

**Adopted
AMENDMENT NO 1 PROPOSED TO**

House Bill No. 1131

BY: Representative Baker

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

25 31-7-13. All agencies and governing authorities shall
26 purchase their commodities and printing; contract for garbage
27 collection or disposal; contract for solid waste collection or
28 disposal; contract for sewage collection or disposal; contract for
29 public construction; and contract for rentals as herein provided.

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



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

38 (b) **Bidding procedure for purchases over \$5,000.00 but**
39 **not over \$50,000.00.** Purchases which involve an expenditure of
40 more than Five Thousand Dollars (\$5,000.00) but not more than
41 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
42 shipping charges, may be made from the lowest and best bidder
43 without publishing or posting advertisement for bids, provided at
44 least two (2) competitive written bids have been obtained. Any
45 state agency or community/junior college purchasing commodities or
46 procuring construction pursuant to this paragraph (b) may
47 authorize its purchasing agent, or his designee, to accept the
48 lowest competitive written bid under Fifty Thousand Dollars
49 (\$50,000.00). Any governing authority purchasing commodities
50 pursuant to this paragraph (b) may authorize its purchasing agent,
51 or his designee, with regard to governing authorities other than
52 counties, or its purchase clerk, or his designee, with regard to
53 counties, to accept the lowest and best competitive written bid.
54 Such authorization shall be made in writing by the governing
55 authority and shall be maintained on file in the primary office of
56 the agency and recorded in the official minutes of the governing
57 authority, as appropriate. The purchasing agent or the purchase



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

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

82 (i) **Publication requirement.**



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

95 2. Reverse auctions shall be the primary
96 method for receiving bids during the bidding process. If * * *~~a~~
97 purchasing entity an agency or governing authority determines that
98 a reverse auction is not in the best interest of the * * *~~state~~
99 agency or governing authority, then with respect to an agency,
100 that determination must be approved by the Public Procurement
101 Review Board, and with respect to a governing authority, that
102 determination must be approved by the governing body of the
103 governing authority. * * *~~The purchasing entity~~ An agency shall
104 submit a detailed explanation of why a reverse auction would not
105 be in the best interest of the * * *~~state~~ agency and present an
106 alternative process to be approved by the Public Procurement
107 Review Board. A governing authority shall make findings in its



108 minutes of why a reverse auction would not be in the best interest
109 of the governing authority. If as to an agency, the Public
110 Procurement Review Board authorizes the purchasing entity to
111 solicit bids with a method other than reverse auction, or if as to
112 a governing authority, the governing board thereof authorizes the
113 purchasing entity to solicit bids with a method other than reverse
114 auction, then the purchasing entity may designate the other
115 methods by which the bids will be received, including, but not
116 limited to, bids sealed in an envelope, bids received
117 electronically in a secure system, or bids received by any other
118 method that promotes open competition and has been approved by the
119 Office of Purchasing and Travel. However, reverse auction shall
120 not be used for any public contract for design or construction of
121 public facilities, including buildings, roads and bridges.

122 * * *~~The~~ As to an agency, the Public Procurement Review Board
123 must approve any contract entered into by alternative process.
124 The provisions of this item 2 shall not apply to the individual
125 state institutions of higher learning.

126 3. The date as published for the bid opening
127 shall not be less than seven (7) working days after the last
128 published notice; however, if the purchase involves a construction
129 project in which the estimated cost is in excess of Fifty Thousand
130 Dollars (\$50,000.00), such bids shall not be opened in less than
131 fifteen (15) working days after the last notice is published and
132 the notice for the purchase of such construction shall be



133 published once each week for two (2) consecutive weeks. However,
134 all American Recovery and Reinvestment Act projects in excess of
135 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
136 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
137 under the American Recovery and Reinvestment Act, publication
138 shall be made one (1) time and the bid opening for construction
139 projects shall not be less than ten (10) working days after the
140 date of the published notice. The notice of intention to let
141 contracts or purchase equipment shall state the time and place at
142 which bids shall be received, list the contracts to be made or
143 types of equipment or supplies to be purchased, and, if all plans
144 and/or specifications are not published, refer to the plans and/or
145 specifications on file. If there is no newspaper published in the
146 county or municipality, then such notice shall be given by posting
147 same at the courthouse, or for municipalities at the city hall,
148 and at two (2) other public places in the county or municipality,
149 and also by publication once each week for two (2) consecutive
150 weeks in some newspaper having a general circulation in the county
151 or municipality in the above-provided manner. On the same date
152 that the notice is submitted to the newspaper for publication, the
153 agency or governing authority involved shall mail written notice
154 to, or provide electronic notification to the main office of the
155 Mississippi Procurement Technical Assistance Program under the
156 Mississippi Development Authority that contains the same
157 information as that in the published notice. Submissions received



