

By: Representatives Turner, Hughes

To: Accountability,  
Efficiency, Transparency

HOUSE BILL NO. 1106

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
 2 REQUIRE A PURCHASING ENTITY TO ACCEPT A BID SUBMITTED THROUGH A  
 3 SECURE ELECTRONIC FORMAT FROM CONTRACTORS WHO HAVE THE CAPABILITY  
 4 TO SUBMIT A BID ELECTRONICALLY THROUGH A SECURE SYSTEM; TO REQUIRE  
 5 A PURCHASING ENTITY TO MAKE THE APPROPRIATE PROVISIONS NECESSARY  
 6 TO BE ABLE TO ACCEPT BIDS SUBMITTED ELECTRONICALLY THROUGH A  
 7 SECURE SYSTEM FOR ALL PURCHASES THAT REQUIRE COMPETITIVE SEALED  
 8 BIDDING; TO REQUIRE AGENCIES AND GOVERNING AUTHORITIES TO  
 9 ESTABLISH SECURE PROCEDURES BY WHICH BIDS MAY BE SUBMITTED VIA  
 10 ELECTRONIC MEANS; TO PROVIDE THAT AGENCIES AND GOVERNING  
 11 AUTHORITIES THAT ARE CURRENTLY WITHOUT HIGH SPEED INTERNET ACCESS  
 12 SHALL BE EXEMPT FROM THIS REQUIREMENT UNTIL SUCH TIME THAT HIGH  
 13 SPEED INTERNET ACCESS BECOMES AVAILABLE; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is  
 16 amended as follows:

17 31-7-13. All agencies and governing authorities shall  
 18 purchase their commodities and printing; contract for garbage  
 19 collection or disposal; contract for solid waste collection or  
 20 disposal; contract for sewage collection or disposal; contract for  
 21 public construction; and contract for rentals as herein provided.

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

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



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

30 (b) **Bidding procedure for purchases over \$5,000.00 but**  
31 **not over \$50,000.00.** Purchases which involve an expenditure of  
32 more than Five Thousand Dollars (\$5,000.00) but not more than  
33 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
34 shipping charges may be made from the lowest and best bidder  
35 without publishing or posting advertisement for bids, provided at  
36 least two (2) competitive written bids have been obtained. Any  
37 state agency or community/junior college purchasing commodities or  
38 procuring construction pursuant to this paragraph (b) may  
39 authorize its purchasing agent, or his designee, to accept the  
40 lowest competitive written bid under Fifty Thousand Dollars  
41 (\$50,000.00). Any governing authority purchasing commodities  
42 pursuant to this paragraph (b) may authorize its purchasing agent,  
43 or his designee, with regard to governing authorities other than  
44 counties, or its purchase clerk, or his designee, with regard to  
45 counties, to accept the lowest and best competitive written bid.  
46 Such authorization shall be made in writing by the governing  
47 authority and shall be maintained on file in the primary office of  
48 the agency and recorded in the official minutes of the governing



49 authority, as appropriate. The purchasing agent or the purchase  
50 clerk, or their designee, as the case may be, and not the  
51 governing authority, shall be liable for any penalties and/or  
52 damages as may be imposed by law for any act or omission of the  
53 purchasing agent or purchase clerk, or their designee,  
54 constituting a violation of law in accepting any bid without  
55 approval by the governing authority. The term "competitive  
56 written bid" shall mean a bid submitted on a bid form furnished by  
57 the buying agency or governing authority and signed by authorized  
58 personnel representing the vendor, or a bid submitted on a  
59 vendor's letterhead or identifiable bid form and signed by  
60 authorized personnel representing the vendor. "Competitive" shall  
61 mean that the bids are developed based upon comparable  
62 identification of the needs and are developed independently and  
63 without knowledge of other bids or prospective bids. Any bid item  
64 for construction in excess of Five Thousand Dollars (\$5,000.00)  
65 shall be broken down by components to provide detail of component  
66 description and pricing. These details shall be submitted with  
67 the written bids and become part of the bid evaluation criteria.  
68 Bids may be submitted by facsimile, electronic mail or other  
69 generally accepted method of information distribution. Bids  
70 submitted by electronic transmission shall not require the  
71 signature of the vendor's representative unless required by  
72 agencies or governing authorities.

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



74 (i) **Publication requirement.**

75 1. Purchases which involve an expenditure of  
76 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
77 freight and shipping charges, may be made from the lowest and best  
78 bidder after advertising for competitive bids once each week for  
79 two (2) consecutive weeks in a regular newspaper published in the  
80 county or municipality in which such agency or governing authority  
81 is located. However, all American Recovery and Reinvestment Act  
82 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
83 shall be bid. All references to American Recovery and  
84 Reinvestment Act projects in this section shall not apply to  
85 programs identified in Division B of the American Recovery and  
86 Reinvestment Act.

87 2. The purchasing entity may designate the  
88 method by which the bids will be received, including, but not  
89 limited to, bids sealed in an envelope, bids received  
90 electronically in a secure system, bids received via a reverse  
91 auction, or bids received by any other method that promotes open  
92 competition and has been approved by the Office of Purchasing and  
93 Travel. However, reverse auction shall not be used for any public  
94 contract for design or construction of public facilities,  
95 including buildings, roads and bridges. If a contractor has the  
96 capability to submit a bid electronically through a secure system,  
97 the purchasing entity must accept the bid in that format. Except  
98 as otherwise provided in subparagraph (v) of this paragraph (c),



99 all purchasing entities shall make the appropriate provisions  
100 necessary for the acceptance of bids submitted electronically  
101 through a secure system for all purchases that require competitive  
102 sealed bidding as provided in this section.

