

By: Representatives Turner, Hughes

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1109
(As Sent to Governor)

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; AND FOR RELATED PURPOSES.

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

41 **SECTION 1. Applicability.** Except as otherwise provided by
42 law, the provisions of Sections 1 through 12 of this act shall
43 apply to every procurement of commodities, supplies, equipment,
44 construction, technology, personal and professional services other
45 than those in Section 27-104-7(2)(f) and (8), state agency
46 employee benefits, supplemental insurance and cafeteria plans,
47 that are solicited by any state agency by a request for proposals
48 or request for qualifications. The following provisions are
49 intended to ensure that the best practices for soliciting requests
50 for proposals or requests for qualifications are implemented. Any
51 agency that is required to receive approval by the Public
52 Procurement Review Board before entering into a personal or
53 professional services contract as provided in subsection (2)(g) of
54 Section 27-104-7 shall implement the best practices specified in
55 Sections 1 through 12 of this act. The Public Procurement Review
56 Board shall promulgate any necessary rules and regulations to
57 administer the provisions of Sections 1 through 12 of this act.

58 **SECTION 2. Conditions for use.** (1) Competitive sealed
59 bidding is the preferred method of procurement; however, if it is
60 not practicable and advantageous, a request for proposals or
61 request for qualifications may be used. The terms "practicable"
62 and "advantageous" are to be given ordinary dictionary meanings.



63 The term "practicable" denotes what may be accomplished or put
64 into practical application. "Advantageous" denotes a judgmental
65 assessment of what is in the state's best interest.

66 (2) The following factors shall be considered when
67 determining advantageousness:

68 (a) The need for flexibility;

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

71 (c) Whether the evaluation factors involve the relative
72 abilities of offerers to perform, including degrees of technical
73 or professional experience or expertise;

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

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

80 (f) Whether prior procurements indicate that a request
81 for proposals may result in more beneficial contracts for the
82 state.

83 (3) The following factors shall be considered when
84 determining practicability:

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



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

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

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

96 (e) Whether the primary consideration in determining
97 award may not be price.

98 (4) On or before January 1 of each year, and every time a
99 chief procurement officer is hired, each state agency shall
100 provide to the state purchasing agent the name of the state
101 agency's chief procurement officer and information identifying the
102 state agency's central purchasing office, if applicable. If the
103 chief procurement officer of an agency or his or her designee
104 determines, in writing, that the use of competitive sealed bidding
105 is either not practicable or not advantageous to the state, he or
106 she shall submit a detailed explanation of the reasons for that
107 determination to the Public Procurement Review Board. If the
108 Public Procurement Review Board determines that competitive sealed
109 bidding is either not practicable or not advantageous to the
110 state, then a contract may be entered into for the procurement of
111 commodities, supplies, equipment, construction, technology,



112 personal and professional services, state agency purchased
113 employee benefits or state agency supplemental insurance and
114 cafeteria plans, by a request for proposals or request for
115 qualifications. However, these procurements contracted for
116 through a request for proposals or request for qualifications may
117 not be combined or included in a contract with other procurements
118 that are required to be procured through competitive sealed
119 bidding so as to avoid the statutory obligation for procurement
120 through competitive sealed bidding. The board may modify or
121 revoke its determination at any time, and the determination should
122 be reviewed for current applicability from time to time.

123 In addition to determining whether a request for proposals or
124 request for qualifications would be practicable and advantageous
125 to the state, when making the decision to use a request for
126 proposals or request for qualifications, the chief procurement
127 officer shall consider the following factors:

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

131 (b) Whether the initial installation needs to be
132 evaluated together with later maintenance and service capabilities
133 and what priority should be given to these requirements in the
134 best interests of the state; and



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

138 **SECTION 3. Content of the request for proposals or request**
139 **for qualifications.** (1) The request for proposals or request for
140 qualifications shall include the following:

141 (a) Instructions and information to offerers concerning
142 the request for proposals or request for qualifications submission
143 requirements, including the time and date set for receipt of
144 proposals or qualifications, the address of the office to which
145 proposals or qualifications are to be delivered, the maximum time
146 for proposal or qualification acceptance by the state, the manner
147 in which proposals or qualifications are to be submitted,
148 including any forms for that purpose and any other special
149 information;

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

153 (c) The contract terms and conditions, including
154 warranty and bonding or other security requirements, as
155 applicable;

156 (d) A statement that discussions may be conducted with
157 offerers who submit proposals or qualifications determined to be
158 reasonably susceptible of being selected for the award, but that



159 proposals or qualifications may be accepted without such
160 discussions; and

161 (e) A statement of when and how price should be
162 submitted.

163 (2) The request for proposals or request for qualifications
164 may incorporate documents by reference provided that the request
165 for proposals or request for qualifications specifies where those
166 documents can be obtained.

167 (3) Proposal or qualification preparation time shall be set
168 to provide offerers a reasonable time to prepare their proposals
169 or qualifications. A minimum of thirty (30) days shall be
170 provided unless a shorter time is deemed necessary for a
171 particular procurement as determined in writing by the chief
172 procurement officer of the requesting agency.

173 **SECTION 4. Public notice.** (1) In addition to any method of
174 public notice regarding the solicitation of requests for proposals
175 or requests for qualifications currently being used by state
176 agencies, the chief procurement officer shall also have posted on
177 the Mississippi procurement portal and on the soliciting agency's
178 website, public notification of a pending procurement through
179 request for proposals or request for qualifications. The notice
180 shall include the following:

181 (a) The due date for responses;

182 (b) The name and phone number of the officer conducting
183 the procurement; and



184 (c) The means of obtaining the solicitation.

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

190 (3) Each chief procurement officer may determine that other
191 methods of public notification are best for that particular agency
192 or that particular request for proposals or request for
193 qualifications. If such a determination is made, the chief
194 procurement officer may provide notice in an alternative manner
195 about the request for proposals or request for qualifications in
196 addition to the methods provided for in Sections 1 through 12 of
197 this act.

198 (4) The Department of Finance and Administration (DFA) shall
199 monitor agency websites and the Mississippi procurement portal to
200 ensure that the agencies are posting the required notice. DFA
201 shall audit agencies and report its findings to the Chairs of the
202 House of Representatives and Senate Accountability, Efficiency and
203 Transparency Committees and House of Representatives and Senate
204 Appropriations Committees by December 31 of each year.

205 **SECTION 5. Pre-proposal conferences.** (1) Pre-proposal
206 conferences may be conducted to explain the procurement
207 requirements. If a chief procurement officer plans to hold such a
208 conference, he or she shall prominently place the notification in



209 the request for proposals or request for qualifications
210 solicitation. The notification shall include the date, time and
211 location of the conference. If the chief procurement officer
212 decides to hold a pre-proposal conference after the request for
213 proposals or request for qualifications has been sent out, then he
214 or she shall notify all prospective offerers known to have
215 received a request for proposals or request for qualifications.

216 (2) If a pre-proposal conference is held, it shall be at
217 least fourteen (14) days after the request for proposals or
218 request for qualifications has been issued. In setting the time
219 for the conference, the chief procurement officer shall consider
220 the complexity of the procurement and the potential modifications
221 that may need to be made after the conference and any amendments
222 to the solicitation that the chief procurement officer may need to
223 make after the conference.

224 (3) The chief procurement officer issuing the request for
225 proposals or request for qualifications shall serve as chair of
226 the conference. Offerers attending the conference shall be
227 required to sign an attendance sheet provided by the soliciting
228 agency. The chair shall announce at the beginning of the
229 conference how the conference is to be handled. The conference
230 shall be recorded. A chief procurement officer may mandate
231 attendance at a conference if he or she feels it is critical to
232 understanding the solicitation. Once the conference is over, the
233 chief procurement officer shall put the recordings from the



234 conference and the questions and answers from the conference in
235 writing and send them to the offerers who received the request for
236 proposals or request for qualifications and post them on the
237 Mississippi procurement portal and the soliciting agency's
238 website.

239 **SECTION 6. Drafting the request for proposals or request for**

240 **qualifications.** (1) In addition to the items listed in Sections
241 1 through 12 of this act, the contents of a request for proposals
242 or request for qualifications shall also include the following:

243 (a) A statement that discussions may be conducted with
244 offerers who submit proposals or qualifications determined to be
245 reasonably susceptible of being selected for the award, but that
246 proposals or qualifications may also be accepted without those
247 discussions; and

248 (b) A statement of when and how price should be
249 submitted.

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

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

256 **SECTION 7. Evaluation factors in the request for proposals**

257 **or request for qualifications.** (1) When the chief procurement
258 officer submits the determination that the use of competitive



259 sealed bidding is either not practicable or not advantageous to
260 the state to the Public Procurement Review Board for its approval,
261 he or she shall include in that submission the evaluation factors
262 that will be used in reviewing the submitted proposals or
263 qualifications. The evaluation factors shall be approved by the
264 Public Procurement Review Board in the same way that the decision
265 to solicit procurements through a request for proposals or request
266 for qualifications must be approved.

267 (2) (a) The request for proposals or request for
268 qualifications shall state all of the approved evaluation factors,
269 including price, and their relative importance. When the chief
270 procurement officer is determining the weights and importance of
271 each evaluation factor, price as an evaluation factor shall be
272 given the highest criteria weighting and at least thirty-five
273 percent (35%) out of the one hundred percent (100%) total weight
274 of all the other evaluation factors. The evaluation shall be
275 based on the evaluation factors set forth in the request for
276 proposals or request for qualifications. The evaluation factors
277 used and the weights given to each shall be decided and agreed to
278 by the evaluation committee before the opening of any proposal or
279 qualification. Numerical rating systems shall be used when
280 determining the weight and importance of each evaluation factor.
281 Factors not specified in the request for proposals or request for
282 qualifications shall not be considered. Upon completion of the
283 evaluation, the evaluation score sheets used to review the



284 submitted proposals or qualifications shall be made part of the
285 report required under Section 12(1) of this act.