158 by the Mississippi Procurement Technical Assistance Program for
159 projects funded by the American Recovery and Reinvestment Act
160 shall be displayed on a separate and unique Internet web page
161 accessible to the public and maintained by the Mississippi
162 Development Authority for the Mississippi Procurement Technical
163 Assistance Program. Those American Recovery and Reinvestment Act
164 related submissions shall be publicly posted within twenty-four
165 (24) hours of receipt by the Mississippi Development Authority and
166 the bid opening shall not occur until the submission has been
167 posted for ten (10) consecutive days. The Department of Finance
168 and Administration shall maintain information regarding contracts
169 and other expenditures from the American Recovery and Reinvestment
170 Act, on a unique Internet web page accessible to the public. The
171 Department of Finance and Administration shall promulgate rules
172 regarding format, content and deadlines, unless otherwise
173 specified by law, of the posting of award notices, contract
174 execution and subsequent amendments, links to the contract
175 documents, expenditures against the awarded contracts and general
176 expenditures of funds from the American Recovery and Reinvestment
177 Act. Within one (1) working day of the contract award, the agency
178 or governing authority shall post to the designated web page
179 maintained by the Department of Finance and Administration, notice
180 of the award, including the award recipient, the contract amount,
181 and a brief summary of the contract in accordance with rules
182 promulgated by the department. Within one (1) working day of the



183 contract execution, the agency or governing authority shall post
184 to the designated web page maintained by the Department of Finance
185 and Administration a summary of the executed contract and make a
186 copy of the appropriately redacted contract documents available
187 for linking to the designated web page in accordance with the
188 rules promulgated by the department. The information provided by
189 the agency or governing authority shall be posted to the web page
190 for the duration of the American Recovery and Reinvestment Act
191 funding or until the project is completed, whichever is longer.

192 (ii) **Bidding process amendment procedure.** If all
193 plans and/or specifications are published in the notification,
194 then the plans and/or specifications may not be amended. If all
195 plans and/or specifications are not published in the notification,
196 then amendments to the plans/specifications, bid opening date, bid
197 opening time and place may be made, provided that the agency or
198 governing authority maintains a list of all prospective bidders
199 who are known to have received a copy of the bid documents and all
200 such prospective bidders are sent copies of all amendments. This
201 notification of amendments may be made via mail, facsimile,
202 electronic mail or other generally accepted method of information
203 distribution. No addendum to bid specifications may be issued
204 within two (2) working days of the time established for the
205 receipt of bids unless such addendum also amends the bid opening
206 to a date not less than five (5) working days after the date of
207 the addendum.



208 (iii) **Filing requirement.** In all cases involving
209 governing authorities, before the notice shall be published or
210 posted, the plans or specifications for the construction or
211 equipment being sought shall be filed with the clerk of the board
212 of the governing authority. In addition to these requirements, a
213 bid file shall be established which shall indicate those vendors
214 to whom such solicitations and specifications were issued, and
215 such file shall also contain such information as is pertinent to
216 the bid.

217 (iv) **Specification restrictions.**

218 1. Specifications pertinent to such bidding
219 shall be written so as not to exclude comparable equipment of
220 domestic manufacture. However, if valid justification is
221 presented, the Department of Finance and Administration or the
222 board of a governing authority may approve a request for specific
223 equipment necessary to perform a specific job. Further, such
224 justification, when placed on the minutes of the board of a
225 governing authority, may serve as authority for that governing
226 authority to write specifications to require a specific item of
227 equipment needed to perform a specific job. In addition to these
228 requirements, from and after July 1, 1990, vendors of relocatable
229 classrooms and the specifications for the purchase of such
230 relocatable classrooms published by local school boards shall meet
231 all pertinent regulations of the State Board of Education,



232 including prior approval of such bid by the State Department of
233 Education.

234 2. Specifications for construction projects
235 may include an allowance for commodities, equipment, furniture,
236 construction materials or systems in which prospective bidders are
237 instructed to include in their bids specified amounts for such
238 items so long as the allowance items are acquired by the vendor in
239 a commercially reasonable manner and approved by the
240 agency/governing authority. Such acquisitions shall not be made
241 to circumvent the public purchasing laws.