103                   3. The date as published for the bid opening  
104 shall not be less than seven (7) working days after the last  
105 published notice; however, if the purchase involves a construction  
106 project in which the estimated cost is in excess of Fifty Thousand  
107 Dollars (\$50,000.00), such bids shall not be opened in less than  
108 fifteen (15) working days after the last notice is published and  
109 the notice for the purchase of such construction shall be  
110 published once each week for two (2) consecutive weeks. However,  
111 all American Recovery and Reinvestment Act projects in excess of  
112 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
113 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
114 under the American Recovery and Reinvestment Act, publication  
115 shall be made one (1) time and the bid opening for construction  
116 projects shall not be less than ten (10) working days after the  
117 date of the published notice. The notice of intention to let  
118 contracts or purchase equipment shall state the time and place at  
119 which bids shall be received, list the contracts to be made or  
120 types of equipment or supplies to be purchased, and, if all plans  
121 and/or specifications are not published, refer to the plans and/or  
122 specifications on file. If there is no newspaper published in the  
123 county or municipality, then such notice shall be given by posting



124 same at the courthouse, or for municipalities at the city hall,  
125 and at two (2) other public places in the county or municipality,  
126 and also by publication once each week for two (2) consecutive  
127 weeks in some newspaper having a general circulation in the county  
128 or municipality in the above-provided manner. On the same date  
129 that the notice is submitted to the newspaper for publication, the  
130 agency or governing authority involved shall mail written notice  
131 to, or provide electronic notification to the main office of the  
132 Mississippi Procurement Technical Assistance Program under the  
133 Mississippi Development Authority that contains the same  
134 information as that in the published notice. Submissions received  
135 by the Mississippi Procurement Technical Assistance Program for  
136 projects funded by the American Recovery and Reinvestment Act  
137 shall be displayed on a separate and unique Internet web page  
138 accessible to the public and maintained by the Mississippi  
139 Development Authority for the Mississippi Procurement Technical  
140 Assistance Program. Those American Recovery and Reinvestment Act  
141 related submissions shall be publicly posted within twenty-four  
142 (24) hours of receipt by the Mississippi Development Authority and  
143 the bid opening shall not occur until the submission has been  
144 posted for ten (10) consecutive days. The Department of Finance  
145 and Administration shall maintain information regarding contracts  
146 and other expenditures from the American Recovery and Reinvestment  
147 Act, on a unique Internet web page accessible to the public. The  
148 Department of Finance and Administration shall promulgate rules



149 regarding format, content and deadlines, unless otherwise  
150 specified by law, of the posting of award notices, contract  
151 execution and subsequent amendments, links to the contract  
152 documents, expenditures against the awarded contracts and general  
153 expenditures of funds from the American Recovery and Reinvestment  
154 Act. Within one (1) working day of the contract award, the agency  
155 or governing authority shall post to the designated web page  
156 maintained by the Department of Finance and Administration, notice  
157 of the award, including the award recipient, the contract amount,  
158 and a brief summary of the contract in accordance with rules  
159 promulgated by the department. Within one (1) working day of the  
160 contract execution, the agency or governing authority shall post  
161 to the designated web page maintained by the Department of Finance  
162 and Administration a summary of the executed contract and make a  
163 copy of the appropriately redacted contract documents available  
164 for linking to the designated web page in accordance with the  
165 rules promulgated by the department. The information provided by  
166 the agency or governing authority shall be posted to the web page  
167 for the duration of the American Recovery and Reinvestment Act  
168 funding or until the project is completed, whichever is longer.

169 (ii) **Bidding process amendment procedure.** If all  
170 plans and/or specifications are published in the notification,  
171 then the plans and/or specifications may not be amended. If all  
172 plans and/or specifications are not published in the notification,  
173 then amendments to the plans/specifications, bid opening date, bid



174 opening time and place may be made, provided that the agency or  
175 governing authority maintains a list of all prospective bidders  
176 who are known to have received a copy of the bid documents and all  
177 such prospective bidders are sent copies of all amendments. This  
178 notification of amendments may be made via mail, facsimile,  
179 electronic mail or other generally accepted method of information  
180 distribution. No addendum to bid specifications may be issued  
181 within two (2) working days of the time established for the  
182 receipt of bids unless such addendum also amends the bid opening  
183 to a date not less than five (5) working days after the date of  
184 the addendum.

185                   (iii) **Filing requirement.** In all cases involving  
186 governing authorities, before the notice shall be published or  
187 posted, the plans or specifications for the construction or  
188 equipment being sought shall be filed with the clerk of the board  
189 of the governing authority. In addition to these requirements, a  
190 bid file shall be established which shall indicate those vendors  
191 to whom such solicitations and specifications were issued, and  
192 such file shall also contain such information as is pertinent to  
193 the bid.

194                   (iv) **Specification restrictions.**

195                               1. Specifications pertinent to such bidding  
196 shall be written so as not to exclude comparable equipment of  
197 domestic manufacture. However, if valid justification is  
198 presented, the Department of Finance and Administration or the



199 board of a governing authority may approve a request for specific  
200 equipment necessary to perform a specific job. Further, such  
201 justification, when placed on the minutes of the board of a  
202 governing authority, may serve as authority for that governing  
203 authority to write specifications to require a specific item of  
204 equipment needed to perform a specific job. In addition to these  
205 requirements, from and after July 1, 1990, vendors of relocatable  
206 classrooms and the specifications for the purchase of such  
207 relocatable classrooms published by local school boards shall meet  
208 all pertinent regulations of the State Board of Education,  
209 including prior approval of such bid by the State Department of  
210 Education.

