invoices therefor are split so as to appear to be



966 authorized as purchases for which competitive bids are not  
967 required. Submission of such invoices shall constitute a  
968 misdemeanor punishable by a fine of not less than Five Hundred  
969 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
970 or by imprisonment for thirty (30) days in the county jail, or  
971 both such fine and imprisonment. In addition, the claim or claims  
972 submitted shall be forfeited.

973           (p) **Electrical utility petroleum-based equipment**  
974 **purchase procedure.** When in response to a proper advertisement  
975 therefor, no bid firm as to price is submitted to an electric  
976 utility for power transformers, distribution transformers, power  
977 breakers, reclosers or other articles containing a petroleum  
978 product, the electric utility may accept the lowest and best bid  
979 therefor although the price is not firm.

980           (q) **Fuel management system bidding procedure.** Any  
981 governing authority or agency of the state shall, before  
982 contracting for the services and products of a fuel management or  
983 fuel access system, enter into negotiations with not fewer than  
984 two (2) sellers of fuel management or fuel access systems for  
985 competitive written bids to provide the services and products for  
986 the systems. In the event that the governing authority or agency  
987 cannot locate two (2) sellers of such systems or cannot obtain  
988 bids from two (2) sellers of such systems, it shall show proof  
989 that it made a diligent, good-faith effort to locate and negotiate  
990 with two (2) sellers of such systems. Such proof shall include,





991 but not be limited to, publications of a request for proposals and  
992 letters soliciting negotiations and bids. For purposes of this  
993 paragraph (q), a fuel management or fuel access system is an  
994 automated system of acquiring fuel for vehicles as well as  
995 management reports detailing fuel use by vehicles and drivers, and  
996 the term "competitive written bid" shall have the meaning as  
997 defined in paragraph (b) of this section. Governing authorities  
998 and agencies shall be exempt from this process when contracting  
999 for the services and products of fuel management or fuel access  
1000 systems under the terms of a state contract established by the  
1001 Office of Purchasing and Travel.

1002 (r) **Solid waste contract proposal procedure.** Before  
1003 entering into any contract for garbage collection or disposal,  
1004 contract for solid waste collection or disposal or contract for  
1005 sewage collection or disposal, which involves an expenditure of  
1006 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1007 authority or agency shall issue publicly a request for proposals  
1008 concerning the specifications for such services which shall be  
1009 advertised for in the same manner as provided in this section for  
1010 seeking bids for purchases which involve an expenditure of more  
1011 than the amount provided in paragraph (c) of this section. Any  
1012 request for proposals when issued shall contain terms and  
1013 conditions relating to price, financial responsibility,  
1014 technology, legal responsibilities and other relevant factors as  
1015 are determined by the governing authority or agency to be



1016 appropriate for inclusion; all factors determined relevant by the  
1017 governing authority or agency or required by this paragraph (r)  
1018 shall be duly included in the advertisement to elicit proposals.  
1019 After responses to the request for proposals have been duly  
1020 received, the governing authority or agency shall select the most  
1021 qualified proposal or proposals on the basis of price, technology  
1022 and other relevant factors and from such proposals, but not  
1023 limited to the terms thereof, negotiate and enter into contracts  
1024 with one or more of the persons or firms submitting proposals. If  
1025 the governing authority or agency deems none of the proposals to  
1026 be qualified or otherwise acceptable, the request for proposals  
1027 process may be reinitiated. Notwithstanding any other provisions  
1028 of this paragraph, where a county with at least thirty-five  
1029 thousand (35,000) nor more than forty thousand (40,000)  
1030 population, according to the 1990 federal decennial census, owns  
1031 or operates a solid waste landfill, the governing authorities of  
1032 any other county or municipality may contract with the governing  
1033 authorities of the county owning or operating the landfill,  
1034 pursuant to a resolution duly adopted and spread upon the minutes  
1035 of each governing authority involved, for garbage or solid waste  
1036 collection or disposal services through contract negotiations.

1037 (s) **Minority set-aside authorization.** Notwithstanding  
1038 any provision of this section to the contrary, any agency or  
1039 governing authority, by order placed on its minutes, may, in its  
1040 discretion, set aside not more than twenty percent (20%) of its



1041 anticipated annual expenditures for the purchase of commodities  
1042 from minority businesses; however, all such set-aside purchases  
1043 shall comply with all purchasing regulations promulgated by the  
1044 Department of Finance and Administration and shall be subject to  
1045 bid requirements under this section. Set-aside purchases for  
1046 which competitive bids are required shall be made from the lowest  
1047 and best minority business bidder. For the purposes of this  
1048 paragraph, the term "minority business" means a business which is  
1049 owned by a majority of persons who are United States citizens or  
1050 permanent resident aliens (as defined by the Immigration and  
1051 Naturalization Service) of the United States, and who are Asian,  
1052 Black, Hispanic or Native American, according to the following  
1053 definitions:

1054 (i) "Asian" means persons having origins in any of  
1055 the original people of the Far East, Southeast Asia, the Indian  
1056 subcontinent, or the Pacific Islands.

1057 (ii) "Black" means persons having origins in any  
1058 black racial group of Africa.

1059 (iii) "Hispanic" means persons of Spanish or  
1060 Portuguese culture with origins in Mexico, South or Central  
1061 America, or the Caribbean Islands, regardless of race.

1062 (iv) "Native American" means persons having  
1063 origins in any of the original people of North America, including  
1064 American Indians, Eskimos and Aleuts.



1065                   (t)   **Construction punch list restriction.**   The  
1066 architect, engineer or other representative designated by the  
1067 agency or governing authority that is contracting for public  
1068 construction or renovation may prepare and submit to the  
1069 contractor only one (1) preliminary punch list of items that do  
1070 not meet the contract requirements at the time of substantial  
1071 completion and one (1) final list immediately before final  
1072 completion and final payment.

1073                   (u)   **Procurement of construction services by state**  
1074 **institutions of higher learning.**   Contracts for privately financed  
1075 construction of auxiliary facilities on the campus of a state  
1076 institution of higher learning may be awarded by the Board of  
1077 Trustees of State Institutions of Higher Learning to the lowest  
1078 and best bidder, where sealed bids are solicited, or to the  
1079 offeror whose proposal is determined to represent the best value  
1080 to the citizens of the State of Mississippi, where requests for  
1081 proposals are solicited.

1082                   (v)   **Insurability of bidders for public construction or**  
1083 **other public contracts.**   In any solicitation for bids to perform  
1084 public construction or other public contracts to which this  
1085 section applies including, but not limited to, contracts for  
1086 repair and maintenance, for which the contract will require  
1087 insurance coverage in an amount of not less than One Million  
1088 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1089 submit proof of current insurance coverage in the specified amount



1090 or demonstrate ability to obtain the required coverage amount of  
1091 insurance if the contract is awarded to the bidder. Proof of  
1092 insurance coverage shall be submitted within five (5) business  
1093 days from bid acceptance.

1094 (w) **Purchase authorization clarification.** Nothing in  
1095 this section shall be construed as authorizing any purchase not  
1096 authorized by law.

1097 **SECTION 6.** The provisions of this act are severable. If any  
1098 part is declared invalid or unconstitutional, that declaration  
1099 shall not affect the part which remains.

1100 **SECTION 7.** This act shall take effect and be in force from  
1101 and after July 1, 2017.