286 (b) The following, as appropriate to individual
287 circumstances, shall be used as criteria for evaluating requests
288 for proposals or requests for qualifications under the request for
289 proposals or request for qualifications process described in
290 Sections 1 through 12 of this act. These factors are not intended
291 to be limiting or all-inclusive, and they may be adapted or
292 supplemented in order to meet a soliciting agency's individual
293 needs as the competitive procurement process requires.

294 (i) Technical factors (Proposed methodology):

295 a. Does the offerer's proposal or
296 qualification demonstrate a clear understanding of the scope of
297 work and related objectives?

298 b. Is the offerer's proposal or
299 qualification complete and responsive to the specific request for
300 proposals or request for qualifications requirements?

301 c. Has the past performance of the
302 offerer's proposed methodology been documented?

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

305 (ii) Management factors (Factors that will require
306 the identity of the offerer to be revealed must be submitted
307 separately from other factors):

308 1. Project management:



309 a. How well does the proposed scheduling
310 timeline meet the needs of the soliciting agency?

311 b. Is there a project management plan?

312 2. History and experience in performing the
313 work:

314 a. Does the offerer document a record of
315 reliability of timely delivery and on-time and on-budget
316 implementation?

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

320 c. Does the offerer document industry or
321 program experience?

322 d. Does the offerer have a record of
323 poor business ethics?

324 3. Availability of personnel, facilities,
325 equipment and other resources:

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

328 b. Are the availability of in-house and
329 contract resources documented?

330 4. Qualification and experience of personnel:

331 a. Documentation of experience in
332 performing similar work by employees and when appropriate,
333 sub-contractors?



334 b. Does the offerer demonstrate cultural
335 sensitivity in hiring and training staff?

336 (iii) Cost factors (Factors must be submitted
337 separately from other factors unless specifically approved by the
338 Public Procurement Review Board):

339 1. Cost of goods to be provided or services
340 to be performed:

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

343 b. Full explanation: Is the price and
344 its component charges, fees, etc. adequately explained or
345 documented?

346 2. Assurances of performance:

347 a. If required, are suitable bonds,
348 warranties or guarantees provided?

349 b. Does the proposal or qualification
350 include quality control and assurance programs?

351 3. Offerer's financial stability and
352 strength: Does the offerer have sufficient financial resources to
353 meet its obligations?

354 **SECTION 8. Evaluation committee.** (1) Evaluation committees
355 shall be used to evaluate request for proposals or request for
356 qualifications and award contracts. Persons appointed to an
357 evaluation committee shall have the relevant experience necessary
358 to evaluate the proposal or qualification. The members of the



359 evaluation committee shall have no personal, financial or familial
360 interest in any of the contract offerers, or principals thereof,
361 to be evaluated.

362 (2) The names of the members of the evaluation committee
363 shall not be publicly disclosed until their evaluation report as
364 required under Section 12(1) of this act. The members' names and
365 job titles shall be made available to the public. Where
366 evaluation committee members are not public employees, those
367 members' names, educational and professional qualifications, and
368 practical experience, that were the basis for the appointment,
369 shall be made available to the public.

370 (3) Before evaluating proposals or qualifications, each
371 individual participating in the evaluation of a proposal or
372 qualification shall execute a statement in accordance with
373 subsection (1) of this section certifying that he or she does not
374 have a conflict of interest. The statement shall be filed with
375 the chief procurement officer of the soliciting agency, before
376 beginning the evaluation process. The certification shall be as
377 follows:

378 "I hereby certify that I have reviewed the conflict of
379 interest standards prescribed herein, and that I do not have a
380 conflict of interest with respect to the evaluation of this
381 proposal or qualification. I further certify that I am not
382 engaged in any negotiations or arrangements for prospective
383 employment or association with any of the offerers submitting



384 proposals or qualifications or their parent or subsidiary
385 organization."

386 (4) Committee members may conduct their work separately or
387 together.

388 (5) The committee may use advisors, as it deems necessary to
389 give opinions on evaluating proposals or qualifications, except
390 that such advisors shall be subject to the provisions of
391 subsection (3) of this section. The names of the advisors shall
392 be made public at the same time as members of the evaluation
393 committee as provided in subsection (2) of this section. For the
394 purposes of this section, the term "advisors" shall mean those
395 individuals who provide such significant input to a member or
396 members of the evaluation committee that the advisor's opinions
397 are fundamental in shaping the committee member's evaluation of
398 the submitted proposals or qualifications.

399 (6) The process of establishing weighting criteria and
400 evaluating proposals or qualifications shall result in a finding
401 that a specific proposal or qualification is the most practical
402 and advantageous, price and other factors considered, or that all
403 proposals or qualifications should be rejected.

404 **SECTION 9. Receipt and registration of proposals or**

405 **qualifications.** (1) Submitted proposals or qualifications shall
406 be opened at the time designated for opening in the request for
407 proposals or request for qualifications. Proposals or
408 qualifications and modifications shall be date-stamped or time and



409 date-stamped upon receipt and held in a secure place until the
410 established due date. Electronic proposals or qualifications
411 received will be stored in an electronic lockbox until the time
412 designated for the opening of the proposal or qualification.

413 (2) As each proposal or qualification is submitted but
414 before those proposals or qualifications are opened, the chief
415 procurement officer shall designate a person to prepare a register
416 of proposals or qualifications, which shall include the number of
417 modifications received, if any, and a description sufficient to
418 identify the supply, service, commodity or other item offered.
419 The designated person shall assign each submitted proposal or
420 qualification an identifying letter, number, or combination
421 thereof, without revealing the name of the offerer who submitted
422 each proposal or qualification to the chief procurement officer or
423 any person named to the evaluation committee for that proposal or
424 qualification. The designated person shall keep the names of the
425 offerers and their identifying numbers or letters, or combination
426 thereof, in a sealed envelope or other secure location until
427 factors not requiring knowledge of the name of the offerer have
428 been evaluated and scored. If the designated person reveals the
429 names of the offerers and the corresponding identifying
430 information before such time, the procurement process shall be
431 terminated and the proposal or qualifications resolicited and the
432 Public Procurement Review Board shall assess that person a fine of
433 not less than One Thousand Dollars (\$1,000.00) and the chief



434 procurement officer who designated that person to establish the
435 register of proposals or qualifications shall be removed from his
436 or her office and assessed a fine of not less than One Thousand
437 Dollars (\$1,000.00). The register of proposals or qualifications
438 shall be made part of the report required under Section 12(1) of
439 this act.

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

441 **qualifications.** (1) The evaluation committee shall evaluate
442 proposals or qualifications only in accordance with the
443 methodology and weighting criteria described in the request for
444 proposals or request for qualifications. Proposals or
445 qualifications shall be initially classified as: (a) acceptable;
446 (b) potentially acceptable, which means reasonably susceptible of
447 being made acceptable; or (c) unacceptable. Offerers whose
448 proposals or qualifications are unacceptable shall be so notified
449 promptly.

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

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

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

457 (3) Offerers shall be accorded fair and equal treatment with
458 respect to any opportunity for discussions and revisions of



459 proposals or qualifications. Any discussions that take place
460 under the provisions of this section shall be recorded and the
461 recordings shall be made public upon award of the contract. The
462 chief procurement officer shall establish procedures and schedules
463 for conducting discussions. If, during discussions, there is a
464 need for any substantial clarification of or change in the request
465 for proposals or request for qualifications, the request shall be
466 amended to incorporate the clarification or change. Auction
467 techniques, revealing one offerer's price to another, and
468 disclosure of any information derived from competing proposals is
469 prohibited. Any substantial oral clarification of a proposal or
470 qualification shall be reduced to writing by the offerer.

471 **SECTION 11. Best and final offers.** The chief procurement
472 officer shall establish a common date and time for the submission
473 of best and final offers. Best and final offers shall be
474 submitted only once; however, the chief procurement officer may
475 make a written determination that it is in the state's best
476 interest to conduct additional discussions or change the state's
477 requirements and require another submission of best and final
478 offers. Otherwise, no discussion of or changes in the best and
479 final offers shall be allowed before the award. Offerers shall
480 also be informed that if they do not submit a notice of withdrawal
481 or another best and final offer, their immediate previous offer
482 will be construed as their best and final offer.



483 **SECTION 12.** **Awarding the contract.** (1) After proposals or
484 qualifications have been evaluated, the evaluation committee shall
485 prepare a report evaluating and recommending the award of a
486 contract or contracts. The report shall list the names of all
487 potential offerers who submitted a proposal or qualification and
488 shall summarize the proposals or qualifications of each offerer.
489 The report shall rank offerers in order of evaluation, shall
490 recommend the selection of an offerer or offerers, as appropriate,
491 for a contract, shall be clear in the reasons why the offerer or
492 offerers have been selected among others considered, and shall
493 detail the terms, conditions, scope of services, fees and other
494 matters to be incorporated into the contract. The report shall be
495 available to the public at least forty-eight (48) hours before the
496 awarding of the contract.

497 (2) The chief procurement officer shall publish a notice on
498 the agency's website and the Mississippi procurement portal
499 summarizing the award of the contract, which shall include but not
500 be limited to, the nature, duration and amount of the contract,
501 the name of the offerer and a statement that the contract is on
502 file and available for public inspection in the office of the
503 chief procurement officer.

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



506 27-104-7. (1) (a) There is created * * * the Public
507 Procurement Review Board, which shall be reconstituted on January
508 1, 2018, and shall be composed of the * * * following members:

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

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

513 (iii) The Executive Director of the Department of
514 Finance and Administration, serving as an ex officio and nonvoting
515 member.

516 (b) The initial terms of each appointee shall be as
517 follows:

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

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

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

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

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

528 After the expiration of the initial terms, all appointed
529 members' terms shall be for a period of four (4) years from the



530 expiration date of the previous term, and until such time as the
531 member's successor is duly appointed and qualified.