211                   2. Specifications for construction projects  
212 may include an allowance for commodities, equipment, furniture,  
213 construction materials or systems in which prospective bidders are  
214 instructed to include in their bids specified amounts for such  
215 items so long as the allowance items are acquired by the vendor in  
216 a commercially reasonable manner and approved by the  
217 agency/governing authority. Such acquisitions shall not be made  
218 to circumvent the public purchasing laws.

219                   (v) Agencies and governing authorities \* \* \* shall  
220 establish secure procedures by which bids may be submitted via  
221 electronic means. Agencies and governing authorities that are  
222 currently without high speed Internet access shall be exempt from



223 this requirement until such time that high speed Internet access  
224 becomes available.

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

226 (i) **Decision procedure.** Purchases may be made  
227 from the lowest and best bidder. In determining the lowest and  
228 best bid, freight and shipping charges shall be included.  
229 Life-cycle costing, total cost bids, warranties, guaranteed  
230 buy-back provisions and other relevant provisions may be included  
231 in the best bid calculation. All best bid procedures for state  
232 agencies must be in compliance with regulations established by the  
233 Department of Finance and Administration. If any governing  
234 authority accepts a bid other than the lowest bid actually  
235 submitted, it shall place on its minutes detailed calculations and  
236 narrative summary showing that the accepted bid was determined to  
237 be the lowest and best bid, including the dollar amount of the  
238 accepted bid and the dollar amount of the lowest bid. No agency  
239 or governing authority shall accept a bid based on items not  
240 included in the specifications.

241 (ii) **Decision procedure for Certified Purchasing**  
242 **Offices.** In addition to the decision procedure set forth in \* \* \*  
243 subparagraph (i) of this paragraph (d), Certified Purchasing  
244 Offices may also use the following procedure: Purchases may be  
245 made from the bidder offering the best value. In determining the  
246 best value bid, freight and shipping charges shall be included.  
247 Life-cycle costing, total cost bids, warranties, guaranteed



248 buy-back provisions, documented previous experience, training  
249 costs and other relevant provisions, including, but not limited  
250 to, a bidder having a local office and inventory located within  
251 the jurisdiction of the governing authority, may be included in  
252 the best value calculation. This provision shall authorize  
253 Certified Purchasing Offices to utilize a Request For Proposals  
254 (RFP) process when purchasing commodities. All best value  
255 procedures for state agencies must be in compliance with  
256 regulations established by the Department of Finance and  
257 Administration. No agency or governing authority shall accept a  
258 bid based on items or criteria not included in the specifications.

259 (iii) **Decision procedure for Mississippi**

260 **Landmarks.** In addition to the decision procedure set forth  
261 in \* \* \* subparagraph (i) of this paragraph (d), where purchase  
262 involves renovation, restoration, or both, of the State Capitol  
263 Building or any other historical building designated for at least  
264 five (5) years as a Mississippi Landmark by the Board of Trustees  
265 of the Department of Archives and History under the authority of  
266 Sections 39-7-7 and 39-7-11, the agency or governing authority may  
267 use the following procedure: Purchases may be made from the  
268 lowest and best prequalified bidder. Prequalification of bidders  
269 shall be determined not less than fifteen (15) working days before  
270 the first published notice of bid opening. Prequalification  
271 criteria shall be limited to bidder's knowledge and experience in  
272 historical restoration, preservation and renovation. In



273 determining the lowest and best bid, freight and shipping charges  
274 shall be included. Life-cycle costing, total cost bids,  
275 warranties, guaranteed buy-back provisions and other relevant  
276 provisions may be included in the best bid calculation. All best  
277 bid and prequalification procedures for state agencies must be in  
278 compliance with regulations established by the Department of  
279 Finance and Administration. If any governing authority accepts a  
280 bid other than the lowest bid actually submitted, it shall place  
281 on its minutes detailed calculations and narrative summary showing  
282 that the accepted bid was determined to be the lowest and best  
283 bid, including the dollar amount of the accepted bid and the  
284 dollar amount of the lowest bid. No agency or governing authority  
285 shall accept a bid based on items not included in the  
286 specifications.

287                   (iv) **Construction project negotiations authority.**  
288 If the lowest and best bid is not more than ten percent (10%)  
289 above the amount of funds allocated for a public construction or  
290 renovation project, then the agency or governing authority shall  
291 be permitted to negotiate with the lowest bidder in order to enter  
292 into a contract for an amount not to exceed the funds allocated.

