

By: Representatives Turner, Hughes

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1109

1 AN ACT TO CREATE STANDARDS FOR PROCUREMENTS BY THE
2 SOLICITATION OF REQUESTS FOR PROPOSALS OR REQUESTS FOR
3 QUALIFICATIONS; TO PROVIDE THAT THE STANDARDS SHALL APPLY TO
4 PROCUREMENTS BY STATE AGENCIES OF COMMODITIES, SUPPLIES,
5 EQUIPMENT, CONSTRUCTION, TECHNOLOGY, PERSONAL AND PROFESSIONAL
6 SERVICES, ANY TYPE OF STATE AGENCY PURCHASED EMPLOYEE BENEFITS AND
7 STATE AGENCY PURCHASED SUPPLEMENTAL INSURANCE AND CAFETERIA PLANS;
8 TO PROVIDE THE FACTORS THAT MUST BE CONSIDERED WHEN DETERMINING TO
9 USE A REQUEST FOR PROPOSALS OR REQUESTS FOR QUALIFICATIONS; TO
10 PROVIDE THE CONTENT TO INCLUDE IN A REQUEST FOR PROPOSALS OR
11 REQUESTS FOR QUALIFICATIONS; TO PROVIDE THE REQUIREMENTS OF
12 PRE-PROPOSAL CONFERENCES; TO PROVIDE THE METHOD TO PROPERLY DRAFT
13 A REQUEST FOR PROPOSALS OR REQUEST FOR QUALIFICATIONS; TO PROVIDE
14 THE EVALUATION FACTORS TO USE WHEN REVIEWING A REQUEST FOR
15 PROPOSALS OR REQUESTS FOR QUALIFICATIONS; TO PROVIDE THE
16 QUALIFICATIONS OF THE EVALUATION COMMITTEE THAT WILL EVALUATE EACH
17 SUBMITTED PROPOSAL OR QUALIFICATION; TO PROVIDE THE GUIDELINES FOR
18 DISCUSSIONS ONCE PROPOSALS OR QUALIFICATIONS HAVE BEEN SUBMITTED;
19 TO PROVIDE FOR THE CONTENT TO BE INCLUDED IN THE BEST AND FINAL
20 OFFER; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
21 RECONSTITUTE THE PUBLIC PROCUREMENT REVIEW BOARD; TO INCLUDE THE
22 POWERS AND DUTIES OF THE PERSONAL SERVICE CONTRACT REVIEW BOARD
23 UNDER THE PURVIEW OF THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND
24 SECTION 25-9-120, MISSISSIPPI CODE OF 1972, TO ABOLISH THE
25 PERSONAL SERVICE CONTRACT REVIEW BOARD; TO PROVIDE THAT THE
26 POWERS, DUTIES AND ALL RESOURCES OF THE PERSONAL SERVICE CONTRACT
27 REVIEW BOARD SHALL BE TRANSFERRED TO THE PUBLIC PROCUREMENT REVIEW
28 BOARD; TO AMEND SECTION 25-61-9, MISSISSIPPI CODE OF 1972, TO
29 REQUIRE ANYONE SEEKING A PROTECTIVE ORDER FOR CERTAIN CONTRACT
30 INFORMATION OTHERWISE REQUIRED TO BE PUBLIC UNDER THE PUBLIC
31 RECORDS ACT TO POST NOTICE OF THE PETITION AND THE REASONS FOR THE
32 PROTECTIVE ORDER ON THE MISSISSIPPI PROCUREMENT PORTAL FOR A
33 MINIMUM OF SEVEN DAYS BEFORE FILING THE PETITION FOR THE
34 PROTECTIVE ORDER IN CHANCERY COURT; TO AMEND SECTION 31-7-13,



35 MISSISSIPPI CODE OF 1972, TO REQUIRE REVERSE AUCTIONS TO BE THE
36 PRIMARY METHOD FOR RECEIVING BIDS DURING THE COMPETITIVE BIDDING
37 PROCESS; TO REQUIRE THE PUBLIC PROCUREMENT REVIEW BOARD TO APPROVE
38 A PURCHASING ENTITY'S DECISION TO USE A METHOD OTHER THAN REVERSE
39 AUCTION FOR SOLICITING BIDS; TO REQUIRE A PURCHASING ENTITY TO
40 ACCEPT A BID SUBMITTED THROUGH A SECURE ELECTRONIC FORMAT FROM
41 CONTRACTORS WHO HAVE THE CAPABILITY TO SUBMIT A BID ELECTRONICALLY
42 THROUGH A SECURE SYSTEM; TO REQUIRE A PURCHASING ENTITY TO MAKE
43 THE APPROPRIATE PROVISIONS NECESSARY TO BE ABLE TO ACCEPT BIDS
44 SUBMITTED ELECTRONICALLY THROUGH A SECURE SYSTEM FOR ALL PURCHASES
45 THAT REQUIRE COMPETITIVE SEALED BIDDING; TO REQUIRE AGENCIES AND
46 GOVERNING AUTHORITIES TO ESTABLISH SECURE PROCEDURES BY WHICH BIDS
47 MAY BE SUBMITTED VIA ELECTRONIC MEANS; TO PROVIDE THAT AGENCIES
48 AND GOVERNING AUTHORITIES THAT ARE CURRENTLY WITHOUT HIGH SPEED
49 INTERNET ACCESS SHALL BE EXEMPT FROM THIS REQUIREMENT UNTIL SUCH
50 TIME THAT HIGH SPEED INTERNET ACCESS BECOMES AVAILABLE; AND FOR
51 RELATED PURPOSES.

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

53 **SECTION 1. Applicability.** Except as otherwise provided by
54 law, the provisions of this act shall apply to every procurement
55 of commodities, supplies, equipment, construction, technology,
56 personal and professional services, other than those in Section
57 27-104-7(2)(f) and (8), state agency purchased employee benefits
58 and state agency purchased supplemental insurance and cafeteria
59 plans that is solicited by any state agency by a request for
60 proposals or request for qualifications. The following provisions
61 are intended to ensure that the best practices for soliciting
62 requests for proposals or requests for qualifications are
63 implemented. Any agency that is required to receive approval by
64 the Public Procurement Review board before entering into a
65 personal or professional services contract as provided in
66 subsection (2)(g) of Section 27-104-7 shall implement the best
67 practices specified in this act. The Public Procurement Review



68 board shall promulgate any necessary rules and regulations to
69 administer the provisions of Sections 1 through 12 of this act.

70 **SECTION 2. Conditions for use.** (1) Competitive sealed
71 bidding is the preferred method of procurement; however, if it is
72 not practicable and advantageous, a request for proposals or
73 request for qualifications may be used. The terms "practicable"
74 and "advantageous" are to be given ordinary dictionary meanings.
75 The term "practicable" denotes what may be accomplished or put
76 into practical application. "Advantageous" denotes a judgmental
77 assessment of what is in the state's best interest.

78 (2) The following factors shall be considered when
79 determining advantageousness:

80 (a) The need for flexibility;

81 (b) The type of evaluations that will be needed after
82 offers are received;

83 (c) Whether the evaluation factors involve the relative
84 abilities of offerers to perform, including degrees of technical
85 or professional experience or expertise;

86 (d) Whether the type of need to be satisfied involves
87 weighing artistic and aesthetic values to the extent that price is
88 a secondary consideration;

89 (e) Whether the types of supplies, services or
90 construction may require the use of comparative judgmental
91 evaluations to evaluate them adequately; and



92 (f) Whether prior procurements indicate that a request
93 for proposals may result in more beneficial contracts for the
94 state.

95 (3) The following factors shall be considered when
96 determining practicability:

97 (a) Whether the contract needs to be a contract other
98 than a fixed-price type contract;

99 (b) Whether oral or written discussions may need to be
100 conducted with offerers concerning technical and price aspects of
101 their proposals;

102 (c) Whether offerers may need to be afforded the
103 opportunity to revise their proposals, including price;

104 (d) Whether the award may need to be based upon a
105 comparative evaluation of differing price and contractual factors
106 as well as quality factors that include technical and performance
107 capability and the content of the technical proposal; and

108 (e) Whether the primary consideration in determining
109 award may not be price.

110 (4) On or before January 1 of each year, and every time a
111 chief procurement officer is hired, each state agency shall
112 provide to the state purchasing agent the name of the state
113 agency's chief procurement officer and information identifying the
114 state agency's central purchasing office, if applicable. If the
115 chief procurement officer of an agency or his or her designee
116 determines, in writing, that the use of competitive sealed bidding



117 is either not practicable or not advantageous to the state, he or
118 she shall submit a detailed explanation of the reasons for that
119 determination to the Public Procurement Review Board. If the
120 Public Procurement Review Board determines that competitive sealed
121 bidding is either not practicable or not advantageous to the
122 state, then a contract may be entered into for the procurement of
123 commodities, supplies, equipment, construction, technology,
124 personal and professional services, state agency purchased
125 employee benefits or state agency purchased supplemental insurance
126 and cafeteria plans by a request for proposals or request for
127 qualifications. However, these procurements contracted for
128 through a request for proposals or request for qualifications may
129 not be combined or included in a contract with other procurements
130 that are required to be procured through competitive sealed
131 bidding so as to avoid the statutory obligation for procurement
132 through competitive sealed bidding. The board may modify or
133 revoke its determination at any time, and the determination should
134 be reviewed for current applicability from time to time.

135 In addition to determining whether a request for proposals or
136 request for qualifications would be practicable and advantageous
137 to the state, when making the decision to use a request for
138 proposals or request for qualifications, the chief procurement
139 officer shall consider the following factors:



140 (a) Whether quality, availability or capability is
141 overriding in relation to price in procurements for research and
142 development, technical supplies or services;

143 (b) Whether the initial installation needs to be
144 evaluated together with later maintenance and service capabilities
145 and what priority should be given to these requirements in the
146 best interests of the state; and

147 (c) Whether the marketplace will respond better to a
148 solicitation permitting not only a range of alternative proposals
149 but evaluation and discussion of them before making the award.

150 **SECTION 3. Content of the request for proposals or request**
151 **for qualifications.** (1) The request for proposals or request for
152 qualifications shall include the following:

153 (a) Instructions and information to offerers concerning
154 the request for proposals or request for qualifications submission
155 requirements, including the time and date set for receipt of
156 proposals or qualifications, the address of the office to which
157 proposals or qualifications are to be delivered, the maximum time
158 for proposal or qualification acceptance by the state, the manner
159 in which proposals or qualifications are to be submitted,
160 including any forms for that purpose and any other special
161 information;

162 (b) The purchase description, evaluation factors,
163 delivery or performance schedule and any inspection and acceptance
164 requirements that are not included in the purchase description;



165 (c) The contract terms and conditions, including
166 warranty and bonding or other security requirements, as
167 applicable;

168 (d) A statement that discussions may be conducted with
169 offerers who submit proposals or qualifications determined to be
170 reasonably susceptible of being selected for the award, but that
171 proposals or qualifications may be accepted without such
172 discussions; and

173 (e) A statement of when and how price should be
174 submitted.

175 (2) The request for proposals or request for qualifications
176 may incorporate documents by reference provided that the request
177 for proposals or request for qualifications specifies where those
178 documents can be obtained.

179 (3) Proposal or qualification preparation time shall be set
180 to provide offerers a reasonable time to prepare their proposals
181 or qualifications. A minimum of thirty (30) days shall be
182 provided unless a shorter time is deemed necessary for a
183 particular procurement as determined in writing by the chief
184 procurement officer of the requesting agency.

185 **SECTION 4. Public notice.** (1) In addition to any method of
186 public notice regarding the solicitation of requests for proposals
187 or requests for qualifications currently being used by state
188 agencies, the chief procurement officer shall also have posted on
189 the Mississippi procurement portal and on the soliciting agency's



190 website, public notification of a pending procurement through
191 request for proposals or request for qualifications. The notice
192 shall include the following:

193 (a) The due date for responses;

194 (b) The name and phone number of the officer conducting
195 the procurement; and

196 (c) The means of obtaining the solicitation.