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

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

552 (e) The * * * members of the Public Procurement Review
553 Board shall * * * elect a chair from among the membership, and he
554 or she shall preside over the meetings of the board. The board



555 shall annually elect a vice * * * chair, who shall serve in the
556 absence of the * * * chair. No business shall be transacted,
557 including adoption of rules of procedure, without the presence of
558 a quorum of the board. * * * Three (3) members shall be a quorum.
559 No action shall be valid unless approved by * * * a majority of
560 the members present and voting, entered upon the minutes of the
561 board and signed by the * * * chair. * * * Necessary clerical and
562 administrative support for the board shall be provided by the
563 Department of Finance and Administration. Minutes shall be kept
564 of the proceedings of each meeting, copies of which shall be filed
565 on a monthly basis with the * * * chairs of the Accountability,
566 Efficiency and Transparency Committees of the Senate and House of
567 Representatives and the chairs of the Appropriations Committees of
568 the Senate and House of Representatives.

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

571 (a) Approve all purchasing regulations governing the
572 purchase or lease by any agency, as defined in Section 31-7-1, of
573 commodities and equipment, except computer equipment acquired
574 pursuant to Sections 25-53-1 through 25-53-29;

575 (b) Adopt regulations governing the approval of
576 contracts let for the construction and maintenance of state
577 buildings and other state facilities as well as related contracts
578 for architectural and engineering services;



579 (c) Adopt regulations governing any lease or rental
580 agreement by any state agency or department, including any state
581 agency financed entirely by federal funds, for space outside the
582 buildings under the jurisdiction of the Department of Finance and
583 Administration. These regulations shall require each agency
584 requesting to lease such space to provide the following
585 information that shall be published by the Department of Finance
586 and Administration on its website: the agency to lease the space;
587 the terms of the lease; the approximate square feet to be leased;
588 the use for the space; a description of a suitable space; the
589 general location desired for the leased space; the contact
590 information for a person from the agency; the deadline date for
591 the agency to have received a lease proposal; any other specific
592 terms or conditions of the agency; and any other information
593 deemed appropriate by the Division of Real Property Management of
594 the Department of Finance and Administration or the Public
595 Procurement Review Board. The information shall be provided
596 sufficiently in advance of the time the space is needed to allow
597 the Division of Real Property Management of the Department of
598 Finance and Administration to review and preapprove the lease
599 before the time for advertisement begins;

600 (d) Adopt, in its discretion, regulations to set aside
601 at least five percent (5%) of anticipated annual expenditures for
602 the purchase of commodities from minority businesses; however, all
603 such set-aside purchases shall comply with all purchasing



604 regulations promulgated by the department and shall be subject to
605 all bid requirements. Set-aside purchases for which competitive
606 bids are required shall be made from the lowest and best minority
607 business bidder; however, if no minority bid is available or if
608 the minority bid is more than two percent (2%) higher than the
609 lowest bid, then bids shall be accepted and awarded to the lowest
610 and best bidder. However, the provisions in this paragraph shall
611 not be construed to prohibit the rejection of a bid when only one
612 (1) bid is received. Such rejection shall be placed in the
613 minutes. For the purposes of this paragraph, the term "minority
614 business" means a business which is owned by a person who is a
615 citizen or lawful permanent resident of the United States and who
616 is:

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

619 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
620 Central or South American, or other Spanish or Portuguese culture
621 or origin regardless of race;

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

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

627 (v) Female;



628 (e) In consultation with and approval by the * * *
629 Chairs of the Senate and House Public Property Committees, approve
630 leases, for a term not to exceed eighteen (18) months, entered
631 into by state agencies for the purpose of providing parking
632 arrangements for state employees who work in the Woolfolk
633 Building, the Carroll Gartin Justice Building or the Walter
634 Sillers Office Building * * *;

635 (f) Promulgate rules and regulations governing the
636 solicitation and selection of contractual services personnel
637 including personal and professional services contracts for any
638 form of consulting, policy analysis, public relations, marketing,
639 public affairs, legislative advocacy services or any other
640 contract that the board deems appropriate for oversight, with the
641 exception of any personal service contracts entered into by any
642 agency that employs only nonstate service employees as defined in
643 Section 25-9-107(c), any personal service contracts entered into
644 for computer or information technology-related services governed
645 by the Mississippi Department of Information Technology Services,
646 any personal service contracts entered into by the individual
647 state institutions of higher learning, any personal service
648 contracts entered into by the Mississippi Department of
649 Transportation, any personal service contracts entered into by the
650 Department of Human Services through June 30, 2019, which the
651 Executive Director of the Department of Human Services determines
652 would be useful in establishing and operating the Department of



653 Child Protection Services, any personal service contracts entered
654 into by the Department of Child Protection Services through June
655 30, 2019, and any contract for attorney, accountant, actuary
656 auditor, architect, engineer, and utility rate expert services.
657 Any such rules and regulations shall provide for maintaining
658 continuous internal audit covering the activities of such agency
659 affecting its revenue and expenditures as required under Section
660 7-7-3(6)(d). Any rules and regulation changes related to personal
661 and professional services contracts that the Public Procurement
662 Review Board may propose shall be submitted to the Chairs of the
663 Accountability, Efficiency and Transparency Committees of the
664 Senate and House of Representatives and the Chairs of the
665 Appropriation Committees of the Senate and House of
666 Representatives at least fifteen (15) days before the board votes
667 on the proposed changes, and those rules and regulation changes,
668 if adopted, shall be promulgated in accordance with the
669 Mississippi Administrative Procedures Act;

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

674 (h) Develop mandatory standards with respect to
675 contractual services personnel that require invitations for public
676 bid, requests for proposals, record keeping and financial
677 responsibility of contractors. The Public Procurement Review



678 Board shall, unless exempted under this paragraph (h) or under
679 paragraph (i) or (o) of this subsection (2), require the agency
680 involved to submit the procurement to a competitive procurement
681 process, and may reserve the right to reject any or all resulting
682 procurements;

683 (i) Prescribe certain circumstances by which agency
684 heads may enter into contracts for personal and professional
685 services without receiving prior approval from the Public
686 Procurement Review Board. The Public Procurement Review Board may
687 establish a preapproved list of providers of various personal and
688 professional services for set prices with which state agencies may
689 contract without bidding or prior approval from the board;

690 (i) Agency requirements may be fulfilled by
691 procuring services performed incident to the state's own programs.
692 The agency head shall determine in writing whether the price
693 represents a fair market value for the services. When the
694 procurements are made from other governmental entities, the
695 private sector need not be solicited; however, these contracts
696 shall still be submitted for approval to the Public Procurement
697 Review Board.

698 (ii) Contracts between two (2) state agencies,
699 both under Public Procurement Review Board purview, shall not
700 require Public Procurement Review Board approval. However, the
701 contracts shall still be entered into the enterprise resource
702 planning system.



703 (j) Provide standards for the issuance of requests for
704 proposals, the evaluation of proposals received, consideration of
705 costs and quality of services proposed, contract negotiations, the
706 administrative monitoring of contract performance by the agency
707 and successful steps in terminating a contract;

708 (k) Present recommendations for governmental
709 privatization and to evaluate privatization proposals submitted by
710 any state agency;

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

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

721 (n) Prepare an annual report to the Legislature
722 concerning the issuance of personal and professional services
723 contracts during the previous year, collecting any necessary
724 information from state agencies in making such report;

725 (o) Develop and implement the following standards and
726 procedures for the approval of any sole source contract for



727 personal and professional services regardless of the value of the
728 procurement:

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

732 (ii) An agency that has been issued a binding,
733 valid court order mandating that a particular source or provider
734 must be used for the required service must include a copy of the
735 applicable court order in all future sole source contract reviews
736 for the particular personal or professional service referenced in
737 the court order.

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

746 1. The personal or professional service
747 offered in the contract;

748 2. An explanation of why the personal or
749 professional service is the only one that can meet the needs of
750 the agency;



751 3. An explanation of why the source is the
752 only person or entity that can provide the required personal or
753 professional service;

754 4. An explanation of why the amount to be
755 expended for the personal or professional service is reasonable;
756 and

757 5. The efforts that the agency went through
758 to obtain the best possible price for the personal or professional
759 service.

760 (iv) If any person or entity objects and proposes
761 that the personal or professional service published under
762 subparagraph (iii) of this paragraph (o) is not a sole source
763 service and can be provided by another person or entity, then the
764 objecting person or entity shall notify the Public Procurement
765 Review Board and the agency that published the proposed sole
766 source contract with a detailed explanation of why the personal or
767 professional service is not a sole source service.

768 (v) 1. If the agency determines after review that
769 the personal or professional service in the proposed sole source
770 contract can be provided by another person or entity, then the
771 agency must withdraw the sole source contract publication from the
772 procurement portal website and submit the procurement of the
773 personal or professional service to an advertised competitive bid
774 or selection process.



775 2. If the agency determines after review that
776 there is only one (1) source for the required personal or
777 professional service, then the agency may appeal to the Public
778 Procurement Review Board. The agency has the burden of proving
779 that the personal or professional service is only provided by one
780 (1) source.

781 3. If the Public Procurement Review Board has
782 any reasonable doubt as to whether the personal or professional
783 service can only be provided by one (1) source, then the agency
784 must submit the procurement of the personal or professional
785 service to an advertised competitive bid or selection process. No
786 action taken by the Public Procurement Review Board in this appeal
787 process shall be valid unless approved by a majority of the
788 members of the Public Procurement Review Board present and voting.

789 (vi) The Public Procurement Review Board shall
790 prepare and submit a quarterly report to the House of
791 Representatives and Senate Accountability, Efficiency and
792 Transparency Committees that details the sole source contracts
793 presented to the Public Procurement Review Board and the reasons
794 that the Public Procurement Review Board approved or rejected each
795 contract. These quarterly reports shall also include the
796 documentation and memoranda required in subsection (4) of this
797 section. An agency that submitted a sole source contract shall be
798 prepared to explain the sole source contract to each committee by
799 December 15 of each year upon request by the committee.



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

802 (3) All submissions shall be made sufficiently in advance of
803 each monthly meeting of the Public Procurement Review Board as
804 prescribed by the Public Procurement Review Board. If the Public
805 Procurement Review Board rejects any contract submitted for review
806 or approval, the Public Procurement Review Board shall clearly set
807 out the reasons for its action, including, but not limited to, the
808 policy that the agency has violated in its submitted contract and
809 any corrective actions that the agency may take to amend the
810 contract to comply with the rules and regulations of the Public
811 Procurement Review Board.