242 (v) **Electronic bids.** Agencies and governing
243 authorities shall provide a secure electronic interactive system
244 for the submittal of bids requiring competitive bidding that shall
245 be an additional bidding option for those bidders who choose to
246 submit their bids electronically. The Department of Finance and
247 Administration shall provide, by regulation, the standards that
248 agencies must follow when receiving electronic bids. Agencies and
249 governing authorities shall make the appropriate provisions
250 necessary to accept electronic bids from those bidders who choose
251 to submit their bids electronically for all purchases requiring
252 competitive bidding under this section. Any special condition or
253 requirement for the electronic bid submission shall be specified
254 in the advertisement for bids required by this section. Agencies
255 or governing authorities that are currently without available high
256 speed Internet access shall be exempt from the requirement of this



257 subparagraph (v) until such time that high speed Internet access
258 becomes available. Any county having a population of less than
259 twenty thousand (20,000) shall be exempt from the provisions of
260 this subparagraph (v). Any municipality having a population of
261 less than ten thousand (10,000) shall be exempt from the
262 provisions of this subparagraph (v). The provisions of this
263 subparagraph (v) shall not require any bidder to submit bids
264 electronically. When construction bids are submitted
265 electronically, the requirement for including a certificate of
266 responsibility, or a statement that the bid enclosed does not
267 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
268 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
269 deemed in compliance with by including same as an attachment with
270 the electronic bid submittal.

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

272 (i) **Decision procedure.** Purchases may be made
273 from the lowest and best bidder. In determining the lowest and
274 best bid, freight and shipping charges shall be included.
275 Life-cycle costing, total cost bids, warranties, guaranteed
276 buy-back provisions and other relevant provisions may be included
277 in the best bid calculation. All best bid procedures for state
278 agencies must be in compliance with regulations established by the
279 Department of Finance and Administration. If any governing
280 authority accepts a bid other than the lowest bid actually
281 submitted, it shall place on its minutes detailed calculations and



282 narrative summary showing that the accepted bid was determined to
283 be the lowest and best bid, including the dollar amount of the
284 accepted bid and the dollar amount of the lowest bid. No agency
285 or governing authority shall accept a bid based on items not
286 included in the specifications.

287 (ii) **Decision procedure for Certified Purchasing**
288 **Offices.** In addition to the decision procedure set forth in
289 subparagraph (i) of this paragraph (d), Certified Purchasing
290 Offices may also use the following procedure: Purchases may be
291 made from the bidder offering the best value. In determining the
292 best value bid, freight and shipping charges shall be included.
293 Life-cycle costing, total cost bids, warranties, guaranteed
294 buy-back provisions, documented previous experience, training
295 costs and other relevant provisions, including, but not limited
296 to, a bidder having a local office and inventory located within
297 the jurisdiction of the governing authority, may be included in
298 the best value calculation. This provision shall authorize
299 Certified Purchasing Offices to utilize a Request For Proposals
300 (RFP) process when purchasing commodities. All best value
301 procedures for state agencies must be in compliance with
302 regulations established by the Department of Finance and
303 Administration. No agency or governing authority shall accept a
304 bid based on items or criteria not included in the specifications.

305 (iii) **Decision procedure for Mississippi**
306 **Landmarks.** In addition to the decision procedure set forth in



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



331 shall accept a bid based on items not included in the
332 specifications.

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

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

339 (e) **Lease-purchase authorization.** For the purposes of
340 this section, the term "equipment" shall mean equipment, furniture
341 and, if applicable, associated software and other applicable
342 direct costs associated with the acquisition. Any lease-purchase
343 of equipment which an agency is not required to lease-purchase
344 under the master lease-purchase program pursuant to Section
345 31-7-10 and any lease-purchase of equipment which a governing
346 authority elects to lease-purchase may be acquired by a
347 lease-purchase agreement under this paragraph (e). Lease-purchase
348 financing may also be obtained from the vendor or from a
349 third-party source after having solicited and obtained at least
350 two (2) written competitive bids, as defined in paragraph (b) of
351 this section, for such financing without advertising for such
352 bids. Solicitation for the bids for financing may occur before or
353 after acceptance of bids for the purchase of such equipment or,
354 where no such bids for purchase are required, at any time before
355 the purchase thereof. No such lease-purchase agreement shall be



356 for an annual rate of interest which is greater than the overall
357 maximum interest rate to maturity on general obligation
358 indebtedness permitted under Section 75-17-101, and the term of
359 such lease-purchase agreement shall not exceed the useful life of
360 equipment covered thereby as determined according to the upper
361 limit of the asset depreciation range (ADR) guidelines for the
362 Class Life Asset Depreciation Range System established by the
363 Internal Revenue Service pursuant to the United States Internal
364 Revenue Code and regulations thereunder as in effect on December
365 31, 1980, or comparable depreciation guidelines with respect to
366 any equipment not covered by ADR guidelines. Any lease-purchase
367 agreement entered into pursuant to this paragraph (e) may contain
368 any of the terms and conditions which a master lease-purchase
369 agreement may contain under the provisions of Section 31-7-10(5),
370 and shall contain an annual allocation dependency clause
371 substantially similar to that set forth in Section 31-7-10(8).
372 Each agency or governing authority entering into a lease-purchase
373 transaction pursuant to this paragraph (e) shall maintain with
374 respect to each such lease-purchase transaction the same
375 information as required to be maintained by the Department of
376 Finance and Administration pursuant to Section 31-7-10(13).
377 However, nothing contained in this section shall be construed to
378 permit agencies to acquire items of equipment with a total
379 acquisition cost in the aggregate of less than Ten Thousand
380 Dollars (\$10,000.00) by a single lease-purchase transaction. All