293                   (e) **Lease-purchase authorization.** For the purposes of  
294 this section, the term "equipment" shall mean equipment, furniture  
295 and, if applicable, associated software and other applicable  
296 direct costs associated with the acquisition. Any lease-purchase  
297 of equipment which an agency is not required to lease-purchase



298 under the master lease-purchase program pursuant to Section  
299 31-7-10 and any lease-purchase of equipment which a governing  
300 authority elects to lease-purchase may be acquired by a  
301 lease-purchase agreement under this paragraph (e). Lease-purchase  
302 financing may also be obtained from the vendor or from a  
303 third-party source after having solicited and obtained at least  
304 two (2) written competitive bids, as defined in paragraph (b) of  
305 this section, for such financing without advertising for such  
306 bids. Solicitation for the bids for financing may occur before or  
307 after acceptance of bids for the purchase of such equipment or,  
308 where no such bids for purchase are required, at any time before  
309 the purchase thereof. No such lease-purchase agreement shall be  
310 for an annual rate of interest which is greater than the overall  
311 maximum interest rate to maturity on general obligation  
312 indebtedness permitted under Section 75-17-101, and the term of  
313 such lease-purchase agreement shall not exceed the useful life of  
314 equipment covered thereby as determined according to the upper  
315 limit of the asset depreciation range (ADR) guidelines for the  
316 Class Life Asset Depreciation Range System established by the  
317 Internal Revenue Service pursuant to the United States Internal  
318 Revenue Code and regulations thereunder as in effect on December  
319 31, 1980, or comparable depreciation guidelines with respect to  
320 any equipment not covered by ADR guidelines. Any lease-purchase  
321 agreement entered into pursuant to this paragraph (e) may contain  
322 any of the terms and conditions which a master lease-purchase



323 agreement may contain under the provisions of Section 31-7-10(5),  
324 and shall contain an annual allocation dependency clause  
325 substantially similar to that set forth in Section 31-7-10(8).  
326 Each agency or governing authority entering into a lease-purchase  
327 transaction pursuant to this paragraph (e) shall maintain with  
328 respect to each such lease-purchase transaction the same  
329 information as required to be maintained by the Department of  
330 Finance and Administration pursuant to Section 31-7-10(13).  
331 However, nothing contained in this section shall be construed to  
332 permit agencies to acquire items of equipment with a total  
333 acquisition cost in the aggregate of less than Ten Thousand  
334 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
335 equipment, and the purchase thereof by any lessor, acquired by  
336 lease-purchase under this paragraph and all lease-purchase  
337 payments with respect thereto shall be exempt from all Mississippi  
338 sales, use and ad valorem taxes. Interest paid on any  
339 lease-purchase agreement under this section shall be exempt from  
340 State of Mississippi income taxation.

341 (f) **Alternate bid authorization.** When necessary to  
342 ensure ready availability of commodities for public works and the  
343 timely completion of public projects, no more than two (2)  
344 alternate bids may be accepted by a governing authority for  
345 commodities. No purchases may be made through use of such  
346 alternate bids procedure unless the lowest and best bidder cannot  
347 deliver the commodities contained in his bid. In that event,



348 purchases of such commodities may be made from one (1) of the  
349 bidders whose bid was accepted as an alternate.

350 (g) **Construction contract change authorization.** In the  
351 event a determination is made by an agency or governing authority  
352 after a construction contract is let that changes or modifications  
353 to the original contract are necessary or would better serve the  
354 purpose of the agency or the governing authority, such agency or  
355 governing authority may, in its discretion, order such changes  
356 pertaining to the construction that are necessary under the  
357 circumstances without the necessity of further public bids;  
358 provided that such change shall be made in a commercially  
359 reasonable manner and shall not be made to circumvent the public  
360 purchasing statutes. In addition to any other authorized person,  
361 the architect or engineer hired by an agency or governing  
362 authority with respect to any public construction contract shall  
363 have the authority, when granted by an agency or governing  
364 authority, to authorize changes or modifications to the original  
365 contract without the necessity of prior approval of the agency or  
366 governing authority when any such change or modification is less  
367 than one percent (1%) of the total contract amount. The agency or  
368 governing authority may limit the number, manner or frequency of  
369 such emergency changes or modifications.

370 (h) **Petroleum purchase alternative.** In addition to  
371 other methods of purchasing authorized in this chapter, when any  
372 agency or governing authority shall have a need for gas, diesel



373 fuel, oils and/or other petroleum products in excess of the amount  
374 set forth in paragraph (a) of this section, such agency or  
375 governing authority may purchase the commodity after having  
376 solicited and obtained at least two (2) competitive written bids,  
377 as defined in paragraph (b) of this section. If two (2)  
378 competitive written bids are not obtained, the entity shall comply  
379 with the procedures set forth in paragraph (c) of this section.  
380 In the event any agency or governing authority shall have  
381 advertised for bids for the purchase of gas, diesel fuel, oils and  
382 other petroleum products and coal and no acceptable bids can be  
383 obtained, such agency or governing authority is authorized and  
384 directed to enter into any negotiations necessary to secure the  
385 lowest and best contract available for the purchase of such  
386 commodities.

387           (i) **Road construction petroleum products price**  
388 **adjustment clause authorization.** Any agency or governing  
389 authority authorized to enter into contracts for the construction,  
390 maintenance, surfacing or repair of highways, roads or streets,  
391 may include in its bid proposal and contract documents a price  
392 adjustment clause with relation to the cost to the contractor,  
393 including taxes, based upon an industry-wide cost index, of  
394 petroleum products including asphalt used in the performance or  
395 execution of the contract or in the production or manufacture of  
396 materials for use in such performance. Such industry-wide index  
397 shall be established and published monthly by the Mississippi



398 Department of Transportation with a copy thereof to be mailed,  
399 upon request, to the clerks of the governing authority of each  
400 municipality and the clerks of each board of supervisors  
401 throughout the state. The price adjustment clause shall be based  
402 on the cost of such petroleum products only and shall not include  
403 any additional profit or overhead as part of the adjustment. The  
404 bid proposals or document contract shall contain the basis and  
405 methods of adjusting unit prices for the change in the cost of  
406 such petroleum products.