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

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



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

827 (c) Explanation of why the price is considered
828 reasonable; and

829 (d) Description of the efforts that were made to
830 conduct a noncompetitive negotiation to get the best possible
831 price for the taxpayers.

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

847 (* * *6) No member of the Public Procurement Review Board
848 shall use his or her official authority or influence to coerce, by
849 threat of discharge from employment, or otherwise, the purchase of



850 commodities, the contracting for personal or professional
851 services, or the contracting for public construction under this
852 chapter.

853 (* * *7) Notwithstanding any other laws or rules to the
854 contrary, the provisions of subsection (2) of this section shall
855 not be applicable to the Mississippi State Port Authority at
856 Gulfport.

857 (8) Nothing in this section shall impair or limit the
858 authority of the Board of Trustees of the Public Employees'
859 Retirement System to enter into any personal or professional
860 services contracts directly related to their constitutional
861 obligation to manage the trust funds, including, but not limited
862 to, actuarial, custodial banks, cash management, investment
863 consultant and investment management contracts.

864 (9) Notwithstanding the exemption of personal and
865 professional services contracts entered into by the Department of
866 Human Services and personal and professional services contracts
867 entered into by the Department of Child Protection Services from
868 the provisions of this section under subsection (2)(f), before the
869 Department of Human Services or the Department of Child Protection
870 Services may enter into a personal or professional service
871 contract, the department(s) shall give notice of the proposed
872 personal or professional service contract to the Public
873 Procurement Review Board for any recommendations by the board.
874 Upon receipt of the notice, the board shall post the notice on its



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

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

890 25-9-120. (1) Contract personnel, whether classified as
891 contract workers or independent contractors shall not be deemed
892 state service or nonstate service employees of the State of
893 Mississippi, and shall not be eligible to participate in the
894 Public Employees' Retirement System, or the State and School
895 Employees' Health Insurance Plan, nor be allowed credit for
896 personal and sick leave and other leave benefits as employees of
897 the State of Mississippi, notwithstanding Sections 25-3-91 through
898 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126;
899 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the



900 purpose set forth herein. Contract workers, i.e., contract
901 personnel who do not meet the criteria of independent contractors,
902 shall be subject to the provisions of Section 25-11-127.

903 * * *

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

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

921 25-61-9. (1) Records furnished to public bodies by third
922 parties which contain trade secrets or confidential commercial or
923 financial information shall not be subject to inspection,
924 examination, copying or reproduction under this chapter until



925 notice to third parties has been given, but the records shall be
926 released no later than twenty-one (21) days from the date the
927 third parties are given notice by the public body unless the third
928 parties have filed in chancery court a petition seeking a
929 protective order on or before the expiration of the twenty-one-day
930 time period. Any party seeking the protective order shall give
931 notice to the party requesting the information in accordance with
932 the Mississippi Rules of Civil Procedure.

933 (2) If any public record which is held to be exempt from
934 disclosure pursuant to this chapter contains material which is not
935 exempt pursuant to this chapter, the public body shall separate
936 the exempt material and make the nonexempt material available for
937 examination or copying, or both, as provided for in this chapter.

938 (3) Trade secrets and confidential commercial and financial
939 information of a proprietary nature developed by a college,
940 university or public hospital under contract with a firm,
941 business, partnership, association, corporation, individual or
942 other like entity shall not be subject to inspection, examination,
943 copying or reproduction under this chapter.

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

947 (5) A waste minimization plan and any updates developed by
948 generators and facility operators under the Mississippi
949 Comprehensive Multimedia Waste Minimization Act of 1990 shall be



950 retained at the facility and shall not be subject to inspection,
951 examination, copying or reproduction under this chapter.

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

958 As used in this subsection, "sensitive" means only those
959 portions of data processing software, including the specifications
960 and documentation, used to:

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

963 (b) Control and direct access authorizations and
964 security measures for automated systems.

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

968 (7) For all procurement contracts awarded by state agencies,
969 the provisions of the contract which contain the commodities
970 purchased or the personal or professional services provided, the
971 price to be paid, and the term of the contract shall not be deemed
972 to be a trade secret or confidential commercial or financial
973 information under this section, and shall be available for
974 examination, copying or reproduction as provided for in this



975 chapter. Any party seeking a protective order for a procurement
976 contract awarded by state agencies shall give notice to and
977 provide the reasons for the protective order to the party
978 requesting the information in accordance with the Mississippi
979 Rules of Civil Procedure. The notice and reasons for the
980 protective order must be posted on the Mississippi procurement
981 portal for a minimum of seven (7) days before filing the petition
982 seeking the protective order in chancery court. Any party seeking
983 a protective order in violation of this subsection may be barred
984 by a state agency from submitting bids, proposals or
985 qualifications for procurement for a period not to exceed five (5)
986 years.

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

989 31-7-13. All agencies and governing authorities shall
990 purchase their commodities and printing; contract for garbage
991 collection or disposal; contract for solid waste collection or
992 disposal; contract for sewage collection or disposal; contract for
993 public construction; and contract for rentals as herein provided.

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

995 Purchases which do not involve an expenditure of more than Five
996 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
997 charges, may be made without advertising or otherwise requesting
998 competitive bids. However, nothing contained in this paragraph

999 (a) shall be construed to prohibit any agency or governing



1000 authority from establishing procedures which require competitive
1001 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

1002 (b) **Bidding procedure for purchases over \$5,000.00 but**
1003 **not over \$50,000.00.** Purchases which involve an expenditure of
1004 more than Five Thousand Dollars (\$5,000.00) but not more than
1005 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
1006 shipping charges may be made from the lowest and best bidder
1007 without publishing or posting advertisement for bids, provided at
1008 least two (2) competitive written bids have been obtained. Any
1009 state agency or community/junior college purchasing commodities or
1010 procuring construction pursuant to this paragraph (b) may
1011 authorize its purchasing agent, or his designee, to accept the
1012 lowest competitive written bid under Fifty Thousand Dollars
1013 (\$50,000.00). Any governing authority purchasing commodities
1014 pursuant to this paragraph (b) may authorize its purchasing agent,
1015 or his designee, with regard to governing authorities other than
1016 counties, or its purchase clerk, or his designee, with regard to
1017 counties, to accept the lowest and best competitive written bid.
1018 Such authorization shall be made in writing by the governing
1019 authority and shall be maintained on file in the primary office of
1020 the agency and recorded in the official minutes of the governing
1021 authority, as appropriate. The purchasing agent or the purchase
1022 clerk, or their designee, as the case may be, and not the
1023 governing authority, shall be liable for any penalties and/or
1024 damages as may be imposed by law for any act or omission of the



1025 purchasing agent or purchase clerk, or their designee,
1026 constituting a violation of law in accepting any bid without
1027 approval by the governing authority. The term "competitive
1028 written bid" shall mean a bid submitted on a bid form furnished by
1029 the buying agency or governing authority and signed by authorized
1030 personnel representing the vendor, or a bid submitted on a
1031 vendor's letterhead or identifiable bid form and signed by
1032 authorized personnel representing the vendor. "Competitive" shall
1033 mean that the bids are developed based upon comparable
1034 identification of the needs and are developed independently and
1035 without knowledge of other bids or prospective bids. Any bid item
1036 for construction in excess of Five Thousand Dollars (\$5,000.00)
1037 shall be broken down by components to provide detail of component
1038 description and pricing. These details shall be submitted with
1039 the written bids and become part of the bid evaluation criteria.
1040 Bids may be submitted by facsimile, electronic mail or other
1041 generally accepted method of information distribution. Bids
1042 submitted by electronic transmission shall not require the
1043 signature of the vendor's representative unless required by
1044 agencies or governing authorities.

1045 (c) **Bidding procedure for purchases over \$50,000.00.**

1046 (i) **Publication requirement.**

1047 1. Purchases which involve an expenditure of
1048 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
1049 freight and shipping charges, may be made from the lowest and best



1050 bidder after advertising for competitive bids once each week for
1051 two (2) consecutive weeks in a regular newspaper published in the
1052 county or municipality in which such agency or governing authority
1053 is located. However, all American Recovery and Reinvestment Act
1054 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
1055 shall be bid. All references to American Recovery and
1056 Reinvestment Act projects in this section shall not apply to
1057 programs identified in Division B of the American Recovery and
1058 Reinvestment Act.

1059 2. Reverse auctions shall be the primary
1060 method for receiving bids during the bidding process. If a
1061 purchasing entity determines that a reverse auction is not in the
1062 best interest of the state, then that determination must be
1063 approved by the Public Procurement Review Board. The purchasing
1064 entity shall submit a detailed explanation of why a reverse
1065 auction would not be in the best interest of the state and present
1066 alternative process to be approved by Public Procurement Review
1067 Board. If the Public Procurement Review Board authorizes the
1068 purchasing entity to solicit bids with a method other than reverse
1069 auction, then the purchasing entity may designate the other
1070 methods by which the bids will be received, including, but not
1071 limited to, bids sealed in an envelope, bids received
1072 electronically in a secure system, * * * or bids received by any
1073 other method that promotes open competition and has been approved
1074 by the Office of Purchasing and Travel. However, reverse auction



1075 shall not be used for any public contract for design or
1076 construction of public facilities, including buildings, roads and
1077 bridges. The Public Procurement Review Board must approve any
1078 contract entered into by alternative processes. The provisions of
1079 this subparagraph 2 shall not apply to the individual state
1080 institutions of higher learning.