381 equipment, and the purchase thereof by any lessor, acquired by
382 lease-purchase under this paragraph and all lease-purchase
383 payments with respect thereto shall be exempt from all Mississippi
384 sales, use and ad valorem taxes. Interest paid on any
385 lease-purchase agreement under this section shall be exempt from
386 State of Mississippi income taxation.

387 (f) **Alternate bid authorization.** When necessary to
388 ensure ready availability of commodities for public works and the
389 timely completion of public projects, no more than two (2)
390 alternate bids may be accepted by a governing authority for
391 commodities. No purchases may be made through use of such
392 alternate bids procedure unless the lowest and best bidder cannot
393 deliver the commodities contained in his bid. In that event,
394 purchases of such commodities may be made from one (1) of the
395 bidders whose bid was accepted as an alternate.

396 (g) **Construction contract change authorization.** In the
397 event a determination is made by an agency or governing authority
398 after a construction contract is let that changes or modifications
399 to the original contract are necessary or would better serve the
400 purpose of the agency or the governing authority, such agency or
401 governing authority may, in its discretion, order such changes
402 pertaining to the construction that are necessary under the
403 circumstances without the necessity of further public bids;
404 provided that such change shall be made in a commercially
405 reasonable manner and shall not be made to circumvent the public



406 purchasing statutes. In addition to any other authorized person,
407 the architect or engineer hired by an agency or governing
408 authority with respect to any public construction contract shall
409 have the authority, when granted by an agency or governing
410 authority, to authorize changes or modifications to the original
411 contract without the necessity of prior approval of the agency or
412 governing authority when any such change or modification is less
413 than one percent (1%) of the total contract amount. The agency or
414 governing authority may limit the number, manner or frequency of
415 such emergency changes or modifications.

416 (h) **Petroleum purchase alternative.** In addition to
417 other methods of purchasing authorized in this chapter, when any
418 agency or governing authority shall have a need for gas, diesel
419 fuel, oils and/or other petroleum products in excess of the amount
420 set forth in paragraph (a) of this section, such agency or
421 governing authority may purchase the commodity after having
422 solicited and obtained at least two (2) competitive written bids,
423 as defined in paragraph (b) of this section. If two (2)
424 competitive written bids are not obtained, the entity shall comply
425 with the procedures set forth in paragraph (c) of this section.
426 In the event any agency or governing authority shall have
427 advertised for bids for the purchase of gas, diesel fuel, oils and
428 other petroleum products and coal and no acceptable bids can be
429 obtained, such agency or governing authority is authorized and
430 directed to enter into any negotiations necessary to secure the



431 lowest and best contract available for the purchase of such
432 commodities.

433 (i) **Road construction petroleum products price**
434 **adjustment clause authorization.** Any agency or governing
435 authority authorized to enter into contracts for the construction,
436 maintenance, surfacing or repair of highways, roads or streets,
437 may include in its bid proposal and contract documents a price
438 adjustment clause with relation to the cost to the contractor,
439 including taxes, based upon an industry-wide cost index, of
440 petroleum products including asphalt used in the performance or
441 execution of the contract or in the production or manufacture of
442 materials for use in such performance. Such industry-wide index
443 shall be established and published monthly by the Mississippi
444 Department of Transportation with a copy thereof to be mailed,
445 upon request, to the clerks of the governing authority of each
446 municipality and the clerks of each board of supervisors
447 throughout the state. The price adjustment clause shall be based
448 on the cost of such petroleum products only and shall not include
449 any additional profit or overhead as part of the adjustment. The
450 bid proposals or document contract shall contain the basis and
451 methods of adjusting unit prices for the change in the cost of
452 such petroleum products.