197 (2) The notice shall be posted at least thirty (30) days
198 before the date that proposals or qualifications are to be
199 submitted to the chief procurement officer, unless a shorter time
200 is deemed necessary for a particular procurement as determined in
201 writing by the chief procurement officer of the requesting agency.

202 (3) Each chief procurement officer may determine that other
203 methods of public notification are best for that particular agency
204 or that particular request for proposals or request for
205 qualifications. If such a determination is made, the chief
206 procurement officer may provide notice in an alternative manner
207 about the request for proposals or request for qualifications in
208 addition to the methods provided for in this act.

209 (4) The Department of Finance and Administration (DFA) shall
210 monitor agency websites and the Mississippi procurement portal to
211 ensure that the agencies are posting the required notice. DFA
212 shall audit agencies and report its findings to the Chairs of the
213 House of Representatives and Senate Accountability, Efficiency and



214 Transparency committees and House of Representatives and Senate
215 Appropriations Committee by December 31 of each.

216 **SECTION 5. Pre-proposal conferences.** (1) Pre-proposal
217 conferences may be conducted to explain the procurement
218 requirements. If a chief procurement officer plans to hold such a
219 conference, he or she shall prominently place the notification in
220 the request for proposals or request for qualifications
221 solicitation. The notification shall include the date, time and
222 location of the conference. If the chief procurement officer
223 decides to hold a pre-proposal conference after the request for
224 proposals or request for qualifications has been sent out, then he
225 or she shall notify all prospective offerers known to have
226 received a request for proposals or request for qualifications.

227 (2) If a pre-proposal conference is held, it shall be at
228 least fourteen (14) days after the request for proposals or
229 request for qualifications has been issued. In setting the time
230 for the conference, the chief procurement officer shall consider
231 the complexity of the procurement and the potential modifications
232 that may need to be made after the conference and any amendments
233 to the solicitation that the chief procurement officer may need to
234 make after the conference.

235 (3) The chief procurement officer issuing the request for
236 proposals or request for qualifications shall serve as chair of
237 the conference. Offerers attending the conference shall be
238 required to sign an attendance sheet provided by the soliciting



239 agency. The chair shall announce at the beginning of the
240 conference how the conference is to be handled. The conference
241 shall be recorded. A chief procurement officer may mandate
242 attendance at a conference if he or she feels it is critical to
243 understanding the solicitation. Once the conference is over, the
244 chief procurement officer shall put the recordings from the
245 conference and the questions and answers from the conference in
246 writing and send them to the offerers who received the request for
247 proposals or request for qualifications and post them on the
248 Mississippi procurement portal and the soliciting agency's
249 website.

250 **SECTION 6. Drafting the request for proposals or request for**
251 **qualifications.** (1) In addition to the items listed in this act,
252 the contents of a request for proposals or request for
253 qualifications shall also include the following:

254 (a) A statement that discussions may be conducted with
255 offerers who submit proposals or qualifications determined to be
256 reasonably susceptible of being selected for the award, but that
257 proposals or qualifications may also be accepted without those
258 discussions; and

259 (b) A statement of when and how price should be
260 submitted.

261 (2) The request for proposals or request for qualifications
262 shall indicate, either by the order listed, weights or some other
263 manner, the order of importance of the evaluation criteria.



264 (3) The request for proposals or request for qualifications,
265 its amendments, the offerer's proposals or qualifications and the
266 best and final offer shall constitute the contract.

267 **SECTION 7. Evaluation factors in the request for proposals**
268 **or request for qualifications.**

269 (1) When the chief procurement officer submits the
270 determination that the use of competitive sealed bidding is either
271 not practicable or not advantageous to the state to the Public
272 Procurement Review Board for its approval, he or she shall include
273 in that submission the evaluation factors that will be used in
274 reviewing the submitted proposals or qualifications. The
275 evaluation factors shall be approved by the Public Procurement
276 Review Board in the same way that the decision to solicit
277 procurements through a request for proposals or request for
278 qualifications must be approved.

279 (2) (a) The request for proposals or request for
280 qualifications shall state all of the approved evaluation factors,
281 including price, and their relative importance. When the chief
282 procurement officer is determining the weights and importance of
283 each evaluation factor, price as an evaluation factor shall be
284 given the highest criteria weighting and at least thirty-five
285 percent (35%) out of the one hundred percent (100%) total weight
286 of all the other evaluation factors. The evaluation shall be
287 based on the evaluation factors set forth in the request for
288 proposals or request for qualifications. The evaluation factors



289 used and the weights given to each shall be decided and agreed to
290 by the evaluation committee before the opening of any proposal or
291 qualification. Numerical rating systems shall be used when
292 determining the weight and importance of each evaluation factor.
293 Factors not specified in the request for proposals or request for
294 qualifications shall not be considered. Upon completion of the
295 evaluation, the evaluation score sheets used to review the
296 submitted proposals or qualifications shall be made part of the
297 report required under Section 12(1) of this act.

298 (b) The following, as appropriate to individual
299 circumstances, shall be used as criteria for evaluating requests
300 for proposals or requests for qualifications under the request for
301 proposals or request for qualifications process described in this
302 act. These factors are not intended to be limiting or
303 all-inclusive, and they may be adapted or supplemented in order to
304 meet a soliciting agency's individual needs as the competitive
305 procurement process requires.

306 (i) Technical factors (Proposed methodology):

307 a. Does the offerer's proposal or
308 qualification demonstrate a clear understanding of the scope of
309 work and related objectives?

310 b. Is the offerer's proposal or
311 qualification complete and responsive to the specific request for
312 proposal or request for qualifications requirements?



313 c. Has the past performance of the
314 offerer's proposed methodology been documented?

315 d. Does the offerer's proposal or
316 qualification use innovative technology and techniques?

317 (ii) Management factors (Factors that will require
318 the identity of the offerer to be revealed must be submitted
319 separately from other factors):

320 1. Project management:

321 a. How well does the proposed scheduling
322 timeline meet the needs of the soliciting agency?

323 b. Is there a project management plan?

324 2. History and experience in performing the
325 work:

326 a. Does the offerer document a record of
327 reliability of timely delivery and on-time and on-budget
328 implementation?

329 b. Does the offerer demonstrate a track
330 record of service as evidenced by on-time, on-budget, and contract
331 compliance performance?

332 c. Does the offerer document industry or
333 program experience?

334 d. Does the offerer have a record of
335 poor business ethics?

336 3. Availability of personnel, facilities,
337 equipment and other resources:



338 a. To what extent does the offerer rely
339 on in-house resources vs. contracted resources?

340 b. Are the availability of in-house and
341 contract resources documented?

342 4. Qualification and experience of personnel:

343 a. Documentation of experience in
344 performing similar work by employees and when appropriate,
345 sub-contractors?

346 b. Does the offerer demonstrate cultural
347 sensitivity in hiring and training staff?

348 (iii) Cost factors (Factors must be submitted
349 separately from other factors unless specifically approved by the
350 Public Procurement Review Board):

351 1. Cost of goods to be provided or services
352 to be performed:

353 a. Relative cost: How does the cost
354 compare to other similarly scored proposals or qualifications?

355 b. Full explanation: Is the price and
356 its component charges, fees, etc. adequately explained or
357 documented?

358 2. Assurances of performance:

359 a. If required, are suitable bonds,
360 warranties or guarantees provided?

361 b. Does the proposal or qualification
362 include quality control and assurance programs?



363 3. Offerer's financial stability and
364 strength: Does the offerer have sufficient financial resources to
365 meet its obligations?

366 **SECTION 8. Evaluation committee.** (1) Evaluation committees
367 shall be used to evaluate request for proposals or request for
368 qualifications and award contracts. Persons appointed to an
369 evaluation committee shall have the relevant experience necessary
370 to evaluate the proposal or qualification. The members of the
371 evaluation committee shall have no personal, financial or familial
372 interest in any of the contract offerers, or principals thereof,
373 to be evaluated.

374 (2) The names of the members of the evaluation committee
375 shall not be publicly disclosed until their evaluation report as
376 required under Section 12(1) of this act. The members' names and
377 job titles shall be made available to the public. Where
378 evaluation committee members are not public employees, those
379 members' names, educational and professional qualifications, and
380 practical experience, that were the basis for the appointment,
381 shall be made available to the public.

382 (3) Before evaluating proposals or qualifications, each
383 individual participating in the evaluation of a proposal or
384 qualification shall execute a statement in accordance with
385 subsection (1) of this section certifying that he or she does not
386 have a conflict of interest. The statement shall be filed with
387 the chief procurement officer of the soliciting agency, before



388 beginning the evaluation process. The certification shall be as
389 follows:

390 "I hereby certify that I have reviewed the conflict of
391 interest standards prescribed herein, and that I do not have a
392 conflict of interest with respect to the evaluation of this
393 proposal or qualification. I further certify that I am not
394 engaged in any negotiations or arrangements for prospective
395 employment or association with any of the offerers submitting
396 proposals or qualifications or their parent or subsidiary
397 organization."

398 (4) Committee members may conduct their work separately or
399 together.

400 (5) The committee may use advisors, as it deems necessary to
401 give opinions on evaluating proposals or qualifications, except
402 that such advisors shall be subject to the provisions of
403 subsection (3) of this section. The names of the advisors shall
404 be made public at the same time as members of the evaluation
405 committee as provided in subsection (2) of this section. For the
406 purposes of this section, the term "advisors" shall mean those
407 individuals who provide such significant input to a member or
408 members of the evaluation committee that the advisor's opinions
409 are fundamental in shaping the committee member's evaluation of
410 the submitted proposals or qualifications.

411 (6) The process of establishing weighting criteria and
412 evaluating proposals or qualifications shall result in a finding



413 that a specific proposal or qualification is the most practical
414 and advantageous, price and other factors considered, or that all
415 proposals or qualifications should be rejected.

416 **SECTION 9. Receipt and registration of proposals or**
417 **qualifications.** (1) Submitted proposals or qualifications shall
418 be opened at the time designated for opening in the request for
419 proposals or request for qualifications. Proposals or
420 qualifications and modifications shall be date-stamped or time and
421 date-stamped upon receipt and held in a secure place until the
422 established due date. Electronic proposals or qualifications
423 received will be stored in an electronic lockbox until the time
424 designated for the opening of the proposal or qualification.

425 (2) As each proposal or qualification is submitted but
426 before those proposals or qualifications are opened, the chief
427 procurement officer shall designate a person to prepare a register
428 of proposals or qualifications, which shall include the number of
429 modifications received, if any, and a description sufficient to
430 identify the supply, service, commodity or other item offered.
431 The designated person shall assign each submitted proposal or
432 qualification an identifying letter, number, or combination
433 thereof, without revealing the name of the offerer who submitted
434 each proposal or qualification to the chief procurement officer or
435 any person named to the evaluation committee for that proposal or
436 qualification. The designated person shall keep the names of the
437 offerers and their identifying numbers or letters, or combination



438 thereof, in a sealed envelope or other secure location until
439 factors not requiring knowledge of the name of the offerer have
440 been evaluated and scored. If the designated person reveals the
441 names of the offerers and the corresponding identifying
442 information before such time, the procurement process shall be
443 terminated and the proposal or qualifications resolicited and the
444 Public Procurement Review Board shall assess that person a fine of
445 not less than One Thousand Dollars (\$1,000.00) and the chief
446 procurement officer who designated that person to establish the
447 register of proposals or qualifications shall be removed from his
448 or her office and assessed a fine of not less than One Thousand
449 Dollars (\$1,000.00). The register of proposals or qualifications
450 shall be made part of the report required under Section 12(1) of
451 this act.