1081 3. The date as published for the bid opening
1082 shall not be less than seven (7) working days after the last
1083 published notice; however, if the purchase involves a construction
1084 project in which the estimated cost is in excess of Fifty Thousand
1085 Dollars (\$50,000.00), such bids shall not be opened in less than
1086 fifteen (15) working days after the last notice is published and
1087 the notice for the purchase of such construction shall be
1088 published once each week for two (2) consecutive weeks. However,
1089 all American Recovery and Reinvestment Act projects in excess of
1090 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
1091 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
1092 under the American Recovery and Reinvestment Act, publication
1093 shall be made one (1) time and the bid opening for construction
1094 projects shall not be less than ten (10) working days after the
1095 date of the published notice. The notice of intention to let
1096 contracts or purchase equipment shall state the time and place at
1097 which bids shall be received, list the contracts to be made or
1098 types of equipment or supplies to be purchased, and, if all plans
1099 and/or specifications are not published, refer to the plans and/or



1100 specifications on file. If there is no newspaper published in the
1101 county or municipality, then such notice shall be given by posting
1102 same at the courthouse, or for municipalities at the city hall,
1103 and at two (2) other public places in the county or municipality,
1104 and also by publication once each week for two (2) consecutive
1105 weeks in some newspaper having a general circulation in the county
1106 or municipality in the above-provided manner. On the same date
1107 that the notice is submitted to the newspaper for publication, the
1108 agency or governing authority involved shall mail written notice
1109 to, or provide electronic notification to the main office of the
1110 Mississippi Procurement Technical Assistance Program under the
1111 Mississippi Development Authority that contains the same
1112 information as that in the published notice. Submissions received
1113 by the Mississippi Procurement Technical Assistance Program for
1114 projects funded by the American Recovery and Reinvestment Act
1115 shall be displayed on a separate and unique Internet web page
1116 accessible to the public and maintained by the Mississippi
1117 Development Authority for the Mississippi Procurement Technical
1118 Assistance Program. Those American Recovery and Reinvestment Act
1119 related submissions shall be publicly posted within twenty-four
1120 (24) hours of receipt by the Mississippi Development Authority and
1121 the bid opening shall not occur until the submission has been
1122 posted for ten (10) consecutive days. The Department of Finance
1123 and Administration shall maintain information regarding contracts
1124 and other expenditures from the American Recovery and Reinvestment



1125 Act, on a unique Internet web page accessible to the public. The
1126 Department of Finance and Administration shall promulgate rules
1127 regarding format, content and deadlines, unless otherwise
1128 specified by law, of the posting of award notices, contract
1129 execution and subsequent amendments, links to the contract
1130 documents, expenditures against the awarded contracts and general
1131 expenditures of funds from the American Recovery and Reinvestment
1132 Act. Within one (1) working day of the contract award, the agency
1133 or governing authority shall post to the designated web page
1134 maintained by the Department of Finance and Administration, notice
1135 of the award, including the award recipient, the contract amount,
1136 and a brief summary of the contract in accordance with rules
1137 promulgated by the department. Within one (1) working day of the
1138 contract execution, the agency or governing authority shall post
1139 to the designated web page maintained by the Department of Finance
1140 and Administration a summary of the executed contract and make a
1141 copy of the appropriately redacted contract documents available
1142 for linking to the designated web page in accordance with the
1143 rules promulgated by the department. The information provided by
1144 the agency or governing authority shall be posted to the web page
1145 for the duration of the American Recovery and Reinvestment Act
1146 funding or until the project is completed, whichever is longer.

1147 (ii) **Bidding process amendment procedure.** If all
1148 plans and/or specifications are published in the notification,
1149 then the plans and/or specifications may not be amended. If all



1150 plans and/or specifications are not published in the notification,
1151 then amendments to the plans/specifications, bid opening date, bid
1152 opening time and place may be made, provided that the agency or
1153 governing authority maintains a list of all prospective bidders
1154 who are known to have received a copy of the bid documents and all
1155 such prospective bidders are sent copies of all amendments. This
1156 notification of amendments may be made via mail, facsimile,
1157 electronic mail or other generally accepted method of information
1158 distribution. No addendum to bid specifications may be issued
1159 within two (2) working days of the time established for the
1160 receipt of bids unless such addendum also amends the bid opening
1161 to a date not less than five (5) working days after the date of
1162 the addendum.

1163 (iii) **Filing requirement.** In all cases involving
1164 governing authorities, before the notice shall be published or
1165 posted, the plans or specifications for the construction or
1166 equipment being sought shall be filed with the clerk of the board
1167 of the governing authority. In addition to these requirements, a
1168 bid file shall be established which shall indicate those vendors
1169 to whom such solicitations and specifications were issued, and
1170 such file shall also contain such information as is pertinent to
1171 the bid.

1172 (iv) **Specification restrictions.**

1173 1. Specifications pertinent to such bidding
1174 shall be written so as not to exclude comparable equipment of



1175 domestic manufacture. However, if valid justification is
1176 presented, the Department of Finance and Administration or the
1177 board of a governing authority may approve a request for specific
1178 equipment necessary to perform a specific job. Further, such
1179 justification, when placed on the minutes of the board of a
1180 governing authority, may serve as authority for that governing
1181 authority to write specifications to require a specific item of
1182 equipment needed to perform a specific job. In addition to these
1183 requirements, from and after July 1, 1990, vendors of relocatable
1184 classrooms and the specifications for the purchase of such
1185 relocatable classrooms published by local school boards shall meet
1186 all pertinent regulations of the State Board of Education,
1187 including prior approval of such bid by the State Department of
1188 Education.

1189 2. Specifications for construction projects
1190 may include an allowance for commodities, equipment, furniture,
1191 construction materials or systems in which prospective bidders are
1192 instructed to include in their bids specified amounts for such
1193 items so long as the allowance items are acquired by the vendor in
1194 a commercially reasonable manner and approved by the
1195 agency/governing authority. Such acquisitions shall not be made
1196 to circumvent the public purchasing laws.

1197 (v) **Electronic bids.** Agencies and governing
1198 authorities *may establish secure procedures by which bids may be*
1199 *submitted via electronic means.*



1200 (d) **Lowest and best bid decision procedure.**

1201 (i) **Decision procedure.** Purchases may be made
1202 from the lowest and best bidder. In determining the lowest and
1203 best bid, freight and shipping charges shall be included.
1204 Life-cycle costing, total cost bids, warranties, guaranteed
1205 buy-back provisions and other relevant provisions may be included
1206 in the best bid calculation. All best bid procedures for state
1207 agencies must be in compliance with regulations established by the
1208 Department of Finance and Administration. If any governing
1209 authority accepts a bid other than the lowest bid actually
1210 submitted, it shall place on its minutes detailed calculations and
1211 narrative summary showing that the accepted bid was determined to
1212 be the lowest and best bid, including the dollar amount of the
1213 accepted bid and the dollar amount of the lowest bid. No agency
1214 or governing authority shall accept a bid based on items not
1215 included in the specifications.

1216 (ii) **Decision procedure for Certified Purchasing**
1217 **Offices.** In addition to the decision procedure set forth in * * *
1218 subparagraph (i) of this paragraph (d), Certified Purchasing
1219 Offices may also use the following procedure: Purchases may be
1220 made from the bidder offering the best value. In determining the
1221 best value bid, freight and shipping charges shall be included.
1222 Life-cycle costing, total cost bids, warranties, guaranteed
1223 buy-back provisions, documented previous experience, training
1224 costs and other relevant provisions, including, but not limited



1225 to, a bidder having a local office and inventory located within
1226 the jurisdiction of the governing authority, may be included in
1227 the best value calculation. This provision shall authorize
1228 Certified Purchasing Offices to utilize a Request For Proposals
1229 (RFP) process when purchasing commodities. All best value
1230 procedures for state agencies must be in compliance with
1231 regulations established by the Department of Finance and
1232 Administration. No agency or governing authority shall accept a
1233 bid based on items or criteria not included in the specifications.

1234 (iii) **Decision procedure for Mississippi**

1235 **Landmarks.** In addition to the decision procedure set forth
1236 in * * * subparagraph (i) of this paragraph (d), where purchase
1237 involves renovation, restoration, or both, of the State Capitol
1238 Building or any other historical building designated for at least
1239 five (5) years as a Mississippi Landmark by the Board of Trustees
1240 of the Department of Archives and History under the authority of
1241 Sections 39-7-7 and 39-7-11, the agency or governing authority may
1242 use the following procedure: Purchases may be made from the
1243 lowest and best prequalified bidder. Prequalification of bidders
1244 shall be determined not less than fifteen (15) working days before
1245 the first published notice of bid opening. Prequalification
1246 criteria shall be limited to bidder's knowledge and experience in
1247 historical restoration, preservation and renovation. In
1248 determining the lowest and best bid, freight and shipping charges
1249 shall be included. Life-cycle costing, total cost bids,



1250 warranties, guaranteed buy-back provisions and other relevant
1251 provisions may be included in the best bid calculation. All best
1252 bid and prequalification procedures for state agencies must be in
1253 compliance with regulations established by the Department of
1254 Finance and Administration. If any governing authority accepts a
1255 bid other than the lowest bid actually submitted, it shall place
1256 on its minutes detailed calculations and narrative summary showing
1257 that the accepted bid was determined to be the lowest and best
1258 bid, including the dollar amount of the accepted bid and the
1259 dollar amount of the lowest bid. No agency or governing authority
1260 shall accept a bid based on items not included in the
1261 specifications.

1262 (iv) **Construction project negotiations authority.**
1263 If the lowest and best bid is not more than ten percent (10%)
1264 above the amount of funds allocated for a public construction or
1265 renovation project, then the agency or governing authority shall
1266 be permitted to negotiate with the lowest bidder in order to enter
1267 into a contract for an amount not to exceed the funds allocated.