453 (j) **State agency emergency purchase procedure.** If the
454 governing board or the executive head, or his designees, of any
455 agency of the state shall determine that an emergency exists in



456 regard to the purchase of any commodities or repair contracts, so
457 that the delay incident to giving opportunity for competitive
458 bidding would be detrimental to the interests of the state, then
459 the head of such agency, or his designees, shall file with the
460 Department of Finance and Administration (i) a statement
461 explaining the conditions and circumstances of the emergency,
462 which shall include a detailed description of the events leading
463 up to the situation and the negative impact to the entity if the
464 purchase is made following the statutory requirements set forth in
465 paragraph (a), (b) or (c) of this section, and (ii) a certified
466 copy of the appropriate minutes of the board of such agency
467 requesting the emergency purchase, if applicable. Upon receipt of
468 the statement and applicable board certification, the State Fiscal
469 Officer, or his designees, may, in writing, authorize the purchase
470 or repair without having to comply with competitive bidding
471 requirements.

472 If the governing board or the executive head, or his
473 designees, of any agency determines that an emergency exists in
474 regard to the purchase of any commodities or repair contracts, so
475 that the delay incident to giving opportunity for competitive
476 bidding would threaten the health or safety of any person, or the
477 preservation or protection of property, then the provisions in
478 this section for competitive bidding shall not apply, and any
479 officer or agent of the agency having general or specific
480 authority for making the purchase or repair contract shall approve



481 the bill presented for payment, and he shall certify in writing
482 from whom the purchase was made, or with whom the repair contract
483 was made.

484 Total purchases made under this paragraph (j) shall only be
485 for the purpose of meeting needs created by the emergency
486 situation. Following the emergency purchase, documentation of the
487 purchase, including a description of the commodity purchased, the
488 purchase price thereof and the nature of the emergency shall be
489 filed with the Department of Finance and Administration. Any
490 contract awarded pursuant to this paragraph (j) shall not exceed a
491 term of one (1) year.

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

493 If the governing authority, or the governing authority acting
494 through its designee, shall determine that an emergency exists in
495 regard to the purchase of any commodities or repair contracts, so
496 that the delay incident to giving opportunity for competitive
497 bidding would be detrimental to the interest of the governing
498 authority, then the provisions herein for competitive bidding
499 shall not apply and any officer or agent of such governing
500 authority having general or special authority therefor in making
501 such purchase or repair shall approve the bill presented therefor,
502 and he shall certify in writing thereon from whom such purchase
503 was made, or with whom such a repair contract was made. At the
504 board meeting next following the emergency purchase or repair
505 contract, documentation of the purchase or repair contract,



506 including a description of the commodity purchased, the price
507 thereof and the nature of the emergency shall be presented to the
508 board and shall be placed on the minutes of the board of such
509 governing authority.

510 (1) **Hospital purchase, lease-purchase and lease**
511 **authorization.**

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

517 (ii) In addition to the authority granted in
518 subparagraph (i) of this paragraph (1), the commissioners or board
519 of trustees is authorized to enter into contracts for the lease of
520 equipment or services, or both, which it considers necessary for
521 the proper care of patients if, in its opinion, it is not
522 financially feasible to purchase the necessary equipment or
523 services. Any such contract for the lease of equipment or
524 services executed by the commissioners or board shall not exceed a
525 maximum of five (5) years' duration and shall include a
526 cancellation clause based on unavailability of funds. If such
527 cancellation clause is exercised, there shall be no further
528 liability on the part of the lessee. Any such contract for the
529 lease of equipment or services executed on behalf of the
530 commissioners or board that complies with the provisions of this



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

533 (m) **Exceptions from bidding requirements.** Excepted
534 from bid requirements are:

535 (i) **Purchasing agreements approved by department.**
536 Purchasing agreements, contracts and maximum price regulations
537 executed or approved by the Department of Finance and
538 Administration.

539 (ii) **Outside equipment repairs.** Repairs to
540 equipment, when such repairs are made by repair facilities in the
541 private sector; however, engines, transmissions, rear axles and/or
542 other such components shall not be included in this exemption when
543 replaced as a complete unit instead of being repaired and the need
544 for such total component replacement is known before disassembly
545 of the component; however, invoices identifying the equipment,
546 specific repairs made, parts identified by number and name,
547 supplies used in such repairs, and the number of hours of labor
548 and costs therefor shall be required for the payment for such
549 repairs.

550 (iii) **In-house equipment repairs.** Purchases of
551 parts for repairs to equipment, when such repairs are made by
552 personnel of the agency or governing authority; however, entire
553 assemblies, such as engines or transmissions, shall not be
554 included in this exemption when the entire assembly is being
555 replaced instead of being repaired.



556 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
557 of gravel or fill dirt which are to be removed and transported by
558 the purchaser.