407           (j) **State agency emergency purchase procedure.** If the  
408 governing board or the executive head, or his designees, of any  
409 agency of the state shall determine that an emergency exists in  
410 regard to the purchase of any commodities or repair contracts, so  
411 that the delay incident to giving opportunity for competitive  
412 bidding would be detrimental to the interests of the state, then  
413 the head of such agency, or his designees, shall file with the  
414 Department of Finance and Administration (i) a statement  
415 explaining the conditions and circumstances of the emergency,  
416 which shall include a detailed description of the events leading  
417 up to the situation and the negative impact to the entity if the  
418 purchase is made following the statutory requirements set forth in  
419 paragraph (a), (b) or (c) of this section, and (ii) a certified  
420 copy of the appropriate minutes of the board of such agency  
421 requesting the emergency purchase, if applicable. Upon receipt of  
422 the statement and applicable board certification, the State Fiscal



423 Officer, or his designees, may, in writing, authorize the purchase  
424 or repair without having to comply with competitive bidding  
425 requirements.

426         If the governing board or the executive head, or his  
427 designees, of any agency determines that an emergency exists in  
428 regard to the purchase of any commodities or repair contracts, so  
429 that the delay incident to giving opportunity for competitive  
430 bidding would threaten the health or safety of any person, or the  
431 preservation or protection of property, then the provisions in  
432 this section for competitive bidding shall not apply, and any  
433 officer or agent of the agency having general or specific  
434 authority for making the purchase or repair contract shall approve  
435 the bill presented for payment, and he shall certify in writing  
436 from whom the purchase was made, or with whom the repair contract  
437 was made.

438         Total purchases made under this paragraph (j) shall only be  
439 for the purpose of meeting needs created by the emergency  
440 situation. Following the emergency purchase, documentation of the  
441 purchase, including a description of the commodity purchased, the  
442 purchase price thereof and the nature of the emergency shall be  
443 filed with the Department of Finance and Administration.

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

445 If the governing authority, or the governing authority acting  
446 through its designee, shall determine that an emergency exists in  
447 regard to the purchase of any commodities or repair contracts, so



448 that the delay incident to giving opportunity for competitive  
449 bidding would be detrimental to the interest of the governing  
450 authority, then the provisions herein for competitive bidding  
451 shall not apply and any officer or agent of such governing  
452 authority having general or special authority therefor in making  
453 such purchase or repair shall approve the bill presented therefor,  
454 and he shall certify in writing thereon from whom such purchase  
455 was made, or with whom such a repair contract was made. At the  
456 board meeting next following the emergency purchase or repair  
457 contract, documentation of the purchase or repair contract,  
458 including a description of the commodity purchased, the price  
459 thereof and the nature of the emergency shall be presented to the  
460 board and shall be placed on the minutes of the board of such  
461 governing authority.

462 (1) **Hospital purchase, lease-purchase and lease**  
463 **authorization.**

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

469 (ii) In addition to the authority granted in  
470 subparagraph (i) of this paragraph (1), the commissioners or board  
471 of trustees is authorized to enter into contracts for the lease of  
472 equipment or services, or both, which it considers necessary for



473 the proper care of patients if, in its opinion, it is not  
474 financially feasible to purchase the necessary equipment or  
475 services. Any such contract for the lease of equipment or  
476 services executed by the commissioners or board shall not exceed a  
477 maximum of five (5) years' duration and shall include a  
478 cancellation clause based on unavailability of funds. If such  
479 cancellation clause is exercised, there shall be no further  
480 liability on the part of the lessee. Any such contract for the  
481 lease of equipment or services executed on behalf of the  
482 commissioners or board that complies with the provisions of this  
483 subparagraph (ii) shall be excepted from the bid requirements set  
484 forth in this section.

485 (m) **Exceptions from bidding requirements.** Excepted  
486 from bid requirements are:

487 (i) **Purchasing agreements approved by department.**  
488 Purchasing agreements, contracts and maximum price regulations  
489 executed or approved by the Department of Finance and  
490 Administration.

491 (ii) **Outside equipment repairs.** Repairs to  
492 equipment, when such repairs are made by repair facilities in the  
493 private sector; however, engines, transmissions, rear axles and/or  
494 other such components shall not be included in this exemption when  
495 replaced as a complete unit instead of being repaired and the need  
496 for such total component replacement is known before disassembly  
497 of the component; however, invoices identifying the equipment,



498 specific repairs made, parts identified by number and name,  
499 supplies used in such repairs, and the number of hours of labor  
500 and costs therefor shall be required for the payment for such  
501 repairs.

502 (iii) **In-house equipment repairs.** Purchases of  
503 parts for repairs to equipment, when such repairs are made by  
504 personnel of the agency or governing authority; however, entire  
505 assemblies, such as engines or transmissions, shall not be  
506 included in this exemption when the entire assembly is being  
507 replaced instead of being repaired.

508 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
509 of gravel or fill dirt which are to be removed and transported by  
510 the purchaser.

511 (v) **Governmental equipment auctions.** Motor  
512 vehicles or other equipment purchased from a federal agency or  
513 authority, another governing authority or state agency of the  
514 State of Mississippi, or any governing authority or state agency  
515 of another state at a public auction held for the purpose of  
516 disposing of such vehicles or other equipment. Any purchase by a  
517 governing authority under the exemption authorized by this  
518 subparagraph (v) shall require advance authorization spread upon  
519 the minutes of the governing authority to include the listing of  
520 the item or items authorized to be purchased and the maximum bid  
521 authorized to be paid for each item or items.