452 **SECTION 10. Evaluating submitted proposals or**

453 **qualifications.** (1) The evaluation committee shall evaluate
454 proposals or qualifications only in accordance with the
455 methodology and weighting criteria described in the request for
456 proposals or request for qualifications. Proposals or
457 qualifications shall be initially classified as: (a) acceptable;
458 (b) potentially acceptable, which means reasonably susceptible of
459 being made acceptable; or (c) unacceptable. Offerers whose
460 proposals or qualifications are unacceptable shall be so notified
461 promptly.

462 (2) Discussions may be held with offerers to:



463 (a) Promote understanding of the state's requirements
464 and the offerer's proposals or qualifications; and

465 (b) Facilitate arriving at a contract that will be the
466 most practicable and advantageous to the state taking into
467 consideration price and the other evaluation factors set forth in
468 the request for proposals or request for qualifications.

469 (3) Offerers shall be accorded fair and equal treatment with
470 respect to any opportunity for discussions and revisions of
471 proposals or qualifications. Any discussions that take place
472 under the provisions of this section shall be recorded and the
473 recordings shall be made public upon award of the contract. The
474 chief procurement officer shall establish procedures and schedules
475 for conducting discussions. If, during discussions, there is a
476 need for any substantial clarification of or change in the request
477 for proposals or request for qualifications, the request shall be
478 amended to incorporate the clarification or change. Auction
479 techniques, revealing one offerer's price to another, and
480 disclosure of any information derived from competing proposals is
481 prohibited. Any substantial oral clarification of a proposal or
482 qualification shall be reduced to writing by the offerer.

483 **SECTION 11. Best and final offers.** The chief procurement
484 officer shall establish a common date and time for the submission
485 of best and final offers. Best and final offers shall be
486 submitted only once; however, the chief procurement officer may



487 make a written determination that it is in the state's best
488 interest to conduct additional discussions or change the state's
489 requirements and require another submission of best and final
490 offers. Otherwise, no discussion of or changes in the best and
491 final offers shall be allowed before the award. Offerers shall
492 also be informed that if they do not submit a notice of withdrawal
493 or another best and final offer, their immediate previous offer
494 will be construed as their best and final offer.

495 **SECTION 12. Awarding the contract.** (1) After proposals or
496 qualifications have been evaluated, the evaluation committee shall
497 prepare a report evaluating and recommending the award of a
498 contract or contracts. The report shall list the names of all
499 potential offerers who submitted a proposal or qualification and
500 shall summarize the proposals or qualifications of each offerer.
501 The report shall rank offerers in order of evaluation, shall
502 recommend the selection of an offerer or offerers, as appropriate,
503 for a contract, shall be clear in the reasons why the offerer or
504 offerers have been selected among others considered, and shall
505 detail the terms, conditions, scope of services, fees and other
506 matters to be incorporated into the contract. The report shall be
507 available to the public at least forty-eight (48) hours before the
508 awarding of the contract.

509 (2) The chief procurement officer shall publish a notice on
510 the agency's website and the Mississippi procurement portal
511 summarizing the award of the contract, which shall include but not



512 be limited to, the nature, duration and amount of the contract,
513 the name of the offerer and a statement that the contract is on
514 file and available for public inspection in the office of the
515 chief procurement officer.

516 **SECTION 13.** Section 27-104-7, Mississippi Code of 1972, is
517 amended as follows:

518 27-104-7. (1) (a) There is created * * * the Public
519 Procurement Review Board, which shall be reconstituted on January
520 1, 2018, and shall be composed of the * * * following members:

521 (i) Three (3) individuals appointed by the
522 Governor with the advice and consent of the Senate;

523 (ii) Two (2) individuals appointed by the
524 Lieutenant Governor with the advice and consent of the Senate; and

525 (iii) The Executive Director of the Department of
526 Finance and Administration, serving as an ex-officio and nonvoting
527 member.

528 (b) The initial terms of each appointee shall be as
529 follows:

530 (i) One (1) member appointed by the Governor to
531 serve for a term ending on June 30, 2019;

532 (ii) One (1) member appointed by the Governor to
533 serve for a term ending on June 30, 2020;

534 (iii) One (1) member appointed by the Governor to
535 serve for a term ending on June 30, 2021;



536 (iv) One (1) member appointed by the Lieutenant
537 Governor to serve for a term ending on June 30, 2019; and

538 (v) One (1) member appointed by the Lieutenant
539 Governor to serve for a term ending on June 30, 2020.

540 After the expiration of the initial terms, all appointed
541 members' terms shall be for a period of four (4) years from the
542 expiration date of the previous term, and until such time as the
543 member's successor is duly appointed and qualified.

544 (c) When appointing members to the Public Procurement
545 Review Board, the Governor and Lieutenant Governor shall take into
546 consideration persons who possess at least five (5) years of
547 management experience in general business, healthcare or finance
548 for an organization, corporation or other public or private
549 entity. Any person, or any employee or owner of a company, who
550 receives any grants, procurements or contracts that are subject to
551 approval under this section shall not be appointed to the Public
552 Procurement Review Board. Any person, or any employee or owner of
553 a company, who is a principal of the source providing a personal
554 or professional service shall not be appointed to the Public
555 Procurement Review Board if the principal owns or controls a
556 greater than five percent (5%) interest or has an ownership value
557 of One Million Dollars (\$1,000,000.00) in the source's business,
558 whichever is smaller. No member shall be an officer or employee
559 of the State of Mississippi while serving as a voting member on
560 the Public Procurement Review Board.



561 (d) Members of the Public Procurement Review Board
562 shall be entitled to per diem as authorized by Section 25-3-69 and
563 travel reimbursement as authorized by Section 25-3-41.

564 (e) The * * * members of the Public Procurement Review
565 Board shall * * * elect a chair from among the membership, and he
566 or she shall preside over the meetings of the board. The board
567 shall annually elect a vice * * * chair, who shall serve in the
568 absence of the * * * chair. No business shall be transacted,
569 including adoption of rules of procedure, without the presence of
570 a quorum of the board. * * * Three (3) members shall be a quorum.
571 No action shall be valid unless approved by * * * a majority of
572 the members present and voting, entered upon the minutes of the
573 board and signed by the * * * chair. * * * Necessary clerical and
574 administrative support for the board shall be provided by the
575 Department of Finance and Administration. Minutes shall be kept
576 of the proceedings of each meeting, copies of which shall be filed
577 on a monthly basis with the * * * chairs of the Accountability,
578 Efficiency and Transparency Committees of the Senate and House of
579 Representatives and the chairs of the Appropriation Committees of
580 the Senate and House of Representatives.

581 (2) The Public Procurement Review Board shall have the
582 following powers and responsibilities:

583 (a) Approve all purchasing regulations governing the
584 purchase or lease by any agency, as defined in Section 31-7-1, of



585 commodities and equipment, except computer equipment acquired
586 pursuant to Sections 25-53-1 through 25-53-29;

587 (b) Adopt regulations governing the approval of
588 contracts let for the construction and maintenance of state
589 buildings and other state facilities as well as related contracts
590 for architectural and engineering services;

591 (c) Adopt regulations governing any lease or rental
592 agreement by any state agency or department, including any state
593 agency financed entirely by federal funds, for space outside the
594 buildings under the jurisdiction of the Department of Finance and
595 Administration. These regulations shall require each agency
596 requesting to lease such space to provide the following
597 information that shall be published by the Department of Finance
598 and Administration on its website: the agency to lease the space;
599 the terms of the lease; the approximate square feet to be leased;
600 the use for the space; a description of a suitable space; the
601 general location desired for the leased space; the contact
602 information for a person from the agency; the deadline date for
603 the agency to have received a lease proposal; any other specific
604 terms or conditions of the agency; and any other information
605 deemed appropriate by the Division of Real Property Management of
606 the Department of Finance and Administration or the Public
607 Procurement Review Board. The information shall be provided
608 sufficiently in advance of the time the space is needed to allow
609 the Division of Real Property Management of the Department of



610 Finance and Administration to review and preapprove the lease
611 before the time for advertisement begins;

612 (d) Adopt, in its discretion, regulations to set aside
613 at least five percent (5%) of anticipated annual expenditures for
614 the purchase of commodities from minority businesses; however, all
615 such set-aside purchases shall comply with all purchasing
616 regulations promulgated by the department and shall be subject to
617 all bid requirements. Set-aside purchases for which competitive
618 bids are required shall be made from the lowest and best minority
619 business bidder; however, if no minority bid is available or if
620 the minority bid is more than two percent (2%) higher than the
621 lowest bid, then bids shall be accepted and awarded to the lowest
622 and best bidder. However, the provisions in this paragraph shall
623 not be construed to prohibit the rejection of a bid when only one
624 (1) bid is received. Such rejection shall be placed in the
625 minutes. For the purposes of this paragraph, the term "minority
626 business" means a business which is owned by a person who is a
627 citizen or lawful permanent resident of the United States and who
628 is:

629 (i) Black: having origins in any of the black
630 racial groups of Africa;

631 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
632 Central or South American, or other Spanish or Portuguese culture
633 or origin regardless of race;



634 (iii) Asian-American: having origins in any of
635 the original * * * people of the Far East, Southeast Asia, the
636 Indian subcontinent, or the Pacific Islands;

637 (iv) American Indian or Alaskan Native: having
638 origins in any of the original * * * people of North America; or

639 (v) Female;

640 (e) In consultation with and approval by the * * *
641 Chairs of the Senate and House Public Property Committees, approve
642 leases, for a term not to exceed eighteen (18) months, entered
643 into by state agencies for the purpose of providing parking
644 arrangements for state employees who work in the Woolfolk
645 Building, the Carroll Gartin Justice Building or the Walter
646 Sillers Office Building * * *;

647 (f) Promulgate rules and regulations governing the
648 solicitation and selection of contractual services personnel
649 including personal and professional services contracts for any
650 form of consulting, policy analysis, public relations, marketing,
651 public affairs, legislative advocacy services or any other
652 contract that the board deems appropriate for oversight, with the
653 exception of any personal service contracts entered into by any
654 agency that employs only nonstate service employees as defined in
655 Section 25-9-107(c), any personal service contracts entered into
656 for computer or information technology-related services governed
657 by the Mississippi Department of Information Technology Services,
658 any personal service contracts entered into by the Mississippi



659 Department of Transportation, any personal service contracts
660 entered into by the Department of Human Services through June 30,
661 2019, which the Executive Director of the Department of Human
662 Services determines would be useful in establishing and operating
663 the Department of Child Protection Services, any personal service
664 contracts entered into by the Department of Child Protection
665 Services through June 30, 2019, and any contract for attorney,
666 accountant, auditor, architect, engineer, and utility rate expert
667 services. Any such rules and regulations shall provide for
668 maintaining continuous internal audit covering the activities of
669 such agency affecting its revenue and expenditures as required
670 under Section 7-7-3(6) (d). Any rules and regulation changes
671 related to personal and professional services contracts that the
672 Public Procurement Review Board may propose shall be submitted to
673 the Chairs of the Accountability, Efficiency and Transparency
674 Committees of the Senate and House of Representatives and the
675 Chairs of the Appropriation Committees of the Senate and House of
676 Representatives at least fifteen (15) days before the board votes
677 on the proposed changes, and those rules and regulation changes,
678 if adopted, shall be promulgated in accordance with the
679 Mississippi Administrative Procedures Act;

680 (g) Approve all personal and professional services
681 contracts involving the expenditures of funds in excess of
682 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
683 paragraph (f) of this subsection (2) and in subsection (8);



684 (h) Develop mandatory standards with respect to
685 contractual services personnel that require invitations for public
686 bid, requests for proposals, record keeping and financial
687 responsibility of contractors. The Public Procurement Review
688 Board shall, unless exempted under this paragraph (h) or under
689 paragraph (i) or (o) of this subsection (2), require the agency
690 involved to submit the procurement to a competitive procurement
691 process, and may reserve the right to reject any or all resulting
692 procurements;

693 (i) Prescribe certain circumstances by which agency
694 heads may enter into contracts for personal and professional
695 services without receiving prior approval from the Public
696 Procurement Review Board. The Public Procurement Review Board may
697 establish a preapproved list of providers of various personal and
698 professional services for set prices with which state agencies may
699 contract without bidding or prior approval from the board;

700 (i) Agency requirements may be fulfilled by
701 procuring services performed incident to the state's own programs.
702 The agency head shall determine in writing whether the price
703 represents a fair market value for the services. When the
704 procurements are made from other governmental entities, the
705 private sector need not be solicited; however, these contracts
706 shall still be submitted for approval to the Public Procurement
707 Review Board.