559 (v) **Governmental equipment auctions.** Motor
560 vehicles or other equipment purchased from a federal agency or
561 authority, another governing authority or state agency of the
562 State of Mississippi, or any governing authority or state agency
563 of another state at a public auction held for the purpose of
564 disposing of such vehicles or other equipment. Any purchase by a
565 governing authority under the exemption authorized by this
566 subparagraph (v) shall require advance authorization spread upon
567 the minutes of the governing authority to include the listing of
568 the item or items authorized to be purchased and the maximum bid
569 authorized to be paid for each item or items.

570 (vi) **Intergovernmental sales and transfers.**
571 Purchases, sales, transfers or trades by governing authorities or
572 state agencies when such purchases, sales, transfers or trades are
573 made by a private treaty agreement or through means of
574 negotiation, from any federal agency or authority, another
575 governing authority or state agency of the State of Mississippi,
576 or any state agency or governing authority of another state.
577 Nothing in this section shall permit such purchases through public
578 auction except as provided for in subparagraph (v) of this
579 paragraph (m). It is the intent of this section to allow
580 governmental entities to dispose of and/or purchase commodities



581 from other governmental entities at a price that is agreed to by
582 both parties. This shall allow for purchases and/or sales at
583 prices which may be determined to be below the market value if the
584 selling entity determines that the sale at below market value is
585 in the best interest of the taxpayers of the state. Governing
586 authorities shall place the terms of the agreement and any
587 justification on the minutes, and state agencies shall obtain
588 approval from the Department of Finance and Administration, prior
589 to releasing or taking possession of the commodities.

590 (vii) **Perishable supplies or food.** Perishable
591 supplies or food purchased for use in connection with hospitals,
592 the school lunch programs, homemaking programs and for the feeding
593 of county or municipal prisoners.

594 (viii) **Single source items.** Noncompetitive items
595 available from one (1) source only. In connection with the
596 purchase of noncompetitive items only available from one (1)
597 source, a certification of the conditions and circumstances
598 requiring the purchase shall be filed by the agency with the
599 Department of Finance and Administration and by the governing
600 authority with the board of the governing authority. Upon receipt
601 of that certification the Department of Finance and Administration
602 or the board of the governing authority, as the case may be, may,
603 in writing, authorize the purchase, which authority shall be noted
604 on the minutes of the body at the next regular meeting thereafter.
605 In those situations, a governing authority is not required to



606 obtain the approval of the Department of Finance and
607 Administration. Following the purchase, the executive head of the
608 state agency, or his designees, shall file with the Department of
609 Finance and Administration, documentation of the purchase,
610 including a description of the commodity purchased, the purchase
611 price thereof and the source from whom it was purchased.

612 (ix) **Waste disposal facility construction**

613 **contracts.** Construction of incinerators and other facilities for
614 disposal of solid wastes in which products either generated
615 therein, such as steam, or recovered therefrom, such as materials
616 for recycling, are to be sold or otherwise disposed of; however,
617 in constructing such facilities, a governing authority or agency
618 shall publicly issue requests for proposals, advertised for in the
619 same manner as provided herein for seeking bids for public
620 construction projects, concerning the design, construction,
621 ownership, operation and/or maintenance of such facilities,
622 wherein such requests for proposals when issued shall contain
623 terms and conditions relating to price, financial responsibility,
624 technology, environmental compatibility, legal responsibilities
625 and such other matters as are determined by the governing
626 authority or agency to be appropriate for inclusion; and after
627 responses to the request for proposals have been duly received,
628 the governing authority or agency may select the most qualified
629 proposal or proposals on the basis of price, technology and other
630 relevant factors and from such proposals, but not limited to the



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

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

636 (xi) **Information technology products.** Purchases
637 of information technology products made by governing authorities
638 under the provisions of purchase schedules, or contracts executed
639 or approved by the Mississippi Department of Information
640 Technology Services and designated for use by governing
641 authorities.

642 (xii) **Energy efficiency services and equipment.**
643 Energy efficiency services and equipment acquired by school
644 districts, community and junior colleges, institutions of higher
645 learning and state agencies or other applicable governmental
646 entities on a shared-savings, lease or lease-purchase basis
647 pursuant to Section 31-7-14.

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

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



656 as would be used for teaching, research or other information
657 distribution; however, equipment such as projectors, recorders,
658 audio or video equipment, and monitor televisions are not exempt
659 under this subparagraph.

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

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

666 (xvii) **Multichannel interactive video systems.**
667 From and after July 1, 1990, contracts by Mississippi Authority
668 for Educational Television with any private educational
669 institution or private nonprofit organization whose purposes are
670 educational in regard to the construction, purchase, lease or
671 lease-purchase of facilities and equipment and the employment of
672 personnel for providing multichannel interactive video systems
673 (ITSF) in the school districts of this state.