1268 (e) **Lease-purchase authorization.** For the purposes of
1269 this section, the term "equipment" shall mean equipment, furniture
1270 and, if applicable, associated software and other applicable
1271 direct costs associated with the acquisition. Any lease-purchase
1272 of equipment which an agency is not required to lease-purchase
1273 under the master lease-purchase program pursuant to Section
1274 31-7-10 and any lease-purchase of equipment which a governing



1275 authority elects to lease-purchase may be acquired by a
1276 lease-purchase agreement under this paragraph (e). Lease-purchase
1277 financing may also be obtained from the vendor or from a
1278 third-party source after having solicited and obtained at least
1279 two (2) written competitive bids, as defined in paragraph (b) of
1280 this section, for such financing without advertising for such
1281 bids. Solicitation for the bids for financing may occur before or
1282 after acceptance of bids for the purchase of such equipment or,
1283 where no such bids for purchase are required, at any time before
1284 the purchase thereof. No such lease-purchase agreement shall be
1285 for an annual rate of interest which is greater than the overall
1286 maximum interest rate to maturity on general obligation
1287 indebtedness permitted under Section 75-17-101, and the term of
1288 such lease-purchase agreement shall not exceed the useful life of
1289 equipment covered thereby as determined according to the upper
1290 limit of the asset depreciation range (ADR) guidelines for the
1291 Class Life Asset Depreciation Range System established by the
1292 Internal Revenue Service pursuant to the United States Internal
1293 Revenue Code and regulations thereunder as in effect on December
1294 31, 1980, or comparable depreciation guidelines with respect to
1295 any equipment not covered by ADR guidelines. Any lease-purchase
1296 agreement entered into pursuant to this paragraph (e) may contain
1297 any of the terms and conditions which a master lease-purchase
1298 agreement may contain under the provisions of Section 31-7-10(5),
1299 and shall contain an annual allocation dependency clause



1300 substantially similar to that set forth in Section 31-7-10(8).
1301 Each agency or governing authority entering into a lease-purchase
1302 transaction pursuant to this paragraph (e) shall maintain with
1303 respect to each such lease-purchase transaction the same
1304 information as required to be maintained by the Department of
1305 Finance and Administration pursuant to Section 31-7-10(13).
1306 However, nothing contained in this section shall be construed to
1307 permit agencies to acquire items of equipment with a total
1308 acquisition cost in the aggregate of less than Ten Thousand
1309 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1310 equipment, and the purchase thereof by any lessor, acquired by
1311 lease-purchase under this paragraph and all lease-purchase
1312 payments with respect thereto shall be exempt from all Mississippi
1313 sales, use and ad valorem taxes. Interest paid on any
1314 lease-purchase agreement under this section shall be exempt from
1315 State of Mississippi income taxation.

1316 (f) **Alternate bid authorization.** When necessary to
1317 ensure ready availability of commodities for public works and the
1318 timely completion of public projects, no more than two (2)
1319 alternate bids may be accepted by a governing authority for
1320 commodities. No purchases may be made through use of such
1321 alternate bids procedure unless the lowest and best bidder cannot
1322 deliver the commodities contained in his bid. In that event,
1323 purchases of such commodities may be made from one (1) of the
1324 bidders whose bid was accepted as an alternate.



1325 (g) **Construction contract change authorization.** In the
1326 event a determination is made by an agency or governing authority
1327 after a construction contract is let that changes or modifications
1328 to the original contract are necessary or would better serve the
1329 purpose of the agency or the governing authority, such agency or
1330 governing authority may, in its discretion, order such changes
1331 pertaining to the construction that are necessary under the
1332 circumstances without the necessity of further public bids;
1333 provided that such change shall be made in a commercially
1334 reasonable manner and shall not be made to circumvent the public
1335 purchasing statutes. In addition to any other authorized person,
1336 the architect or engineer hired by an agency or governing
1337 authority with respect to any public construction contract shall
1338 have the authority, when granted by an agency or governing
1339 authority, to authorize changes or modifications to the original
1340 contract without the necessity of prior approval of the agency or
1341 governing authority when any such change or modification is less
1342 than one percent (1%) of the total contract amount. The agency or
1343 governing authority may limit the number, manner or frequency of
1344 such emergency changes or modifications.

1345 (h) **Petroleum purchase alternative.** In addition to
1346 other methods of purchasing authorized in this chapter, when any
1347 agency or governing authority shall have a need for gas, diesel
1348 fuel, oils and/or other petroleum products in excess of the amount
1349 set forth in paragraph (a) of this section, such agency or



1350 governing authority may purchase the commodity after having
1351 solicited and obtained at least two (2) competitive written bids,
1352 as defined in paragraph (b) of this section. If two (2)
1353 competitive written bids are not obtained, the entity shall comply
1354 with the procedures set forth in paragraph (c) of this section.
1355 In the event any agency or governing authority shall have
1356 advertised for bids for the purchase of gas, diesel fuel, oils and
1357 other petroleum products and coal and no acceptable bids can be
1358 obtained, such agency or governing authority is authorized and
1359 directed to enter into any negotiations necessary to secure the
1360 lowest and best contract available for the purchase of such
1361 commodities.

1362 (i) **Road construction petroleum products price**
1363 **adjustment clause authorization.** Any agency or governing
1364 authority authorized to enter into contracts for the construction,
1365 maintenance, surfacing or repair of highways, roads or streets,
1366 may include in its bid proposal and contract documents a price
1367 adjustment clause with relation to the cost to the contractor,
1368 including taxes, based upon an industry-wide cost index, of
1369 petroleum products including asphalt used in the performance or
1370 execution of the contract or in the production or manufacture of
1371 materials for use in such performance. Such industry-wide index
1372 shall be established and published monthly by the Mississippi
1373 Department of Transportation with a copy thereof to be mailed,
1374 upon request, to the clerks of the governing authority of each



1375 municipality and the clerks of each board of supervisors
1376 throughout the state. The price adjustment clause shall be based
1377 on the cost of such petroleum products only and shall not include
1378 any additional profit or overhead as part of the adjustment. The
1379 bid proposals or document contract shall contain the basis and
1380 methods of adjusting unit prices for the change in the cost of
1381 such petroleum products.

1382 (j) **State agency emergency purchase procedure.** If the
1383 governing board or the executive head, or his designees, of any
1384 agency of the state shall determine that an emergency exists in
1385 regard to the purchase of any commodities or repair contracts, so
1386 that the delay incident to giving opportunity for competitive
1387 bidding would be detrimental to the interests of the state, then
1388 the head of such agency, or his designees, shall file with the
1389 Department of Finance and Administration (i) a statement
1390 explaining the conditions and circumstances of the emergency,
1391 which shall include a detailed description of the events leading
1392 up to the situation and the negative impact to the entity if the
1393 purchase is made following the statutory requirements set forth in
1394 paragraph (a), (b) or (c) of this section, and (ii) a certified
1395 copy of the appropriate minutes of the board of such agency
1396 requesting the emergency purchase, if applicable. Upon receipt of
1397 the statement and applicable board certification, the State Fiscal
1398 Officer, or his designees, may, in writing, authorize the purchase



1399 or repair without having to comply with competitive bidding
1400 requirements.

1401 If the governing board or the executive head, or his
1402 designees, of any agency determines 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 threaten the health or safety of any person, or the
1406 preservation or protection of property, then the provisions in
1407 this section for competitive bidding shall not apply, and any
1408 officer or agent of the agency having general or specific
1409 authority for making the purchase or repair contract shall approve
1410 the bill presented for payment, and he shall certify in writing
1411 from whom the purchase was made, or with whom the repair contract
1412 was made.

1413 Total purchases made under this paragraph (j) shall only be
1414 for the purpose of meeting needs created by the emergency
1415 situation. Following the emergency purchase, documentation of the
1416 purchase, including a description of the commodity purchased, the
1417 purchase price thereof and the nature of the emergency shall be
1418 filed with the Department of Finance and Administration. Any
1419 contract awarded pursuant to this paragraph (j) shall not exceed a
1420 term of one (1) year.

1421 (k) **Governing authority emergency purchase procedure.**

1422 If the governing authority, or the governing authority acting
1423 through its designee, shall determine that an emergency exists in



1424 regard to the purchase of any commodities or repair contracts, so
1425 that the delay incident to giving opportunity for competitive
1426 bidding would be detrimental to the interest of the governing
1427 authority, then the provisions herein for competitive bidding
1428 shall not apply and any officer or agent of such governing
1429 authority having general or special authority therefor in making
1430 such purchase or repair shall approve the bill presented therefor,
1431 and he shall certify in writing thereon from whom such purchase
1432 was made, or with whom such a repair contract was made. At the
1433 board meeting next following the emergency purchase or repair
1434 contract, documentation of the purchase or repair contract,
1435 including a description of the commodity purchased, the price
1436 thereof and the nature of the emergency shall be presented to the
1437 board and shall be placed on the minutes of the board of such
1438 governing authority.

1439 (1) **Hospital purchase, lease-purchase and lease**
1440 **authorization.**

1441 (i) The commissioners or board of trustees of any
1442 public hospital may contract with such lowest and best bidder for
1443 the purchase or lease-purchase of any commodity under a contract
1444 of purchase or lease-purchase agreement whose obligatory payment
1445 terms do not exceed five (5) years.

1446 (ii) In addition to the authority granted in
1447 subparagraph (i) of this paragraph (1), the commissioners or board
1448 of trustees is authorized to enter into contracts for the lease of



1449 equipment or services, or both, which it considers necessary for
1450 the proper care of patients if, in its opinion, it is not
1451 financially feasible to purchase the necessary equipment or
1452 services. Any such contract for the lease of equipment or
1453 services executed by the commissioners or board shall not exceed a
1454 maximum of five (5) years' duration and shall include a
1455 cancellation clause based on unavailability of funds. If such
1456 cancellation clause is exercised, there shall be no further
1457 liability on the part of the lessee. Any such contract for the
1458 lease of equipment or services executed on behalf of the
1459 commissioners or board that complies with the provisions of this
1460 subparagraph (ii) shall be excepted from the bid requirements set
1461 forth in this section.

1462 (m) **Exceptions from bidding requirements.** Excepted
1463 from bid requirements are:

1464 (i) **Purchasing agreements approved by department.**
1465 Purchasing agreements, contracts and maximum price regulations
1466 executed or approved by the Department of Finance and
1467 Administration.