522                   (vi)    **Intergovernmental sales and transfers.**  
523 Purchases, sales, transfers or trades by governing authorities or  
524 state agencies when such purchases, sales, transfers or trades are  
525 made by a private treaty agreement or through means of  
526 negotiation, from any federal agency or authority, another  
527 governing authority or state agency of the State of Mississippi,  
528 or any state agency or governing authority of another state.  
529 Nothing in this section shall permit such purchases through public  
530 auction except as provided for in subparagraph (v) of this \* \* \*  
531 paragraph (m). It is the intent of this section to allow  
532 governmental entities to dispose of and/or purchase commodities  
533 from other governmental entities at a price that is agreed to by  
534 both parties. This shall allow for purchases and/or sales at  
535 prices which may be determined to be below the market value if the  
536 selling entity determines that the sale at below market value is  
537 in the best interest of the taxpayers of the state. Governing  
538 authorities shall place the terms of the agreement and any  
539 justification on the minutes, and state agencies shall obtain  
540 approval from the Department of Finance and Administration, prior  
541 to releasing or taking possession of the commodities.

542                   (vii)   **Perishable supplies or food.** Perishable  
543 supplies or food purchased for use in connection with hospitals,  
544 the school lunch programs, homemaking programs and for the feeding  
545 of county or municipal prisoners.



546 (viii) **Single source items.** Noncompetitive items  
547 available from one (1) source only. In connection with the  
548 purchase of noncompetitive items only available from one (1)  
549 source, a certification of the conditions and circumstances  
550 requiring the purchase shall be filed by the agency with the  
551 Department of Finance and Administration and by the governing  
552 authority with the board of the governing authority. Upon receipt  
553 of that certification the Department of Finance and Administration  
554 or the board of the governing authority, as the case may be, may,  
555 in writing, authorize the purchase, which authority shall be noted  
556 on the minutes of the body at the next regular meeting thereafter.  
557 In those situations, a governing authority is not required to  
558 obtain the approval of the Department of Finance and  
559 Administration. Following the purchase, the executive head of the  
560 state agency, or his designees, shall file with the Department of  
561 Finance and Administration, documentation of the purchase,  
562 including a description of the commodity purchased, the purchase  
563 price thereof and the source from whom it was purchased.

564 (ix) **Waste disposal facility construction**  
565 **contracts.** Construction of incinerators and other facilities for  
566 disposal of solid wastes in which products either generated  
567 therein, such as steam, or recovered therefrom, such as materials  
568 for recycling, are to be sold or otherwise disposed of; however,  
569 in constructing such facilities, a governing authority or agency  
570 shall publicly issue requests for proposals, advertised for in the



571 same manner as provided herein for seeking bids for public  
572 construction projects, concerning the design, construction,  
573 ownership, operation and/or maintenance of such facilities,  
574 wherein such requests for proposals when issued shall contain  
575 terms and conditions relating to price, financial responsibility,  
576 technology, environmental compatibility, legal responsibilities  
577 and such other matters as are determined by the governing  
578 authority or agency to be appropriate for inclusion; and after  
579 responses to the request for proposals have been duly received,  
580 the governing authority or agency may select the most qualified  
581 proposal or proposals on the basis of price, technology and other  
582 relevant factors and from such proposals, but not limited to the  
583 terms thereof, negotiate and enter contracts with one or more of  
584 the persons or firms submitting proposals.

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

588           (xi) **Information technology products.** Purchases  
589 of information technology products made by governing authorities  
590 under the provisions of purchase schedules, or contracts executed  
591 or approved by the Mississippi Department of Information  
592 Technology Services and designated for use by governing  
593 authorities.

594           (xii) **Energy efficiency services and equipment.**  
595 Energy efficiency services and equipment acquired by school



596 districts, community and junior colleges, institutions of higher  
597 learning and state agencies or other applicable governmental  
598 entities on a shared-savings, lease or lease-purchase basis  
599 pursuant to Section 31-7-14.

600 (xiii) **Municipal electrical utility system fuel.**

601 Purchases of coal and/or natural gas by municipally owned electric  
602 power generating systems that have the capacity to use both coal  
603 and natural gas for the generation of electric power.

604 (xiv) **Library books and other reference materials.**

605 Purchases by libraries or for libraries of books and periodicals;  
606 processed film, videocassette tapes, filmstrips and slides;  
607 recorded audiotapes, cassettes and diskettes; and any such items  
608 as would be used for teaching, research or other information  
609 distribution; however, equipment such as projectors, recorders,  
610 audio or video equipment, and monitor televisions are not exempt  
611 under this subparagraph.

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

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

618 (xvii) **Multichannel interactive video systems.**

619 From and after July 1, 1990, contracts by Mississippi Authority  
620 for Educational Television with any private educational



621 institution or private nonprofit organization whose purposes are  
622 educational in regard to the construction, purchase, lease or  
623 lease-purchase of facilities and equipment and the employment of  
624 personnel for providing multichannel interactive video systems  
625 (ITSF) in the school districts of this state.

626 (xviii) **Purchases of prison industry products by**  
627 **the Department of Corrections, regional correctional facilities or**  
628 **privately owned prisons.** Purchases made by the Mississippi  
629 Department of Corrections, regional correctional facilities or  
630 privately owned prisons involving any item that is manufactured,  
631 processed, grown or produced from the state's prison industries.