674 (xviii) **Purchases of prison industry products by**
675 **the Department of Corrections, regional correctional facilities or**
676 **privately owned prisons.** Purchases made by the Mississippi
677 Department of Corrections, regional correctional facilities or
678 privately owned prisons involving any item that is manufactured,
679 processed, grown or produced from the state's prison industries.



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

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

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

694 (xxii) **Garbage, solid waste and sewage contracts.**
695 Contracts for garbage collection or disposal, contracts for solid
696 waste collection or disposal and contracts for sewage collection
697 or disposal.

698 (xxiii) **Municipal water tank maintenance**
699 **contracts.** Professional maintenance program contracts for the
700 repair or maintenance of municipal water tanks, which provide
701 professional services needed to maintain municipal water storage
702 tanks for a fixed annual fee for a duration of two (2) or more
703 years.



704 (xxiv) **Purchases of Mississippi Industries for the**
705 **Blind products.** Purchases made by state agencies or governing
706 authorities involving any item that is manufactured, processed or
707 produced by the Mississippi Industries for the Blind.

708 (xxv) **Purchases of state-adopted textbooks.**
709 Purchases of state-adopted textbooks by public school districts.

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

713 (xxvii) **Used heavy or specialized machinery or**
714 **equipment for installation of soil and water conservation**
715 **practices purchased at auction.** Used heavy or specialized
716 machinery or equipment used for the installation and
717 implementation of soil and water conservation practices or
718 measures purchased subject to the restrictions provided in
719 Sections 69-27-331 through 69-27-341. Any purchase by the State
720 Soil and Water Conservation Commission under the exemption
721 authorized by this subparagraph shall require advance
722 authorization spread upon the minutes of the commission to include
723 the listing of the item or items authorized to be purchased and
724 the maximum bid authorized to be paid for each item or items.

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



728 (xxix) **Purchases made pursuant to qualified**
729 **cooperative purchasing agreements.** Purchases made by certified
730 purchasing offices of state agencies or governing authorities
731 under cooperative purchasing agreements previously approved by the
732 Office of Purchasing and Travel and established by or for any
733 municipality, county, parish or state government or the federal
734 government, provided that the notification to potential
735 contractors includes a clause that sets forth the availability of
736 the cooperative purchasing agreement to other governmental
737 entities. Such purchases shall only be made if the use of the
738 cooperative purchasing agreements is determined to be in the best
739 interest of the governmental entity.

740 (xxx) **School yearbooks.** Purchases of school
741 yearbooks by state agencies or governing authorities; provided,
742 however, that state agencies and governing authorities shall use
743 for these purchases the RFP process as set forth in the
744 Mississippi Procurement Manual adopted by the Office of Purchasing
745 and Travel.

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

749 (xxxii) **Toll roads and bridge construction**
750 **projects.** Contracts entered into under the provisions of Section
751 65-43-1 or 65-43-3.



752 (xxxiii) **Certain purchases under Section 57-1-221.**
753 Contracts entered into pursuant to the provisions of Section
754 57-1-221.

755 (xxxiv) **Certain transfers made pursuant to the**
756 **provisions of Section 57-105-1(7).** Transfers of public property
757 or facilities under Section 57-105-1(7) and construction related
758 to such public property or facilities.

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

762 (xxxvi) **Certain purchases by an academic medical**
763 **center or health sciences school.** Purchases by an academic
764 medical center or health sciences school, as defined in Section
765 37-115-50, of commodities that are used for clinical purposes and
766 1. intended for use in the diagnosis of disease or other
767 conditions or in the cure, mitigation, treatment or prevention of
768 disease, and 2. medical devices, biological, drugs and
769 radiation-emitting devices as defined by the United States Food
770 and Drug Administration.

771 (n) **Term contract authorization.** All contracts for the
772 purchase of:

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



777 provisions prohibiting the letting of contracts during specified
778 periods near the end of terms of office. Term contracts for a
779 period exceeding twenty-four (24) months shall also be subject to
780 ratification or cancellation by governing authority boards taking
781 office subsequent to the governing authority board entering the
782 contract.

783 (ii) Bid proposals and contracts may include price
784 adjustment clauses with relation to the cost to the contractor
785 based upon a nationally published industry-wide or nationally
786 published and recognized cost index. The cost index used in a
787 price adjustment clause shall be determined by the Department of
788 Finance and Administration for the state agencies and by the
789 governing board for governing authorities. The bid proposal and
790 contract documents utilizing a price adjustment clause shall
791 contain the basis and method of adjusting unit prices for the
792 change in the cost of such commodities, equipment and public
793 construction.