1468 (ii) **Outside equipment repairs.** Repairs to
1469 equipment, when such repairs are made by repair facilities in the
1470 private sector; however, engines, transmissions, rear axles and/or
1471 other such components shall not be included in this exemption when
1472 replaced as a complete unit instead of being repaired and the need
1473 for such total component replacement is known before disassembly



1474 of the component; however, invoices identifying the equipment,
1475 specific repairs made, parts identified by number and name,
1476 supplies used in such repairs, and the number of hours of labor
1477 and costs therefor shall be required for the payment for such
1478 repairs.

1479 (iii) **In-house equipment repairs.** Purchases of
1480 parts for repairs to equipment, when such repairs are made by
1481 personnel of the agency or governing authority; however, entire
1482 assemblies, such as engines or transmissions, shall not be
1483 included in this exemption when the entire assembly is being
1484 replaced instead of being repaired.

1485 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1486 of gravel or fill dirt which are to be removed and transported by
1487 the purchaser.

1488 (v) **Governmental equipment auctions.** Motor
1489 vehicles or other equipment purchased from a federal agency or
1490 authority, another governing authority or state agency of the
1491 State of Mississippi, or any governing authority or state agency
1492 of another state at a public auction held for the purpose of
1493 disposing of such vehicles or other equipment. Any purchase by a
1494 governing authority under the exemption authorized by this
1495 subparagraph (v) shall require advance authorization spread upon
1496 the minutes of the governing authority to include the listing of
1497 the item or items authorized to be purchased and the maximum bid
1498 authorized to be paid for each item or items.



1499 (vi) **Intergovernmental sales and transfers.**
1500 Purchases, sales, transfers or trades by governing authorities or
1501 state agencies when such purchases, sales, transfers or trades are
1502 made by a private treaty agreement or through means of
1503 negotiation, from any federal agency or authority, another
1504 governing authority or state agency of the State of Mississippi,
1505 or any state agency or governing authority of another state.
1506 Nothing in this section shall permit such purchases through public
1507 auction except as provided for in subparagraph (v) of this * * *
1508 paragraph (m). It is the intent of this section to allow
1509 governmental entities to dispose of and/or purchase commodities
1510 from other governmental entities at a price that is agreed to by
1511 both parties. This shall allow for purchases and/or sales at
1512 prices which may be determined to be below the market value if the
1513 selling entity determines that the sale at below market value is
1514 in the best interest of the taxpayers of the state. Governing
1515 authorities shall place the terms of the agreement and any
1516 justification on the minutes, and state agencies shall obtain
1517 approval from the Department of Finance and Administration, prior
1518 to releasing or taking possession of the commodities.

1519 (vii) **Perishable supplies or food.** Perishable
1520 supplies or food purchased for use in connection with hospitals,
1521 the school lunch programs, homemaking programs and for the feeding
1522 of county or municipal prisoners.



1523 (viii) **Single source items.** Noncompetitive items
1524 available from one (1) source only. In connection with the
1525 purchase of noncompetitive items only available from one (1)
1526 source, a certification of the conditions and circumstances
1527 requiring the purchase shall be filed by the agency with the
1528 Department of Finance and Administration and by the governing
1529 authority with the board of the governing authority. Upon receipt
1530 of that certification the Department of Finance and Administration
1531 or the board of the governing authority, as the case may be, may,
1532 in writing, authorize the purchase, which authority shall be noted
1533 on the minutes of the body at the next regular meeting thereafter.
1534 In those situations, a governing authority is not required to
1535 obtain the approval of the Department of Finance and
1536 Administration. Following the purchase, the executive head of the
1537 state agency, or his designees, shall file with the Department of
1538 Finance and Administration, documentation of the purchase,
1539 including a description of the commodity purchased, the purchase
1540 price thereof and the source from whom it was purchased.

1541 (ix) **Waste disposal facility construction**
1542 **contracts.** Construction of incinerators and other facilities for
1543 disposal of solid wastes in which products either generated
1544 therein, such as steam, or recovered therefrom, such as materials
1545 for recycling, are to be sold or otherwise disposed of; however,
1546 in constructing such facilities, a governing authority or agency
1547 shall publicly issue requests for proposals, advertised for in the



1548 same manner as provided herein for seeking bids for public
1549 construction projects, concerning the design, construction,
1550 ownership, operation and/or maintenance of such facilities,
1551 wherein such requests for proposals when issued shall contain
1552 terms and conditions relating to price, financial responsibility,
1553 technology, environmental compatibility, legal responsibilities
1554 and such other matters as are determined by the governing
1555 authority or agency to be appropriate for inclusion; and after
1556 responses to the request for proposals have been duly received,
1557 the governing authority or agency may select the most qualified
1558 proposal or proposals on the basis of price, technology and other
1559 relevant factors and from such proposals, but not limited to the
1560 terms thereof, negotiate and enter contracts with one or more of
1561 the persons or firms submitting proposals.

1562 (x) **Hospital group purchase contracts.** Supplies,
1563 commodities and equipment purchased by hospitals through group
1564 purchase programs pursuant to Section 31-7-38.

1565 (xi) **Information technology products.** Purchases
1566 of information technology products made by governing authorities
1567 under the provisions of purchase schedules, or contracts executed
1568 or approved by the Mississippi Department of Information
1569 Technology Services and designated for use by governing
1570 authorities.

1571 (xii) **Energy efficiency services and equipment.**
1572 Energy efficiency services and equipment acquired by school



1573 districts, community and junior colleges, institutions of higher
1574 learning and state agencies or other applicable governmental
1575 entities on a shared-savings, lease or lease-purchase basis
1576 pursuant to Section 31-7-14.

1577 (xiii) **Municipal electrical utility system fuel.**

1578 Purchases of coal and/or natural gas by municipally owned electric
1579 power generating systems that have the capacity to use both coal
1580 and natural gas for the generation of electric power.

1581 (xiv) **Library books and other reference materials.**

1582 Purchases by libraries or for libraries of books and periodicals;
1583 processed film, videocassette tapes, filmstrips and slides;
1584 recorded audiotapes, cassettes and diskettes; and any such items
1585 as would be used for teaching, research or other information
1586 distribution; however, equipment such as projectors, recorders,
1587 audio or video equipment, and monitor televisions are not exempt
1588 under this subparagraph.

1589 (xv) **Unmarked vehicles.** Purchases of unmarked
1590 vehicles when such purchases are made in accordance with
1591 purchasing regulations adopted by the Department of Finance and
1592 Administration pursuant to Section 31-7-9(2).

1593 (xvi) **Election ballots.** Purchases of ballots
1594 printed pursuant to Section 23-15-351.

1595 (xvii) **Multichannel interactive video systems.**

1596 From and after July 1, 1990, contracts by Mississippi Authority
1597 for Educational Television with any private educational



1598 institution or private nonprofit organization whose purposes are
1599 educational in regard to the construction, purchase, lease or
1600 lease-purchase of facilities and equipment and the employment of
1601 personnel for providing multichannel interactive video systems
1602 (ITSF) in the school districts of this state.

1603 (xviii) **Purchases of prison industry products by**
1604 **the Department of Corrections, regional correctional facilities or**
1605 **privately owned prisons.** Purchases made by the Mississippi
1606 Department of Corrections, regional correctional facilities or
1607 privately owned prisons involving any item that is manufactured,
1608 processed, grown or produced from the state's prison industries.

1609 (xix) **Undercover operations equipment.** Purchases
1610 of surveillance equipment or any other high-tech equipment to be
1611 used by law enforcement agents in undercover operations, provided
1612 that any such purchase shall be in compliance with regulations
1613 established by the Department of Finance and Administration.

1614 (xx) **Junior college books for rent.** Purchases by
1615 community or junior colleges of textbooks which are obtained for
1616 the purpose of renting such books to students as part of a book
1617 service system.

1618 (xxi) **Certain school district purchases.**
1619 Purchases of commodities made by school districts from vendors
1620 with which any levying authority of the school district, as
1621 defined in Section 37-57-1, has contracted through competitive
1622 bidding procedures for purchases of the same commodities.



1623 (xxii) **Garbage, solid waste and sewage contracts.**
1624 Contracts for garbage collection or disposal, contracts for solid
1625 waste collection or disposal and contracts for sewage collection
1626 or disposal.

1627 (xxiii) **Municipal water tank maintenance**
1628 **contracts.** Professional maintenance program contracts for the
1629 repair or maintenance of municipal water tanks, which provide
1630 professional services needed to maintain municipal water storage
1631 tanks for a fixed annual fee for a duration of two (2) or more
1632 years.

1633 (xxiv) **Purchases of Mississippi Industries for the**
1634 **Blind products.** Purchases made by state agencies or governing
1635 authorities involving any item that is manufactured, processed or
1636 produced by the Mississippi Industries for the Blind.

1637 (xxv) **Purchases of state-adopted textbooks.**
1638 Purchases of state-adopted textbooks by public school districts.

1639 (xxvi) **Certain purchases under the Mississippi**
1640 **Major Economic Impact Act.** Contracts entered into pursuant to the
1641 provisions of Section 57-75-9(2), (3) and (4).

1642 (xxvii) **Used heavy or specialized machinery or**
1643 **equipment for installation of soil and water conservation**
1644 **practices purchased at auction.** Used heavy or specialized
1645 machinery or equipment used for the installation and
1646 implementation of soil and water conservation practices or
1647 measures purchased subject to the restrictions provided in



1648 Sections 69-27-331 through 69-27-341. Any purchase by the State
1649 Soil and Water Conservation Commission under the exemption
1650 authorized by this subparagraph shall require advance
1651 authorization spread upon the minutes of the commission to include
1652 the listing of the item or items authorized to be purchased and
1653 the maximum bid authorized to be paid for each item or items.

1654 (xxviii) **Hospital lease of equipment or services.**
1655 Leases by hospitals of equipment or services if the leases are in
1656 compliance with paragraph (1)(ii).