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

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

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



646 (xxii) **Garbage, solid waste and sewage contracts.**  
647 Contracts for garbage collection or disposal, contracts for solid  
648 waste collection or disposal and contracts for sewage collection  
649 or disposal.

650 (xxiii) **Municipal water tank maintenance**  
651 **contracts.** Professional maintenance program contracts for the  
652 repair or maintenance of municipal water tanks, which provide  
653 professional services needed to maintain municipal water storage  
654 tanks for a fixed annual fee for a duration of two (2) or more  
655 years.

656 (xxiv) **Purchases of Mississippi Industries for the**  
657 **Blind products.** Purchases made by state agencies or governing  
658 authorities involving any item that is manufactured, processed or  
659 produced by the Mississippi Industries for the Blind.

660 (xxv) **Purchases of state-adopted textbooks.**  
661 Purchases of state-adopted textbooks by public school districts.

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

665 (xxvii) **Used heavy or specialized machinery or**  
666 **equipment for installation of soil and water conservation**  
667 **practices purchased at auction.** Used heavy or specialized  
668 machinery or equipment used for the installation and  
669 implementation of soil and water conservation practices or  
670 measures purchased subject to the restrictions provided in



671 Sections 69-27-331 through 69-27-341. Any purchase by the State  
672 Soil and Water Conservation Commission under the exemption  
673 authorized by this subparagraph shall require advance  
674 authorization spread upon the minutes of the commission to include  
675 the listing of the item or items authorized to be purchased and  
676 the maximum bid authorized to be paid for each item or items.

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

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

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

681 **cooperative purchasing agreements.** Purchases made by certified  
682 purchasing offices of state agencies or governing authorities  
683 under cooperative purchasing agreements previously approved by the  
684 Office of Purchasing and Travel and established by or for any  
685 municipality, county, parish or state government or the federal  
686 government, provided that the notification to potential  
687 contractors includes a clause that sets forth the availability of  
688 the cooperative purchasing agreement to other governmental  
689 entities. Such purchases shall only be made if the use of the  
690 cooperative purchasing agreements is determined to be in the best  
691 interest of the governmental entity.

692 (xxx) **School yearbooks.** Purchases of school  
693 yearbooks by state agencies or governing authorities; provided,  
694 however, that state agencies and governing authorities shall use  
695 for these purchases the RFP process as set forth in the



696 Mississippi Procurement Manual adopted by the Office of Purchasing  
697 and Travel.

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

701 (xxxiii) **Toll roads and bridge construction**  
702 **projects.** Contracts entered into under the provisions of Section  
703 65-43-1 or 65-43-3.

704 (xxxiiii) **Certain purchases under Section 57-1-221.**  
705 Contracts entered into pursuant to the provisions of Section  
706 57-1-221.

707 (xxxiv) **Certain transfers made pursuant to the**  
708 **provisions of Section 57-105-1(7).** Transfers of public property  
709 or facilities under Section 57-105-1(7) and construction related  
710 to such public property or facilities.

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

714 (n) **Term contract authorization.** All contracts for the  
715 purchase of:

716 (i) All contracts for the purchase of commodities,  
717 equipment and public construction (including, but not limited to,  
718 repair and maintenance), may be let for periods of not more than  
719 sixty (60) months in advance, subject to applicable statutory  
720 provisions prohibiting the letting of contracts during specified



721 periods near the end of terms of office. Term contracts for a  
722 period exceeding twenty-four (24) months shall also be subject to  
723 ratification or cancellation by governing authority boards taking  
724 office subsequent to the governing authority board entering the  
725 contract.

726 (ii) Bid proposals and contracts may include price  
727 adjustment clauses with relation to the cost to the contractor  
728 based upon a nationally published industry-wide or nationally  
729 published and recognized cost index. The cost index used in a  
730 price adjustment clause shall be determined by the Department of  
731 Finance and Administration for the state agencies and by the  
732 governing board for governing authorities. The bid proposal and  
733 contract documents utilizing a price adjustment clause shall  
734 contain the basis and method of adjusting unit prices for the  
735 change in the cost of such commodities, equipment and public  
736 construction.

737 (o) **Purchase law violation prohibition and vendor**  
738 **penalty.** No contract or purchase as herein authorized shall be  
739 made for the purpose of circumventing the provisions of this  
740 section requiring competitive bids, nor shall it be lawful for any  
741 person or concern to submit individual invoices for amounts within  
742 those authorized for a contract or purchase where the actual value  
743 of the contract or commodity purchased exceeds the authorized  
744 amount and the invoices therefor are split so as to appear to be  
745 authorized as purchases for which competitive bids are not



746 required. Submission of such invoices shall constitute a  
747 misdemeanor punishable by a fine of not less than Five Hundred  
748 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
749 or by imprisonment for thirty (30) days in the county jail, or  
750 both such fine and imprisonment. In addition, the claim or claims  
751 submitted shall be forfeited.

752 (p) **Electrical utility petroleum-based equipment**  
753 **purchase procedure.** When in response to a proper advertisement  
754 therefor, no bid firm as to price is submitted to an electric  
755 utility for power transformers, distribution transformers, power  
756 breakers, reclosers or other articles containing a petroleum  
757 product, the electric utility may accept the lowest and best bid  
758 therefor although the price is not firm.