708 (ii) Contracts between two (2) state agencies,
709 both under Public Procurement Review Board purview, shall not
710 require Public Procurement Review Board approval. However, the
711 contracts shall still be entered into the enterprise resource
712 planning system.

713 (j) Provide standards for the issuance of requests for
714 proposals, the evaluation of proposals received, consideration of
715 costs and quality of services proposed, contract negotiations, the
716 administrative monitoring of contract performance by the agency
717 and successful steps in terminating a contract;

718 (k) Present recommendations for governmental
719 privatization and to evaluate privatization proposals submitted by
720 any state agency;

721 (l) Authorize personal and professional service
722 contracts to be effective for more than one (1) year provided a
723 funding condition is included in any such multiple year contract,
724 except the State Board of Education, which shall have the
725 authority to enter into contractual agreements for student
726 assessment for a period up to ten (10) years. The State Board of
727 Education shall procure these services in accordance with the
728 Public Procurement Review Board procurement regulations;

729 (m) Request the State Auditor to conduct a performance
730 audit on any personal or professional service contract;

731 (n) Prepare an annual report to the Legislature
732 concerning the issuance of personal and professional services



733 contracts during the previous year, collecting any necessary
734 information from state agencies in making such report;

735 (o) Develop and implement the following standards and
736 procedures for the approval of any sole source contract for
737 personal and professional services regardless of the value of the
738 procurement:

739 (i) For the purposes of this paragraph (o), the
740 term "sole source" means only one (1) source is available that can
741 provide the required personal or professional service.

742 (ii) An agency that has been issued a binding,
743 valid court order mandating that a particular source or provider
744 must be used for the required service must include a copy of the
745 applicable court order in all future sole source contract reviews
746 for the particular personal or professional service referenced in
747 the court order.

748 (iii) Any agency alleging to have a sole source
749 for any personal or professional service, other than those
750 exempted under Section 27-104-7(2)(f) and (8), shall publish on
751 the procurement portal website established by Sections 25-53-151
752 and 27-104-165, for at least fourteen (14) days, the terms of the
753 proposed contract for those services. In addition, the
754 publication shall include, but is not limited to, the following
755 information:

756 1. The personal or professional service
757 offered in the contract;



758 2. An explanation of why the personal or
759 professional service is the only one that can meet the needs of
760 the agency;

761 3. An explanation of why the source is the
762 only person or entity that can provide the required personal or
763 professional service;

764 4. An explanation of why the amount to be
765 expended for the personal or professional service is reasonable;
766 and

767 5. The efforts that the agency went through
768 to obtain the best possible price for the personal or professional
769 service.

770 (iv) If any person or entity objects and proposes
771 that the personal or professional service published under
772 subparagraph (iii) of this paragraph (o) is not a sole source
773 service and can be provided by another person or entity, then the
774 objecting person or entity shall notify the Public Procurement
775 Review Board and the agency that published the proposed sole
776 source contract with a detailed explanation of why the personal or
777 professional service is not a sole source service.

778 (v) 1. If the agency determines after review that
779 the personal or professional service in the proposed sole source
780 contract can be provided by another person or entity, then the
781 agency must withdraw the sole source contract publication from the
782 procurement portal website and submit the procurement of the



783 personal or professional service to an advertised competitive bid
784 or selection process.

785 2. If the agency determines after review that
786 there is only one (1) source for the required personal or
787 professional service, then the agency may appeal to the Public
788 Procurement Review Board. The agency has the burden of proving
789 that the personal or professional service is only provided by one
790 (1) source.

791 3. If the Public Procurement Review Board has
792 any reasonable doubt as to whether the personal or professional
793 service can only be provided by one (1) source, then the agency
794 must submit the procurement of the personal or professional
795 service to an advertised competitive bid or selection process. No
796 action taken by the Public Procurement Review Board in this appeal
797 process shall be valid unless approved by a majority of the
798 members of the Public Procurement Review Board present and voting.

799 (vi) The Public Procurement Review Board shall
800 prepare and submit a quarterly report to the House of
801 Representatives and Senate Accountability, Efficiency and
802 Transparency Committees that details the sole source contracts
803 presented to the Public Procurement Review Board and the reasons
804 that the Public Procurement Review Board approved or rejected each
805 contract. These quarterly reports shall also include the
806 documentation and memoranda required in subsection (4) of this
807 section. An agency that submitted a sole source contract shall be



808 prepared to explain the sole source contract to each committee by
809 December 15 of each year upon request by the committee.

810 (p) Assess any fines and administrative penalties
811 provided for in Sections 1 through 12 of this act.

812 (3) All submissions shall be made sufficiently in advance of
813 each monthly meeting of the Public Procurement Review Board as
814 prescribed by the Public Procurement Review Board. If the Public
815 Procurement Review Board rejects any contract submitted for review
816 or approval, the Public Procurement Review Board shall clearly set
817 out the reasons for its action, including, but not limited to, the
818 policy that the agency has violated in its submitted contract and
819 any corrective actions that the agency may take to amend the
820 contract to comply with the rules and regulations of the Public
821 Procurement Review Board.

822 (4) All sole source contracts for personal and professional
823 services awarded by state agencies, other than those exempted
824 under Section 27-104-7(2)(f) and (8), whether approved by an
825 agency head or the Public Procurement Review Board, shall contain
826 in the procurement file a written determination for the approval,
827 using a request form furnished by the Public Procurement Review
828 Board. The written determination shall document the basis for the
829 determination, including any market analysis conducted in order to
830 ensure that the service required was practicably available from
831 only one (1) source. A memorandum shall accompany the request
832 form and address the following four (4) points:



833 (a) Explanation of why this service is the only service
834 that can meet the needs of the purchasing agency;

835 (b) Explanation of why this vendor is the only
836 practicably available source from which to obtain this service;

837 (c) Explanation of why the price is considered
838 reasonable; and

839 (d) Description of the efforts that were made to
840 conduct a noncompetitive negotiation to get the best possible
841 price for the taxpayers.

842 (5) The Public Procurement Review Board shall develop and
843 promulgate rules and regulations to define the allowable legal
844 relationship between contract employees and the contracting
845 departments, agencies and institutions of state government under
846 the jurisdiction of the State Personnel Board, in compliance with
847 the applicable rules and regulations of the federal Internal
848 Revenue Service (IRS) for federal employment tax purposes. Under
849 these regulations, the usual common law rules are applicable to
850 determine and require that such worker is an independent
851 contractor and not an employee, requiring evidence of lawful
852 behavioral control, lawful financial control and lawful
853 relationship of the parties. Any state department, agency or
854 institution shall only be authorized to contract for personnel
855 services in compliance with those regulations.

856 (* * *6) No member of the Public Procurement Review Board
857 shall use his or her official authority or influence to coerce, by



858 threat of discharge from employment, or otherwise, the purchase of
859 commodities, the contracting for personal or professional
860 services, or the contracting for public construction under this
861 chapter.

862 (* * *7) Notwithstanding any other laws or rules to the
863 contrary, the provisions of subsection (2) of this section shall
864 not be applicable to the Mississippi State Port Authority at
865 Gulfport.

866 (8) Nothing in this section shall impair or limit the
867 authority of the Board of Trustees of the Public Employees'
868 Retirement System to enter into any personal or professional
869 services contracts directly related to their constitutional
870 obligation to manage the trust funds, including, but not limited
871 to, actuarial, custodial banks, cash management, investment
872 consultant and investment management contracts.

873 (9) Notwithstanding the exemption of personal and
874 professional services contracts entered into by the Department of
875 Human Services and personal and professional services contracts
876 entered into by the Department of Child Protection Services from
877 the provisions of this section under subsection (2)(f), before the
878 Department of Human Services or the Department of Child Protection
879 Services may enter into a personal or professional service
880 contract, the department(s) shall give notice of the proposed
881 personal or professional service contract to the Public
882 Procurement Review Board for any recommendations by the board.



883 Upon receipt of the notice, the board shall post the notice on its
884 website and on the procurement portal website established by
885 Sections 25-53-151 and 27-104-165. If the board does not respond
886 to the department(s) within seven (7) calendar days after
887 receiving the notice, the department(s) may enter the proposed
888 personal or professional service contract. If the board responds
889 to the department(s) within seven (7) calendar days, then the
890 board has seven (7) calendar days from the date of its initial
891 response to provide any additional recommendations. After the end
892 of the second seven-day period, the department(s) may enter the
893 proposed personal or professional service contract. The board is
894 not authorized to disapprove any proposed personal or professional
895 services contracts. This subsection shall stand repealed on July
896 1, 2019.

897 **SECTION 14.** Section 25-9-120, Mississippi Code of 1972, is
898 amended as follows:

899 25-9-120. (1) Contract personnel, whether classified as
900 contract workers or independent contractors shall not be deemed
901 state service or nonstate service employees of the State of
902 Mississippi, and shall not be eligible to participate in the
903 Public Employees' Retirement System, or the State and School
904 Employees' Health Insurance Plan, nor be allowed credit for
905 personal and sick leave and other leave benefits as employees of
906 the State of Mississippi, notwithstanding Sections 25-3-91 through
907 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;



908 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the
909 purpose set forth herein. Contract workers, i.e., contract
910 personnel who do not meet the criteria of independent contractors,
911 shall be subject to the provisions of Section 25-11-127.

912 * * *

913 (2) The Personal Service Contract Review Board is abolished.
914 The Public Procurement Review Board shall be the Personal Service
915 Contract Review Board and shall retain all powers and duties
916 granted by law to the Personal Service Contract Review Board. All
917 equipment, inventories, records, personnel, resources and other
918 property, real or personal, tangible or intangible, of the
919 Personal Service Contract Review Board shall be transferred to the
920 Public Procurement Review Board as provided in Section 27-104-7.
921 The transfer of personnel shall be commensurate with the number
922 and classification of positions (PINS) allocated to the Personal
923 Service Contract Review Board on June 30, 2017. Wherever the
924 terms "Personal Service Contract Review Board" or "board," when
925 referring to the Personal Service Contract Review Board, appear in
926 any law, rule, regulation or document the same shall be construed
927 to mean the Public Procurement Review Board.

928 **SECTION 15.** Section 25-61-9, Mississippi Code of 1972, is
929 amended as follows:

930 25-61-9. (1) Records furnished to public bodies by third
931 parties which contain trade secrets or confidential commercial or
932 financial information shall not be subject to inspection,



933 examination, copying or reproduction under this chapter until
934 notice to third parties has been given, but the records shall be
935 released no later than twenty-one (21) days from the date the
936 third parties are given notice by the public body unless the third
937 parties have filed in chancery court a petition seeking a
938 protective order on or before the expiration of the twenty-one-day
939 time period. Any party seeking the protective order shall give
940 notice to and provide the reasons for the protective order to the
941 party requesting the information in accordance with the
942 Mississippi Rules of Civil Procedure. The notice and reasons for
943 the protective order must be posted on the Mississippi procurement
944 portal for a minimum of seven (7) days before filing the petition
945 seeking the protective order in chancery court.

946 (2) If any public record which is held to be exempt from
947 disclosure pursuant to this chapter contains material which is not
948 exempt pursuant to this chapter, the public body shall separate
949 the exempt material and make the nonexempt material available for
950 examination or copying, or both, as provided for in this chapter.