1657 (xxix) **Purchases made pursuant to qualified**
1658 **cooperative purchasing agreements.** Purchases made by certified
1659 purchasing offices of state agencies or governing authorities
1660 under cooperative purchasing agreements previously approved by the
1661 Office of Purchasing and Travel and established by or for any
1662 municipality, county, parish or state government or the federal
1663 government, provided that the notification to potential
1664 contractors includes a clause that sets forth the availability of
1665 the cooperative purchasing agreement to other governmental
1666 entities. Such purchases shall only be made if the use of the
1667 cooperative purchasing agreements is determined to be in the best
1668 interest of the governmental entity.

1669 (xxx) **School yearbooks.** Purchases of school
1670 yearbooks by state agencies or governing authorities; provided,
1671 however, that state agencies and governing authorities shall use
1672 for these purchases the RFP process as set forth in the



1673 Mississippi Procurement Manual adopted by the Office of Purchasing
1674 and Travel.

1675 (xxxii) **Design-build method and dual-phase**
1676 **design-build method of contracting.** Contracts entered into under
1677 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1678 (xxxiii) **Toll roads and bridge construction**
1679 **projects.** Contracts entered into under the provisions of Section
1680 65-43-1 or 65-43-3.

1681 (xxxiii) **Certain purchases under Section 57-1-221.**
1682 Contracts entered into pursuant to the provisions of Section
1683 57-1-221.

1684 (xxxiv) **Certain transfers made pursuant to the**
1685 **provisions of Section 57-105-1(7).** Transfers of public property
1686 or facilities under Section 57-105-1(7) and construction related
1687 to such public property or facilities.

1688 (xxxv) **Certain purchases or transfers entered into**
1689 **with local electrical power associations.** Contracts or agreements
1690 entered into under the provisions of Section 55-3-33.

1691 (n) **Term contract authorization.** All contracts for the
1692 purchase of:

1693 (i) All contracts for the purchase of commodities,
1694 equipment and public construction (including, but not limited to,
1695 repair and maintenance), may be let for periods of not more than
1696 sixty (60) months in advance, subject to applicable statutory
1697 provisions prohibiting the letting of contracts during specified



1698 periods near the end of terms of office. Term contracts for a
1699 period exceeding twenty-four (24) months shall also be subject to
1700 ratification or cancellation by governing authority boards taking
1701 office subsequent to the governing authority board entering the
1702 contract.

1703 (ii) Bid proposals and contracts may include price
1704 adjustment clauses with relation to the cost to the contractor
1705 based upon a nationally published industry-wide or nationally
1706 published and recognized cost index. The cost index used in a
1707 price adjustment clause shall be determined by the Department of
1708 Finance and Administration for the state agencies and by the
1709 governing board for governing authorities. The bid proposal and
1710 contract documents utilizing a price adjustment clause shall
1711 contain the basis and method of adjusting unit prices for the
1712 change in the cost of such commodities, equipment and public
1713 construction.

1714 (o) **Purchase law violation prohibition and vendor**
1715 **penalty.** No contract or purchase as herein authorized shall be
1716 made for the purpose of circumventing the provisions of this
1717 section requiring competitive bids, nor shall it be lawful for any
1718 person or concern to submit individual invoices for amounts within
1719 those authorized for a contract or purchase where the actual value
1720 of the contract or commodity purchased exceeds the authorized
1721 amount and the invoices therefor are split so as to appear to be
1722 authorized as purchases for which competitive bids are not



1723 required. Submission of such invoices shall constitute a
1724 misdemeanor punishable by a fine of not less than Five Hundred
1725 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1726 or by imprisonment for thirty (30) days in the county jail, or
1727 both such fine and imprisonment. In addition, the claim or claims
1728 submitted shall be forfeited.

1729 (p) **Electrical utility petroleum-based equipment**
1730 **purchase procedure.** When in response to a proper advertisement
1731 therefor, no bid firm as to price is submitted to an electric
1732 utility for power transformers, distribution transformers, power
1733 breakers, reclosers or other articles containing a petroleum
1734 product, the electric utility may accept the lowest and best bid
1735 therefor although the price is not firm.

1736 (q) **Fuel management system bidding procedure.** Any
1737 governing authority or agency of the state shall, before
1738 contracting for the services and products of a fuel management or
1739 fuel access system, enter into negotiations with not fewer than
1740 two (2) sellers of fuel management or fuel access systems for
1741 competitive written bids to provide the services and products for
1742 the systems. In the event that the governing authority or agency
1743 cannot locate two (2) sellers of such systems or cannot obtain
1744 bids from two (2) sellers of such systems, it shall show proof
1745 that it made a diligent, good-faith effort to locate and negotiate
1746 with two (2) sellers of such systems. Such proof shall include,
1747 but not be limited to, publications of a request for proposals and



1748 letters soliciting negotiations and bids. For purposes of this
1749 paragraph (q), a fuel management or fuel access system is an
1750 automated system of acquiring fuel for vehicles as well as
1751 management reports detailing fuel use by vehicles and drivers, and
1752 the term "competitive written bid" shall have the meaning as
1753 defined in paragraph (b) of this section. Governing authorities
1754 and agencies shall be exempt from this process when contracting
1755 for the services and products of fuel management or fuel access
1756 systems under the terms of a state contract established by the
1757 Office of Purchasing and Travel.

1758 (r) **Solid waste contract proposal procedure.** Before
1759 entering into any contract for garbage collection or disposal,
1760 contract for solid waste collection or disposal or contract for
1761 sewage collection or disposal, which involves an expenditure of
1762 more than Fifty Thousand Dollars (\$50,000.00), a governing
1763 authority or agency shall issue publicly a request for proposals
1764 concerning the specifications for such services which shall be
1765 advertised for in the same manner as provided in this section for
1766 seeking bids for purchases which involve an expenditure of more
1767 than the amount provided in paragraph (c) of this section. Any
1768 request for proposals when issued shall contain terms and
1769 conditions relating to price, financial responsibility,
1770 technology, legal responsibilities and other relevant factors as
1771 are determined by the governing authority or agency to be
1772 appropriate for inclusion; all factors determined relevant by the



1773 governing authority or agency or required by this paragraph (r)
1774 shall be duly included in the advertisement to elicit proposals.
1775 After responses to the request for proposals have been duly
1776 received, the governing authority or agency shall select the most
1777 qualified proposal or proposals on the basis of price, technology
1778 and other relevant factors and from such proposals, but not
1779 limited to the terms thereof, negotiate and enter into contracts
1780 with one or more of the persons or firms submitting proposals. If
1781 the governing authority or agency deems none of the proposals to
1782 be qualified or otherwise acceptable, the request for proposals
1783 process may be reinitiated. Notwithstanding any other provisions
1784 of this paragraph, where a county with at least thirty-five
1785 thousand (35,000) nor more than forty thousand (40,000)
1786 population, according to the 1990 federal decennial census, owns
1787 or operates a solid waste landfill, the governing authorities of
1788 any other county or municipality may contract with the governing
1789 authorities of the county owning or operating the landfill,
1790 pursuant to a resolution duly adopted and spread upon the minutes
1791 of each governing authority involved, for garbage or solid waste
1792 collection or disposal services through contract negotiations.

1793 (s) **Minority set-aside authorization.** Notwithstanding
1794 any provision of this section to the contrary, any agency or
1795 governing authority, by order placed on its minutes, may, in its
1796 discretion, set aside not more than twenty percent (20%) of its
1797 anticipated annual expenditures for the purchase of commodities



1798 from minority businesses; however, all such set-aside purchases
1799 shall comply with all purchasing regulations promulgated by the
1800 Department of Finance and Administration and shall be subject to
1801 bid requirements under this section. Set-aside purchases for
1802 which competitive bids are required shall be made from the lowest
1803 and best minority business bidder. For the purposes of this
1804 paragraph, the term "minority business" means a business which is
1805 owned by a majority of persons who are United States citizens or
1806 permanent resident aliens (as defined by the Immigration and
1807 Naturalization Service) of the United States, and who are Asian,
1808 Black, Hispanic or Native American, according to the following
1809 definitions:

1810 (i) "Asian" means persons having origins in any of
1811 the original people of the Far East, Southeast Asia, the Indian
1812 subcontinent, or the Pacific Islands.

1813 (ii) "Black" means persons having origins in any
1814 black racial group of Africa.

1815 (iii) "Hispanic" means persons of Spanish or
1816 Portuguese culture with origins in Mexico, South or Central
1817 America, or the Caribbean Islands, regardless of race.

1818 (iv) "Native American" means persons having
1819 origins in any of the original people of North America, including
1820 American Indians, Eskimos and Aleuts.

1821 (t) **Construction punch list restriction.** The
1822 architect, engineer or other representative designated by the



1823 agency or governing authority that is contracting for public
1824 construction or renovation may prepare and submit to the
1825 contractor only one (1) preliminary punch list of items that do
1826 not meet the contract requirements at the time of substantial
1827 completion and one (1) final list immediately before final
1828 completion and final payment.

1829 (u) **Procurement of construction services by state**
1830 **institutions of higher learning.** Contracts for privately financed
1831 construction of auxiliary facilities on the campus of a state
1832 institution of higher learning may be awarded by the Board of
1833 Trustees of State Institutions of Higher Learning to the lowest
1834 and best bidder, where sealed bids are solicited, or to the
1835 offeror whose proposal is determined to represent the best value
1836 to the citizens of the State of Mississippi, where requests for
1837 proposals are solicited.

1838 (v) **Insurability of bidders for public construction or**
1839 **other public contracts.** In any solicitation for bids to perform
1840 public construction or other public contracts to which this
1841 section applies including, but not limited to, contracts for
1842 repair and maintenance, for which the contract will require
1843 insurance coverage in an amount of not less than One Million
1844 Dollars (\$1,000,000.00), bidders shall be permitted to either
1845 submit proof of current insurance coverage in the specified amount
1846 or demonstrate ability to obtain the required coverage amount of
1847 insurance if the contract is awarded to the bidder. Proof of



1848 insurance coverage shall be submitted within five (5) business
1849 days from bid acceptance.

1850 (w) **Purchase authorization clarification.** Nothing in
1851 this section shall be construed as authorizing any purchase not
1852 authorized by law.

1853 **SECTION 17.** This act shall take effect and be in force from
1854 and after January 1, 2018.