759 (q) **Fuel management system bidding procedure.** Any  
760 governing authority or agency of the state shall, before  
761 contracting for the services and products of a fuel management or  
762 fuel access system, enter into negotiations with not fewer than  
763 two (2) sellers of fuel management or fuel access systems for  
764 competitive written bids to provide the services and products for  
765 the systems. In the event that the governing authority or agency  
766 cannot locate two (2) sellers of such systems or cannot obtain  
767 bids from two (2) sellers of such systems, it shall show proof  
768 that it made a diligent, good-faith effort to locate and negotiate  
769 with two (2) sellers of such systems. Such proof shall include,  
770 but not be limited to, publications of a request for proposals and



771 letters soliciting negotiations and bids. For purposes of this  
772 paragraph (q), a fuel management or fuel access system is an  
773 automated system of acquiring fuel for vehicles as well as  
774 management reports detailing fuel use by vehicles and drivers, and  
775 the term "competitive written bid" shall have the meaning as  
776 defined in paragraph (b) of this section. Governing authorities  
777 and agencies shall be exempt from this process when contracting  
778 for the services and products of fuel management or fuel access  
779 systems under the terms of a state contract established by the  
780 Office of Purchasing and Travel.

781 (r) **Solid waste contract proposal procedure.** Before  
782 entering into any contract for garbage collection or disposal,  
783 contract for solid waste collection or disposal or contract for  
784 sewage collection or disposal, which involves an expenditure of  
785 more than Fifty Thousand Dollars (\$50,000.00), a governing  
786 authority or agency shall issue publicly a request for proposals  
787 concerning the specifications for such services which shall be  
788 advertised for in the same manner as provided in this section for  
789 seeking bids for purchases which involve an expenditure of more  
790 than the amount provided in paragraph (c) of this section. Any  
791 request for proposals when issued shall contain terms and  
792 conditions relating to price, financial responsibility,  
793 technology, legal responsibilities and other relevant factors as  
794 are determined by the governing authority or agency to be  
795 appropriate for inclusion; all factors determined relevant by the



796 governing authority or agency or required by this paragraph (r)  
797 shall be duly included in the advertisement to elicit proposals.  
798 After responses to the request for proposals have been duly  
799 received, the governing authority or agency shall select the most  
800 qualified proposal or proposals on the basis of price, technology  
801 and other relevant factors and from such proposals, but not  
802 limited to the terms thereof, negotiate and enter into contracts  
803 with one or more of the persons or firms submitting proposals. If  
804 the governing authority or agency deems none of the proposals to  
805 be qualified or otherwise acceptable, the request for proposals  
806 process may be reinitiated. Notwithstanding any other provisions  
807 of this paragraph, where a county with at least thirty-five  
808 thousand (35,000) nor more than forty thousand (40,000)  
809 population, according to the 1990 federal decennial census, owns  
810 or operates a solid waste landfill, the governing authorities of  
811 any other county or municipality may contract with the governing  
812 authorities of the county owning or operating the landfill,  
813 pursuant to a resolution duly adopted and spread upon the minutes  
814 of each governing authority involved, for garbage or solid waste  
815 collection or disposal services through contract negotiations.

816 (s) **Minority set-aside authorization.** Notwithstanding  
817 any provision of this section to the contrary, any agency or  
818 governing authority, by order placed on its minutes, may, in its  
819 discretion, set aside not more than twenty percent (20%) of its  
820 anticipated annual expenditures for the purchase of commodities



821 from minority businesses; however, all such set-aside purchases  
822 shall comply with all purchasing regulations promulgated by the  
823 Department of Finance and Administration and shall be subject to  
824 bid requirements under this section. Set-aside purchases for  
825 which competitive bids are required shall be made from the lowest  
826 and best minority business bidder. For the purposes of this  
827 paragraph, the term "minority business" means a business which is  
828 owned by a majority of persons who are United States citizens or  
829 permanent resident aliens (as defined by the Immigration and  
830 Naturalization Service) of the United States, and who are Asian,  
831 Black, Hispanic or Native American, according to the following  
832 definitions:

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

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

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

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

844 (t) **Construction punch list restriction.** The  
845 architect, engineer or other representative designated by the



846 agency or governing authority that is contracting for public  
847 construction or renovation may prepare and submit to the  
848 contractor only one (1) preliminary punch list of items that do  
849 not meet the contract requirements at the time of substantial  
850 completion and one (1) final list immediately before final  
851 completion and final payment.

852 (u) **Procurement of construction services by state**  
853 **institutions of higher learning.** Contracts for privately financed  
854 construction of auxiliary facilities on the campus of a state  
855 institution of higher learning may be awarded by the Board of  
856 Trustees of State Institutions of Higher Learning to the lowest  
857 and best bidder, where sealed bids are solicited, or to the  
858 offeror whose proposal is determined to represent the best value  
859 to the citizens of the State of Mississippi, where requests for  
860 proposals are solicited.

861 (v) **Insurability of bidders for public construction or**  
862 **other public contracts.** In any solicitation for bids to perform  
863 public construction or other public contracts to which this  
864 section applies including, but not limited to, contracts for  
865 repair and maintenance, for which the contract will require  
866 insurance coverage in an amount of not less than One Million  
867 Dollars (\$1,000,000.00), bidders shall be permitted to either  
868 submit proof of current insurance coverage in the specified amount  
869 or demonstrate ability to obtain the required coverage amount of  
870 insurance if the contract is awarded to the bidder. Proof of



871 insurance coverage shall be submitted within five (5) business  
872 days from bid acceptance.

873 (w) **Purchase authorization clarification.** Nothing in  
874 this section shall be construed as authorizing any purchase not  
875 authorized by law.

876 **SECTION 2.** This act shall take effect and be in force from  
877 and after July 1, 2017.