951 (3) Trade secrets and confidential commercial and financial
952 information of a proprietary nature developed by a college,
953 university or public hospital under contract with a firm,
954 business, partnership, association, corporation, individual or
955 other like entity shall not be subject to inspection, examination,
956 copying or reproduction under this chapter.



957 (4) Misappropriation of a trade secret shall be governed by
958 the provisions of the Mississippi Uniform Trade Secrets Act,
959 Sections 75-26-1 through 75-26-19.

960 (5) A waste minimization plan and any updates developed by
961 generators and facility operators under the Mississippi
962 Comprehensive Multimedia Waste Minimization Act of 1990 shall be
963 retained at the facility and shall not be subject to inspection,
964 examination, copying or reproduction under this chapter.

965 (6) Data processing software obtained by an agency under a
966 licensing agreement that prohibits its disclosure and which
967 software is a trade secret, as defined in Section 75-26-3, and
968 data processing software produced by a public body which is
969 sensitive must not be subject to inspection, copying or
970 reproduction under this chapter.

971 As used in this subsection, "sensitive" means only those
972 portions of data processing software, including the specifications
973 and documentation, used to:

974 (a) Collect, process, store, and retrieve information
975 which is exempt under this chapter.

976 (b) Control and direct access authorizations and
977 security measures for automated systems.

978 (c) Collect, process, store, and retrieve information,
979 disclosure of which would require a significant intrusion into the
980 business of the public body.



981 (7) For all procurement contracts awarded by state agencies,
982 the provisions of the contract which contain the commodities
983 purchased or the personal or professional services provided, the
984 price to be paid, and the term of the contract shall not be deemed
985 to be a trade secret or confidential commercial or financial
986 information under this section, and shall be available for
987 examination, copying or reproduction as provided for in this
988 chapter. Any party seeking a protective order in violation of
989 this subsection may be barred by a state agency from submitting
990 bids, proposals or qualifications for procurement for a period not
991 to exceed five (5) years.

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

994 31-7-13. All agencies and governing authorities shall
995 purchase their commodities and printing; contract for garbage
996 collection or disposal; contract for solid waste collection or
997 disposal; contract for sewage collection or disposal; contract for
998 public construction; and contract for rentals as herein provided.

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

1000 Purchases which do not involve an expenditure of more than Five
1001 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
1002 charges, may be made without advertising or otherwise requesting
1003 competitive bids. However, nothing contained in this paragraph
1004 (a) shall be construed to prohibit any agency or governing



1005 authority from establishing procedures which require competitive
1006 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

1007 (b) **Bidding procedure for purchases over \$5,000.00 but**
1008 **not over \$50,000.00.** Purchases which involve an expenditure of
1009 more than Five Thousand Dollars (\$5,000.00) but not more than
1010 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
1011 shipping charges may be made from the lowest and best bidder
1012 without publishing or posting advertisement for bids, provided at
1013 least two (2) competitive written bids have been obtained. Any
1014 state agency or community/junior college purchasing commodities or
1015 procuring construction pursuant to this paragraph (b) may
1016 authorize its purchasing agent, or his designee, to accept the
1017 lowest competitive written bid under Fifty Thousand Dollars
1018 (\$50,000.00). Any governing authority purchasing commodities
1019 pursuant to this paragraph (b) may authorize its purchasing agent,
1020 or his designee, with regard to governing authorities other than
1021 counties, or its purchase clerk, or his designee, with regard to
1022 counties, to accept the lowest and best competitive written bid.
1023 Such authorization shall be made in writing by the governing
1024 authority and shall be maintained on file in the primary office of
1025 the agency and recorded in the official minutes of the governing
1026 authority, as appropriate. The purchasing agent or the purchase
1027 clerk, or their designee, as the case may be, and not the
1028 governing authority, shall be liable for any penalties and/or
1029 damages as may be imposed by law for any act or omission of the



1030 purchasing agent or purchase clerk, or their designee,
1031 constituting a violation of law in accepting any bid without
1032 approval by the governing authority. The term "competitive
1033 written bid" shall mean a bid submitted on a bid form furnished by
1034 the buying agency or governing authority and signed by authorized
1035 personnel representing the vendor, or a bid submitted on a
1036 vendor's letterhead or identifiable bid form and signed by
1037 authorized personnel representing the vendor. "Competitive" shall
1038 mean that the bids are developed based upon comparable
1039 identification of the needs and are developed independently and
1040 without knowledge of other bids or prospective bids. Any bid item
1041 for construction in excess of Five Thousand Dollars (\$5,000.00)
1042 shall be broken down by components to provide detail of component
1043 description and pricing. These details shall be submitted with
1044 the written bids and become part of the bid evaluation criteria.
1045 Bids may be submitted by facsimile, electronic mail or other
1046 generally accepted method of information distribution. Bids
1047 submitted by electronic transmission shall not require the
1048 signature of the vendor's representative unless required by
1049 agencies or governing authorities.

1050 (c) **Bidding procedure for purchases over \$50,000.00.**

1051 (i) **Publication requirement.**

1052 1. Purchases which involve an expenditure of
1053 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
1054 freight and shipping charges, may be made from the lowest and best



1055 bidder after advertising for competitive bids once each week for
1056 two (2) consecutive weeks in a regular newspaper published in the
1057 county or municipality in which such agency or governing authority
1058 is located. However, all American Recovery and Reinvestment Act
1059 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
1060 shall be bid. All references to American Recovery and
1061 Reinvestment Act projects in this section shall not apply to
1062 programs identified in Division B of the American Recovery and
1063 Reinvestment Act.

1064 2. Reverse auctions shall be the primary
1065 method for receiving bids during the bidding process. If a
1066 purchasing entity determines that a reverse auction is not in the
1067 best interest of the state, then that determination must be
1068 approved by the Public Procurement Review Board. The purchasing
1069 entity shall submit a detailed explanation of why a reverse
1070 auction would not be in the best interest of the state and present
1071 alternative process to be approved by Public Procurement Review
1072 Board. If the Public Procurement Review Board authorizes the
1073 purchasing entity to solicit bids with a method other than reverse
1074 auction, then the purchasing entity may designate the other
1075 methods by which the bids will be received, including, but not
1076 limited to, bids sealed in an envelope, bids received
1077 electronically in a secure system, * * * or bids received by any
1078 other method that promotes open competition and has been approved
1079 by the Office of Purchasing and Travel. However, reverse auction



1080 shall not be used for any public contract for design or
1081 construction of public facilities, including buildings, roads and
1082 bridges. The Public Procurement Review Board must approve any
1083 contract entered into by alternative processes. If a contractor
1084 has the capability to submit a bid electronically through a secure
1085 system, the purchasing entity must accept the bid in that format.
1086 Except as otherwise provided in subparagraph (v) of this paragraph
1087 (c), all purchasing entities shall make the appropriate provisions
1088 necessary for the acceptance of bids submitted electronically
1089 through a secure system for all purchases that require competitive
1090 sealed bidding as provided in this section.

1091 3. The date as published for the bid opening
1092 shall not be less than seven (7) working days after the last
1093 published notice; however, if the purchase involves a construction
1094 project in which the estimated cost is in excess of Fifty Thousand
1095 Dollars (\$50,000.00), such bids shall not be opened in less than
1096 fifteen (15) working days after the last notice is published and
1097 the notice for the purchase of such construction shall be
1098 published once each week for two (2) consecutive weeks. However,
1099 all American Recovery and Reinvestment Act projects in excess of
1100 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
1101 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
1102 under the American Recovery and Reinvestment Act, publication
1103 shall be made one (1) time and the bid opening for construction
1104 projects shall not be less than ten (10) working days after the



1105 date of the published notice. The notice of intention to let
1106 contracts or purchase equipment shall state the time and place at
1107 which bids shall be received, list the contracts to be made or
1108 types of equipment or supplies to be purchased, and, if all plans
1109 and/or specifications are not published, refer to the plans and/or
1110 specifications on file. If there is no newspaper published in the
1111 county or municipality, then such notice shall be given by posting
1112 same at the courthouse, or for municipalities at the city hall,
1113 and at two (2) other public places in the county or municipality,
1114 and also by publication once each week for two (2) consecutive
1115 weeks in some newspaper having a general circulation in the county
1116 or municipality in the above-provided manner. On the same date
1117 that the notice is submitted to the newspaper for publication, the
1118 agency or governing authority involved shall mail written notice
1119 to, or provide electronic notification to the main office of the
1120 Mississippi Procurement Technical Assistance Program under the
1121 Mississippi Development Authority that contains the same
1122 information as that in the published notice. Submissions received
1123 by the Mississippi Procurement Technical Assistance Program for
1124 projects funded by the American Recovery and Reinvestment Act
1125 shall be displayed on a separate and unique Internet web page
1126 accessible to the public and maintained by the Mississippi
1127 Development Authority for the Mississippi Procurement Technical
1128 Assistance Program. Those American Recovery and Reinvestment Act
1129 related submissions shall be publicly posted within twenty-four



1130 (24) hours of receipt by the Mississippi Development Authority and
1131 the bid opening shall not occur until the submission has been
1132 posted for ten (10) consecutive days. The Department of Finance
1133 and Administration shall maintain information regarding contracts
1134 and other expenditures from the American Recovery and Reinvestment
1135 Act, on a unique Internet web page accessible to the public. The
1136 Department of Finance and Administration shall promulgate rules
1137 regarding format, content and deadlines, unless otherwise
1138 specified by law, of the posting of award notices, contract
1139 execution and subsequent amendments, links to the contract
1140 documents, expenditures against the awarded contracts and general
1141 expenditures of funds from the American Recovery and Reinvestment
1142 Act. Within one (1) working day of the contract award, the agency
1143 or governing authority shall post to the designated web page
1144 maintained by the Department of Finance and Administration, notice
1145 of the award, including the award recipient, the contract amount,
1146 and a brief summary of the contract in accordance with rules
1147 promulgated by the department. Within one (1) working day of the
1148 contract execution, the agency or governing authority shall post
1149 to the designated web page maintained by the Department of Finance
1150 and Administration a summary of the executed contract and make a
1151 copy of the appropriately redacted contract documents available
1152 for linking to the designated web page in accordance with the
1153 rules promulgated by the department. The information provided by
1154 the agency or governing authority shall be posted to the web page



1155 for the duration of the American Recovery and Reinvestment Act
1156 funding or until the project is completed, whichever is longer.

1157 (ii) **Bidding process amendment procedure.** If all
1158 plans and/or specifications are published in the notification,
1159 then the plans and/or specifications may not be amended. If all
1160 plans and/or specifications are not published in the notification,
1161 then amendments to the plans/specifications, bid opening date, bid
1162 opening time and place may be made, provided that the agency or
1163 governing authority maintains a list of all prospective bidders
1164 who are known to have received a copy of the bid documents and all
1165 such prospective bidders are sent copies of all amendments. This
1166 notification of amendments may be made via mail, facsimile,
1167 electronic mail or other generally accepted method of information
1168 distribution. No addendum to bid specifications may be issued
1169 within two (2) working days of the time established for the
1170 receipt of bids unless such addendum also amends the bid opening
1171 to a date not less than five (5) working days after the date of
1172 the addendum.

1173 (iii) **Filing requirement.** In all cases involving
1174 governing authorities, before the notice shall be published or
1175 posted, the plans or specifications for the construction or
1176 equipment being sought shall be filed with the clerk of the board
1177 of the governing authority. In addition to these requirements, a
1178 bid file shall be established which shall indicate those vendors
1179 to whom such solicitations and specifications were issued, and



1180 such file shall also contain such information as is pertinent to
1181 the bid.

1182 (iv) **Specification restrictions.**

1183 1. Specifications pertinent to such bidding
1184 shall be written so as not to exclude comparable equipment of
1185 domestic manufacture. However, if valid justification is
1186 presented, the Department of Finance and Administration or the
1187 board of a governing authority may approve a request for specific
1188 equipment necessary to perform a specific job. Further, such
1189 justification, when placed on the minutes of the board of a
1190 governing authority, may serve as authority for that governing
1191 authority to write specifications to require a specific item of
1192 equipment needed to perform a specific job. In addition to these
1193 requirements, from and after July 1, 1990, vendors of relocatable
1194 classrooms and the specifications for the purchase of such
1195 relocatable classrooms published by local school boards shall meet
1196 all pertinent regulations of the State Board of Education,
1197 including prior approval of such bid by the State Department of
1198 Education.

1199 2. Specifications for construction projects
1200 may include an allowance for commodities, equipment, furniture,
1201 construction materials or systems in which prospective bidders are
1202 instructed to include in their bids specified amounts for such
1203 items so long as the allowance items are acquired by the vendor in
1204 a commercially reasonable manner and approved by the



1205 agency/governing authority. Such acquisitions shall not be made
1206 to circumvent the public purchasing laws.

1207 (v) Agencies and governing authorities * * * shall
1208 establish secure procedures by which bids may be submitted via
1209 electronic means. Agencies and governing authorities that are
1210 currently without high speed Internet access shall be exempt from
1211 this requirement until such time that high speed Internet access
1212 becomes available. When construction bids are submitted
1213 electronically, the offerer shall be deemed in compliance with the
1214 requirements provided in Section 31-3-21(1) and (2) if he includes
1215 a certificate of responsibility, or a statement that the bid
1216 enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), as
1217 an attachment with the electronic bid submittal.

1218 (d) **Lowest and best bid decision procedure.**

1219 (i) **Decision procedure.** Purchases may be made
1220 from the lowest and best bidder. In determining the lowest and
1221 best bid, freight and shipping charges shall be included.
1222 Life-cycle costing, total cost bids, warranties, guaranteed
1223 buy-back provisions and other relevant provisions may be included
1224 in the best bid calculation. All best bid procedures for state
1225 agencies must be in compliance with regulations established by the
1226 Department of Finance and Administration. If any governing
1227 authority accepts a bid other than the lowest bid actually
1228 submitted, it shall place on its minutes detailed calculations and
1229 narrative summary showing that the accepted bid was determined to



1230 be the lowest and best bid, including the dollar amount of the
1231 accepted bid and the dollar amount of the lowest bid. No agency
1232 or governing authority shall accept a bid based on items not
1233 included in the specifications.

1234 (ii) **Decision procedure for Certified Purchasing**
1235 **Offices.** In addition to the decision procedure set forth in * * *
1236 subparagraph (i) of this paragraph (d), Certified Purchasing
1237 Offices may also use the following procedure: Purchases may be
1238 made from the bidder offering the best value. In determining the
1239 best value bid, freight and shipping charges shall be included.
1240 Life-cycle costing, total cost bids, warranties, guaranteed
1241 buy-back provisions, documented previous experience, training
1242 costs and other relevant provisions, including, but not limited
1243 to, a bidder having a local office and inventory located within
1244 the jurisdiction of the governing authority, may be included in
1245 the best value calculation. This provision shall authorize
1246 Certified Purchasing Offices to utilize a Request For Proposals
1247 (RFP) process when purchasing commodities. All best value
1248 procedures for state agencies must be in compliance with
1249 regulations established by the Department of Finance and
1250 Administration. No agency or governing authority shall accept a
1251 bid based on items or criteria not included in the specifications.

1252 (iii) **Decision procedure for Mississippi**
1253 **Landmarks.** In addition to the decision procedure set forth
1254 in * * * subparagraph (i) of this paragraph (d), where purchase



1255 involves renovation, restoration, or both, of the State Capitol
1256 Building or any other historical building designated for at least
1257 five (5) years as a Mississippi Landmark by the Board of Trustees
1258 of the Department of Archives and History under the authority of
1259 Sections 39-7-7 and 39-7-11, the agency or governing authority may
1260 use the following procedure: Purchases may be made from the
1261 lowest and best prequalified bidder. Prequalification of bidders
1262 shall be determined not less than fifteen (15) working days before
1263 the first published notice of bid opening. Prequalification
1264 criteria shall be limited to bidder's knowledge and experience in
1265 historical restoration, preservation and renovation. In
1266 determining the lowest and best bid, freight and shipping charges
1267 shall be included. Life-cycle costing, total cost bids,
1268 warranties, guaranteed buy-back provisions and other relevant
1269 provisions may be included in the best bid calculation. All best
1270 bid and prequalification procedures for state agencies must be in
1271 compliance with regulations established by the Department of
1272 Finance and Administration. If any governing authority accepts a
1273 bid other than the lowest bid actually submitted, it shall place
1274 on its minutes detailed calculations and narrative summary showing
1275 that the accepted bid was determined to be the lowest and best
1276 bid, including the dollar amount of the accepted bid and the
1277 dollar amount of the lowest bid. No agency or governing authority
1278 shall accept a bid based on items not included in the
1279 specifications.



1280 (iv) **Construction project negotiations authority.**

1281 If the lowest and best bid is not more than ten percent (10%)
1282 above the amount of funds allocated for a public construction or
1283 renovation project, then the agency or governing authority shall
1284 be permitted to negotiate with the lowest bidder in order to enter
1285 into a contract for an amount not to exceed the funds allocated.

1286 (e) **Lease-purchase authorization.** For the purposes of
1287 this section, the term "equipment" shall mean equipment, furniture
1288 and, if applicable, associated software and other applicable
1289 direct costs associated with the acquisition. Any lease-purchase
1290 of equipment which an agency is not required to lease-purchase
1291 under the master lease-purchase program pursuant to Section
1292 31-7-10 and any lease-purchase of equipment which a governing
1293 authority elects to lease-purchase may be acquired by a
1294 lease-purchase agreement under this paragraph (e). Lease-purchase
1295 financing may also be obtained from the vendor or from a
1296 third-party source after having solicited and obtained at least
1297 two (2) written competitive bids, as defined in paragraph (b) of
1298 this section, for such financing without advertising for such
1299 bids. Solicitation for the bids for financing may occur before or
1300 after acceptance of bids for the purchase of such equipment or,
1301 where no such bids for purchase are required, at any time before
1302 the purchase thereof. No such lease-purchase agreement shall be
1303 for an annual rate of interest which is greater than the overall
1304 maximum interest rate to maturity on general obligation



1305 indebtedness permitted under Section 75-17-101, and the term of
1306 such lease-purchase agreement shall not exceed the useful life of
1307 equipment covered thereby as determined according to the upper
1308 limit of the asset depreciation range (ADR) guidelines for the
1309 Class Life Asset Depreciation Range System established by the
1310 Internal Revenue Service pursuant to the United States Internal
1311 Revenue Code and regulations thereunder as in effect on December
1312 31, 1980, or comparable depreciation guidelines with respect to
1313 any equipment not covered by ADR guidelines. Any lease-purchase
1314 agreement entered into pursuant to this paragraph (e) may contain
1315 any of the terms and conditions which a master lease-purchase
1316 agreement may contain under the provisions of Section 31-7-10(5),
1317 and shall contain an annual allocation dependency clause
1318 substantially similar to that set forth in Section 31-7-10(8).
1319 Each agency or governing authority entering into a lease-purchase
1320 transaction pursuant to this paragraph (e) shall maintain with
1321 respect to each such lease-purchase transaction the same
1322 information as required to be maintained by the Department of
1323 Finance and Administration pursuant to Section 31-7-10(13).
1324 However, nothing contained in this section shall be construed to
1325 permit agencies to acquire items of equipment with a total
1326 acquisition cost in the aggregate of less than Ten Thousand
1327 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1328 equipment, and the purchase thereof by any lessor, acquired by
1329 lease-purchase under this paragraph and all lease-purchase



1330 payments with respect thereto shall be exempt from all Mississippi
1331 sales, use and ad valorem taxes. Interest paid on any
1332 lease-purchase agreement under this section shall be exempt from
1333 State of Mississippi income taxation.

1334 (f) **Alternate bid authorization.** When necessary to
1335 ensure ready availability of commodities for public works and the
1336 timely completion of public projects, no more than two (2)
1337 alternate bids may be accepted by a governing authority for
1338 commodities. No purchases may be made through use of such
1339 alternate bids procedure unless the lowest and best bidder cannot
1340 deliver the commodities contained in his bid. In that event,
1341 purchases of such commodities may be made from one (1) of the
1342 bidders whose bid was accepted as an alternate.

1343 (g) **Construction contract change authorization.** In the
1344 event a determination is made by an agency or governing authority
1345 after a construction contract is let that changes or modifications
1346 to the original contract are necessary or would better serve the
1347 purpose of the agency or the governing authority, such agency or
1348 governing authority may, in its discretion, order such changes
1349 pertaining to the construction that are necessary under the
1350 circumstances without the necessity of further public bids;
1351 provided that such change shall be made in a commercially
1352 reasonable manner and shall not be made to circumvent the public
1353 purchasing statutes. In addition to any other authorized person,
1354 the architect or engineer hired by an agency or governing



1355 authority with respect to any public construction contract shall
1356 have the authority, when granted by an agency or governing
1357 authority, to authorize changes or modifications to the original
1358 contract without the necessity of prior approval of the agency or
1359 governing authority when any such change or modification is less
1360 than one percent (1%) of the total contract amount. The agency or
1361 governing authority may limit the number, manner or frequency of
1362 such emergency changes or modifications.

1363 (h) **Petroleum purchase alternative.** In addition to
1364 other methods of purchasing authorized in this chapter, when any
1365 agency or governing authority shall have a need for gas, diesel
1366 fuel, oils and/or other petroleum products in excess of the amount
1367 set forth in paragraph (a) of this section, such agency or
1368 governing authority may purchase the commodity after having
1369 solicited and obtained at least two (2) competitive written bids,
1370 as defined in paragraph (b) of this section. If two (2)
1371 competitive written bids are not obtained, the entity shall comply
1372 with the procedures set forth in paragraph (c) of this section.
1373 In the event any agency or governing authority shall have
1374 advertised for bids for the purchase of gas, diesel fuel, oils and
1375 other petroleum products and coal and no acceptable bids can be
1376 obtained, such agency or governing authority is authorized and
1377 directed to enter into any negotiations necessary to secure the
1378 lowest and best contract available for the purchase of such
1379 commodities.



1380 (i) **Road construction petroleum products price**
1381 **adjustment clause authorization.** Any agency or governing
1382 authority authorized to enter into contracts for the construction,
1383 maintenance, surfacing or repair of highways, roads or streets,
1384 may include in its bid proposal and contract documents a price
1385 adjustment clause with relation to the cost to the contractor,
1386 including taxes, based upon an industry-wide cost index, of
1387 petroleum products including asphalt used in the performance or
1388 execution of the contract or in the production or manufacture of
1389 materials for use in such performance. Such industry-wide index
1390 shall be established and published monthly by the Mississippi
1391 Department of Transportation with a copy thereof to be mailed,
1392 upon request, to the clerks of the governing authority of each
1393 municipality and the clerks of each board of supervisors
1394 throughout the state. The price adjustment clause shall be based
1395 on the cost of such petroleum products only and shall not include
1396 any additional profit or overhead as part of the adjustment. The
1397 bid proposals or document contract shall contain the basis and
1398 methods of adjusting unit prices for the change in the cost of
1399 such petroleum products.

1400 (j) **State agency emergency purchase procedure.** If the
1401 governing board or the executive head, or his designees, of any
1402 agency of the state shall determine that an emergency exists in
1403 regard to the purchase of any commodities or repair contracts, so
1404 that the delay incident to giving opportunity for competitive



1405 bidding would be detrimental to the interests of the state, then
1406 the head of such agency, or his designees, shall file with the
1407 Department of Finance and Administration (i) a statement
1408 explaining the conditions and circumstances of the emergency,
1409 which shall include a detailed description of the events leading
1410 up to the situation and the negative impact to the entity if the
1411 purchase is made following the statutory requirements set forth in
1412 paragraph (a), (b) or (c) of this section, and (ii) a certified
1413 copy of the appropriate minutes of the board of such agency
1414 requesting the emergency purchase, if applicable. Upon receipt of
1415 the statement and applicable board certification, the State Fiscal
1416 Officer, or his designees, may, in writing, authorize the purchase
1417 or repair without having to comply with competitive bidding
1418 requirements.

1419 If the governing board or the executive head, or his
1420 designees, of any agency determines that an emergency exists in
1421 regard to the purchase of any commodities or repair contracts, so
1422 that the delay incident to giving opportunity for competitive
1423 bidding would threaten the health or safety of any person, or the
1424 preservation or protection of property, then the provisions in
1425 this section for competitive bidding shall not apply, and any
1426 officer or agent of the agency having general or specific
1427 authority for making the purchase or repair contract shall approve
1428 the bill presented for payment, and he shall certify in writing



1429 from whom the purchase was made, or with whom the repair contract
1430 was made.

1431 Total purchases made under this paragraph (j) shall only be
1432 for the purpose of meeting needs created by the emergency
1433 situation. Following the emergency purchase, documentation of the
1434 purchase, including a description of the commodity purchased, the
1435 purchase price thereof and the nature of the emergency shall be
1436 filed with the Department of Finance and Administration.

1437 (k) **Governing authority emergency purchase procedure.**

1438 If the governing authority, or the governing authority acting
1439 through its designee, shall determine that an emergency exists in
1440 regard to the purchase of any commodities or repair contracts, so
1441 that the delay incident to giving opportunity for competitive
1442 bidding would be detrimental to the interest of the governing
1443 authority, then the provisions herein for competitive bidding
1444 shall not apply and any officer or agent of such governing
1445 authority having general or special authority therefor in making
1446 such purchase or repair shall approve the bill presented therefor,
1447 and he shall certify in writing thereon from whom such purchase
1448 was made, or with whom such a repair contract was made. At the
1449 board meeting next following the emergency purchase or repair
1450 contract, documentation of the purchase or repair contract,
1451 including a description of the commodity purchased, the price
1452 thereof and the nature of the emergency shall be presented to the



1453 board and shall be placed on the minutes of the board of such
1454 governing authority.

1455 (1) **Hospital purchase, lease-purchase and lease**
1456 **authorization.**

1457 (i) The commissioners or board of trustees of any
1458 public hospital may contract with such lowest and best bidder for
1459 the purchase or lease-purchase of any commodity under a contract
1460 of purchase or lease-purchase agreement whose obligatory payment
1461 terms do not exceed five (5) years.

1462 (ii) In addition to the authority granted in
1463 subparagraph (i) of this paragraph (1), the commissioners or board
1464 of trustees is authorized to enter into contracts for the lease of
1465 equipment or services, or both, which it considers necessary for
1466 the proper care of patients if, in its opinion, it is not
1467 financially feasible to purchase the necessary equipment or
1468 services. Any such contract for the lease of equipment or
1469 services executed by the commissioners or board shall not exceed a
1470 maximum of five (5) years' duration and shall include a
1471 cancellation clause based on unavailability of funds. If such
1472 cancellation clause is exercised, there shall be no further
1473 liability on the part of the lessee. Any such contract for the
1474 lease of equipment or services executed on behalf of the
1475 commissioners or board that complies with the provisions of this
1476 subparagraph (ii) shall be excepted from the bid requirements set
1477 forth in this section.



1478 (m) **Exceptions from bidding requirements.** Excepted
1479 from bid requirements are:

1480 (i) **Purchasing agreements approved by department.**
1481 Purchasing agreements, contracts and maximum price regulations
1482 executed or approved by the Department of Finance and
1483 Administration.

1484 (ii) **Outside equipment repairs.** Repairs to
1485 equipment, when such repairs are made by repair facilities in the
1486 private sector; however, engines, transmissions, rear axles and/or
1487 other such components shall not be included in this exemption when
1488 replaced as a complete unit instead of being repaired and the need
1489 for such total component replacement is known before disassembly
1490 of the component; however, invoices identifying the equipment,
1491 specific repairs made, parts identified by number and name,
1492 supplies used in such repairs, and the number of hours of labor
1493 and costs therefor shall be required for the payment for such
1494 repairs.

1495 (iii) **In-house equipment repairs.** Purchases of
1496 parts for repairs to equipment, when such repairs are made by
1497 personnel of the agency or governing authority; however, entire
1498 assemblies, such as engines or transmissions, shall not be
1499 included in this exemption when the entire assembly is being
1500 replaced instead of being repaired.



1501 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1502 of gravel or fill dirt which are to be removed and transported by
1503 the purchaser.

1504 (v) **Governmental equipment auctions.** Motor
1505 vehicles or other equipment purchased from a federal agency or
1506 authority, another governing authority or state agency of the
1507 State of Mississippi, or any governing authority or state agency
1508 of another state at a public auction held for the purpose of
1509 disposing of such vehicles or other equipment. Any purchase by a
1510 governing authority under the exemption authorized by this
1511 subparagraph (v) shall require advance authorization spread upon
1512 the minutes of the governing authority to include the listing of
1513 the item or items authorized to be purchased and the maximum bid
1514 authorized to be paid for each item or items.

1515 (vi) **Intergovernmental sales and transfers.**
1516 Purchases, sales, transfers or trades by governing authorities or
1517 state agencies when such purchases, sales, transfers or trades are
1518 made by a private treaty agreement or through means of
1519 negotiation, from any federal agency or authority, another
1520 governing authority or state agency of the State of Mississippi,
1521 or any state agency or governing authority of another state.
1522 Nothing in this section shall permit such purchases through public
1523 auction except as provided for in subparagraph (v) of this * * *
1524 paragraph (m). It is the intent of this section to allow
1525 governmental entities to dispose of and/or purchase commodities



1526 from other governmental entities at a price that is agreed to by
1527 both parties. This shall allow for purchases and/or sales at
1528 prices which may be determined to be below the market value if the
1529 selling entity determines that the sale at below market value is
1530 in the best interest of the taxpayers of the state. Governing
1531 authorities shall place the terms of the agreement and any
1532 justification on the minutes, and state agencies shall obtain
1533 approval from the Department of Finance and Administration, prior
1534 to releasing or taking possession of the commodities.

1535 (vii) **Perishable supplies or food.** Perishable
1536 supplies or food purchased for use in connection with hospitals,
1537 the school lunch programs, homemaking programs and for the feeding
1538 of county or municipal prisoners.

1539 (viii) **Single source items.** Noncompetitive items
1540 available from one (1) source only. In connection with the
1541 purchase of noncompetitive items only available from one (1)
1542 source, a certification of the conditions and circumstances
1543 requiring the purchase shall be filed by the agency with the
1544 Department of Finance and Administration and by the governing
1545 authority with the board of the governing authority. Upon receipt
1546 of that certification the Department of Finance and Administration
1547 or the board of the governing authority, as the case may be, may,
1548 in writing, authorize the purchase, which authority shall be noted
1549 on the minutes of the body at the next regular meeting thereafter.
1550 In those situations, a governing authority is not required to



1551 obtain the approval of the Department of Finance and
1552 Administration. Following the purchase, the executive head of the
1553 state agency, or his designees, shall file with the Department of
1554 Finance and Administration, documentation of the purchase,
1555 including a description of the commodity purchased, the purchase
1556 price thereof and the source from whom it was purchased.

1557 (ix) **Waste disposal facility construction**
1558 **contracts.** Construction of incinerators and other facilities for
1559 disposal of solid wastes in which products either generated
1560 therein, such as steam, or recovered therefrom, such as materials
1561 for recycling, are to be sold or otherwise disposed of; however,
1562 in constructing such facilities, a governing authority or agency
1563 shall publicly issue requests for proposals, advertised for in the
1564 same manner as provided herein for seeking bids for public
1565 construction projects, concerning the design, construction,
1566 ownership, operation and/or maintenance of such facilities,
1567 wherein such requests for proposals when issued shall contain
1568 terms and conditions relating to price, financial responsibility,
1569 technology, environmental compatibility, legal responsibilities
1570 and such other matters as are determined by the governing
1571 authority or agency to be appropriate for inclusion; and after
1572 responses to the request for proposals have been duly received,
1573 the governing authority or agency may select the most qualified
1574 proposal or proposals on the basis of price, technology and other
1575 relevant factors and from such proposals, but not limited to the



1576 terms thereof, negotiate and enter contracts with one or more of
1577 the persons or firms submitting proposals.

1578 (x) **Hospital group purchase contracts.** Supplies,
1579 commodities and equipment purchased by hospitals through group
1580 purchase programs pursuant to Section 31-7-38.

1581 (xi) **Information technology products.** Purchases
1582 of information technology products made by governing authorities
1583 under the provisions of purchase schedules, or contracts executed
1584 or approved by the Mississippi Department of Information
1585 Technology Services and designated for use by governing
1586 authorities.

1587 (xii) **Energy efficiency services and equipment.**
1588 Energy efficiency services and equipment acquired by school
1589 districts, community and junior colleges, institutions of higher
1590 learning and state agencies or other applicable governmental
1591 entities on a shared-savings, lease or lease-purchase basis
1592 pursuant to Section 31-7-14.

1593 (xiii) **Municipal electrical utility system fuel.**
1594 Purchases of coal and/or natural gas by municipally owned electric
1595 power generating systems that have the capacity to use both coal
1596 and natural gas for the generation of electric power.

1597 (xiv) **Library books and other reference materials.**
1598 Purchases by libraries or for libraries of books and periodicals;
1599 processed film, videocassette tapes, filmstrips and slides;
1600 recorded audiotapes, cassettes and diskettes; and any such items



1601 as would be used for teaching, research or other information
1602 distribution; however, equipment such as projectors, recorders,
1603 audio or video equipment, and monitor televisions are not exempt
1604 under this subparagraph.

1605 (xv) **Unmarked vehicles.** Purchases of unmarked
1606 vehicles when such purchases are made in accordance with
1607 purchasing regulations adopted by the Department of Finance and
1608 Administration pursuant to Section 31-7-9(2).

1609 (xvi) **Election ballots.** Purchases of ballots
1610 printed pursuant to Section 23-15-351.

1611 (xvii) **Multichannel interactive video systems.**
1612 From and after July 1, 1990, contracts by Mississippi Authority
1613 for Educational Television with any private educational
1614 institution or private nonprofit organization whose purposes are
1615 educational in regard to the construction, purchase, lease or
1616 lease-purchase of facilities and equipment and the employment of
1617 personnel for providing multichannel interactive video systems
1618 (ITSF) in the school districts of this state.

1619 (xviii) **Purchases of prison industry products by**
1620 **the Department of Corrections, regional correctional facilities or**
1621 **privately owned prisons.** Purchases made by the Mississippi
1622 Department of Corrections, regional correctional facilities or
1623 privately owned prisons involving any item that is manufactured,
1624 processed, grown or produced from the state's prison industries.



1625 (xix) **Undercover operations equipment.** Purchases
1626 of surveillance equipment or any other high-tech equipment to be
1627 used by law enforcement agents in undercover operations, provided
1628 that any such purchase shall be in compliance with regulations
1629 established by the Department of Finance and Administration.

1630 (xx) **Junior college books for rent.** Purchases by
1631 community or junior colleges of textbooks which are obtained for
1632 the purpose of renting such books to students as part of a book
1633 service system.

1634 (xxi) **Certain school district purchases.**
1635 Purchases of commodities made by school districts from vendors
1636 with which any levying authority of the school district, as
1637 defined in Section 37-57-1, has contracted through competitive
1638 bidding procedures for purchases of the same commodities.

1639 (xxii) **Garbage, solid waste and sewage contracts.**
1640 Contracts for garbage collection or disposal, contracts for solid
1641 waste collection or disposal and contracts for sewage collection
1642 or disposal.

1643 (xxiii) **Municipal water tank maintenance**
1644 **contracts.** Professional maintenance program contracts for the
1645 repair or maintenance of municipal water tanks, which provide
1646 professional services needed to maintain municipal water storage
1647 tanks for a fixed annual fee for a duration of two (2) or more
1648 years.



1649 (xxiv) **Purchases of Mississippi Industries for the**
1650 **Blind products.** Purchases made by state agencies or governing
1651 authorities involving any item that is manufactured, processed or
1652 produced by the Mississippi Industries for the Blind.

1653 (xxv) **Purchases of state-adopted textbooks.**
1654 Purchases of state-adopted textbooks by public school districts.

1655 (xxvi) **Certain purchases under the Mississippi**
1656 **Major Economic Impact Act.** Contracts entered into pursuant to the
1657 provisions of Section 57-75-9(2), (3) and (4).

1658 (xxvii) **Used heavy or specialized machinery or**
1659 **equipment for installation of soil and water conservation**
1660 **practices purchased at auction.** Used heavy or specialized
1661 machinery or equipment used for the installation and
1662 implementation of soil and water conservation practices or
1663 measures purchased subject to the restrictions provided in
1664 Sections 69-27-331 through 69-27-341. Any purchase by the State
1665 Soil and Water Conservation Commission under the exemption
1666 authorized by this subparagraph shall require advance
1667 authorization spread upon the minutes of the commission to include
1668 the listing of the item or items authorized to be purchased and
1669 the maximum bid authorized to be paid for each item or items.

1670 (xxviii) **Hospital lease of equipment or services.**
1671 Leases by hospitals of equipment or services if the leases are in
1672 compliance with paragraph (1)(ii).



1673 (xxix) **Purchases made pursuant to qualified**
1674 **cooperative purchasing agreements.** Purchases made by certified
1675 purchasing offices of state agencies or governing authorities
1676 under cooperative purchasing agreements previously approved by the
1677 Office of Purchasing and Travel and established by or for any
1678 municipality, county, parish or state government or the federal
1679 government, provided that the notification to potential
1680 contractors includes a clause that sets forth the availability of
1681 the cooperative purchasing agreement to other governmental
1682 entities. Such purchases shall only be made if the use of the
1683 cooperative purchasing agreements is determined to be in the best
1684 interest of the governmental entity.

1685 (xxx) **School yearbooks.** Purchases of school
1686 yearbooks by state agencies or governing authorities; provided,
1687 however, that state agencies and governing authorities shall use
1688 for these purchases the RFP process as set forth in the
1689 Mississippi Procurement Manual adopted by the Office of Purchasing
1690 and Travel.

1691 (xxxi) **Design-build method and dual-phase**
1692 **design-build method of contracting.** Contracts entered into under
1693 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1694 (xxxii) **Toll roads and bridge construction**
1695 **projects.** Contracts entered into under the provisions of Section
1696 65-43-1 or 65-43-3.



1697 (xxxiii) **Certain purchases under Section 57-1-221.**
1698 Contracts entered into pursuant to the provisions of Section
1699 57-1-221.

1700 (xxxiv) **Certain transfers made pursuant to the**
1701 **provisions of Section 57-105-1(7).** Transfers of public property
1702 or facilities under Section 57-105-1(7) and construction related
1703 to such public property or facilities.

1704 (xxxv) **Certain purchases or transfers entered into**
1705 **with local electrical power associations.** Contracts or agreements
1706 entered into under the provisions of Section 55-3-33.

1707 (n) **Term contract authorization.** All contracts for the
1708 purchase of:

1709 (i) All contracts for the purchase of commodities,
1710 equipment and public construction (including, but not limited to,
1711 repair and maintenance), may be let for periods of not more than
1712 sixty (60) months in advance, subject to applicable statutory
1713 provisions prohibiting the letting of contracts during specified
1714 periods near the end of terms of office. Term contracts for a
1715 period exceeding twenty-four (24) months shall also be subject to
1716 ratification or cancellation by governing authority boards taking
1717 office subsequent to the governing authority board entering the
1718 contract.

1719 (ii) Bid proposals and contracts may include price
1720 adjustment clauses with relation to the cost to the contractor
1721 based upon a nationally published industry-wide or nationally



1722 published and recognized cost index. The cost index used in a
1723 price adjustment clause shall be determined by the Department of
1724 Finance and Administration for the state agencies and by the
1725 governing board for governing authorities. The bid proposal and
1726 contract documents utilizing a price adjustment clause shall
1727 contain the basis and method of adjusting unit prices for the
1728 change in the cost of such commodities, equipment and public
1729 construction.

1730 (o) **Purchase law violation prohibition and vendor**
1731 **penalty.** No contract or purchase as herein authorized shall be
1732 made for the purpose of circumventing the provisions of this
1733 section requiring competitive bids, nor shall it be lawful for any
1734 person or concern to submit individual invoices for amounts within
1735 those authorized for a contract or purchase where the actual value
1736 of the contract or commodity purchased exceeds the authorized
1737 amount and the invoices therefor are split so as to appear to be
1738 authorized as purchases for which competitive bids are not
1739 required. Submission of such invoices shall constitute a
1740 misdemeanor punishable by a fine of not less than Five Hundred
1741 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1742 or by imprisonment for thirty (30) days in the county jail, or
1743 both such fine and imprisonment. In addition, the claim or claims
1744 submitted shall be forfeited.

1745 (p) **Electrical utility petroleum-based equipment**
1746 **purchase procedure.** When in response to a proper advertisement



1747 therefor, no bid firm as to price is submitted to an electric
1748 utility for power transformers, distribution transformers, power
1749 breakers, reclosers or other articles containing a petroleum
1750 product, the electric utility may accept the lowest and best bid
1751 therefor although the price is not firm.

1752 (q) **Fuel management system bidding procedure.** Any
1753 governing authority or agency of the state shall, before
1754 contracting for the services and products of a fuel management or
1755 fuel access system, enter into negotiations with not fewer than
1756 two (2) sellers of fuel management or fuel access systems for
1757 competitive written bids to provide the services and products for
1758 the systems. In the event that the governing authority or agency
1759 cannot locate two (2) sellers of such systems or cannot obtain
1760 bids from two (2) sellers of such systems, it shall show proof
1761 that it made a diligent, good-faith effort to locate and negotiate
1762 with two (2) sellers of such systems. Such proof shall include,
1763 but not be limited to, publications of a request for proposals and
1764 letters soliciting negotiations and bids. For purposes of this
1765 paragraph (q), a fuel management or fuel access system is an
1766 automated system of acquiring fuel for vehicles as well as
1767 management reports detailing fuel use by vehicles and drivers, and
1768 the term "competitive written bid" shall have the meaning as
1769 defined in paragraph (b) of this section. Governing authorities
1770 and agencies shall be exempt from this process when contracting
1771 for the services and products of fuel management or fuel access



1772 systems under the terms of a state contract established by the
1773 Office of Purchasing and Travel.

1774 (r) **Solid waste contract proposal procedure.** Before
1775 entering into any contract for garbage collection or disposal,
1776 contract for solid waste collection or disposal or contract for
1777 sewage collection or disposal, which involves an expenditure of
1778 more than Fifty Thousand Dollars (\$50,000.00), a governing
1779 authority or agency shall issue publicly a request for proposals
1780 concerning the specifications for such services which shall be
1781 advertised for in the same manner as provided in this section for
1782 seeking bids for purchases which involve an expenditure of more
1783 than the amount provided in paragraph (c) of this section. Any
1784 request for proposals when issued shall contain terms and
1785 conditions relating to price, financial responsibility,
1786 technology, legal responsibilities and other relevant factors as
1787 are determined by the governing authority or agency to be
1788 appropriate for inclusion; all factors determined relevant by the
1789 governing authority or agency or required by this paragraph (r)
1790 shall be duly included in the advertisement to elicit proposals.
1791 After responses to the request for proposals have been duly
1792 received, the governing authority or agency shall select the most
1793 qualified proposal or proposals on the basis of price, technology
1794 and other relevant factors and from such proposals, but not
1795 limited to the terms thereof, negotiate and enter into contracts
1796 with one or more of the persons or firms submitting proposals. If



1797 the governing authority or agency deems none of the proposals to
1798 be qualified or otherwise acceptable, the request for proposals
1799 process may be reinitiated. Notwithstanding any other provisions
1800 of this paragraph, where a county with at least thirty-five
1801 thousand (35,000) nor more than forty thousand (40,000)
1802 population, according to the 1990 federal decennial census, owns
1803 or operates a solid waste landfill, the governing authorities of
1804 any other county or municipality may contract with the governing
1805 authorities of the county owning or operating the landfill,
1806 pursuant to a resolution duly adopted and spread upon the minutes
1807 of each governing authority involved, for garbage or solid waste
1808 collection or disposal services through contract negotiations.

1809 (s) **Minority set-aside authorization.** Notwithstanding
1810 any provision of this section to the contrary, any agency or
1811 governing authority, by order placed on its minutes, may, in its
1812 discretion, set aside not more than twenty percent (20%) of its
1813 anticipated annual expenditures for the purchase of commodities
1814 from minority businesses; however, all such set-aside purchases
1815 shall comply with all purchasing regulations promulgated by the
1816 Department of Finance and Administration and shall be subject to
1817 bid requirements under this section. Set-aside purchases for
1818 which competitive bids are required shall be made from the lowest
1819 and best minority business bidder. For the purposes of this
1820 paragraph, the term "minority business" means a business which is
1821 owned by a majority of persons who are United States citizens or



1822 permanent resident aliens (as defined by the Immigration and
1823 Naturalization Service) of the United States, and who are Asian,
1824 Black, Hispanic or Native American, according to the following
1825 definitions:

1826 (i) "Asian" means persons having origins in any of
1827 the original people of the Far East, Southeast Asia, the Indian
1828 subcontinent, or the Pacific Islands.

1829 (ii) "Black" means persons having origins in any
1830 black racial group of Africa.

1831 (iii) "Hispanic" means persons of Spanish or
1832 Portuguese culture with origins in Mexico, South or Central
1833 America, or the Caribbean Islands, regardless of race.

1834 (iv) "Native American" means persons having
1835 origins in any of the original people of North America, including
1836 American Indians, Eskimos and Aleuts.

1837 (t) **Construction punch list restriction.** The
1838 architect, engineer or other representative designated by the
1839 agency or governing authority that is contracting for public
1840 construction or renovation may prepare and submit to the
1841 contractor only one (1) preliminary punch list of items that do
1842 not meet the contract requirements at the time of substantial
1843 completion and one (1) final list immediately before final
1844 completion and final payment.

1845 (u) **Procurement of construction services by state**
1846 **institutions of higher learning.** Contracts for privately financed



1847 construction of auxiliary facilities on the campus of a state
1848 institution of higher learning may be awarded by the Board of
1849 Trustees of State Institutions of Higher Learning to the lowest
1850 and best bidder, where sealed bids are solicited, or to the
1851 offeror whose proposal is determined to represent the best value
1852 to the citizens of the State of Mississippi, where requests for
1853 proposals are solicited.

1854 (v) **Insurability of bidders for public construction or**
1855 **other public contracts.** In any solicitation for bids to perform
1856 public construction or other public contracts to which this
1857 section applies including, but not limited to, contracts for
1858 repair and maintenance, for which the contract will require
1859 insurance coverage in an amount of not less than One Million
1860 Dollars (\$1,000,000.00), bidders shall be permitted to either
1861 submit proof of current insurance coverage in the specified amount
1862 or demonstrate ability to obtain the required coverage amount of
1863 insurance if the contract is awarded to the bidder. Proof of
1864 insurance coverage shall be submitted within five (5) business
1865 days from bid acceptance.

1866 (w) **Purchase authorization clarification.** Nothing in
1867 this section shall be construed as authorizing any purchase not
1868 authorized by law.

1869 **SECTION 17.** This act shall take effect and be in force from
1870 and after January 1, 2018.