794 (o) **Purchase law violation prohibition and vendor**
795 **penalty.** No contract or purchase as herein authorized shall be
796 made for the purpose of circumventing the provisions of this
797 section requiring competitive bids, nor shall it be lawful for any
798 person or concern to submit individual invoices for amounts within
799 those authorized for a contract or purchase where the actual value
800 of the contract or commodity purchased exceeds the authorized
801 amount and the invoices therefor are split so as to appear to be



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

809 (p) **Electrical utility petroleum-based equipment**
810 **purchase procedure.** When in response to a proper advertisement
811 therefor, no bid firm as to price is submitted to an electric
812 utility for power transformers, distribution transformers, power
813 breakers, reclosers or other articles containing a petroleum
814 product, the electric utility may accept the lowest and best bid
815 therefor although the price is not firm.

816 (q) **Fuel management system bidding procedure.** Any
817 governing authority or agency of the state shall, before
818 contracting for the services and products of a fuel management or
819 fuel access system, enter into negotiations with not fewer than
820 two (2) sellers of fuel management or fuel access systems for
821 competitive written bids to provide the services and products for
822 the systems. In the event that the governing authority or agency
823 cannot locate two (2) sellers of such systems or cannot obtain
824 bids from two (2) sellers of such systems, it shall show proof
825 that it made a diligent, good-faith effort to locate and negotiate
826 with two (2) sellers of such systems. Such proof shall include,



827 but not be limited to, publications of a request for proposals and
828 letters soliciting negotiations and bids. For purposes of this
829 paragraph (q), a fuel management or fuel access system is an
830 automated system of acquiring fuel for vehicles as well as
831 management reports detailing fuel use by vehicles and drivers, and
832 the term "competitive written bid" shall have the meaning as
833 defined in paragraph (b) of this section. Governing authorities
834 and agencies shall be exempt from this process when contracting
835 for the services and products of fuel management or fuel access
836 systems under the terms of a state contract established by the
837 Office of Purchasing and Travel.

838 (r) **Solid waste contract proposal procedure.** Before
839 entering into any contract for garbage collection or disposal,
840 contract for solid waste collection or disposal or contract for
841 sewage collection or disposal, which involves an expenditure of
842 more than Fifty Thousand Dollars (\$50,000.00), a governing
843 authority or agency shall issue publicly a request for proposals
844 concerning the specifications for such services which shall be
845 advertised for in the same manner as provided in this section for
846 seeking bids for purchases which involve an expenditure of more
847 than the amount provided in paragraph (c) of this section. Any
848 request for proposals when issued shall contain terms and
849 conditions relating to price, financial responsibility,
850 technology, legal responsibilities and other relevant factors as
851 are determined by the governing authority or agency to be



852 appropriate for inclusion; all factors determined relevant by the
853 governing authority or agency or required by this paragraph (r)
854 shall be duly included in the advertisement to elicit proposals.
855 After responses to the request for proposals have been duly
856 received, the governing authority or agency shall select the most
857 qualified proposal or proposals on the basis of price, technology
858 and other relevant factors and from such proposals, but not
859 limited to the terms thereof, negotiate and enter into contracts
860 with one or more of the persons or firms submitting proposals. If
861 the governing authority or agency deems none of the proposals to
862 be qualified or otherwise acceptable, the request for proposals
863 process may be reinitiated. Notwithstanding any other provisions
864 of this paragraph, where a county with at least thirty-five
865 thousand (35,000) nor more than forty thousand (40,000)
866 population, according to the 1990 federal decennial census, owns
867 or operates a solid waste landfill, the governing authorities of
868 any other county or municipality may contract with the governing
869 authorities of the county owning or operating the landfill,
870 pursuant to a resolution duly adopted and spread upon the minutes
871 of each governing authority involved, for garbage or solid waste
872 collection or disposal services through contract negotiations.

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



877 anticipated annual expenditures for the purchase of commodities
878 from minority businesses; however, all such set-aside purchases
879 shall comply with all purchasing regulations promulgated by the
880 Department of Finance and Administration and shall be subject to
881 bid requirements under this section. Set-aside purchases for
882 which competitive bids are required shall be made from the lowest
883 and best minority business bidder. For the purposes of this
884 paragraph, the term "minority business" means a business which is
885 owned by a majority of persons who are United States citizens or
886 permanent resident aliens (as defined by the Immigration and
887 Naturalization Service) of the United States, and who are Asian,
888 Black, Hispanic or Native American, according to the following
889 definitions:

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

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

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

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



901 (t) **Construction punch list restriction.** The
902 architect, engineer or other representative designated by the
903 agency or governing authority that is contracting for public
904 construction or renovation may prepare and submit to the
905 contractor only one (1) preliminary punch list of items that do
906 not meet the contract requirements at the time of substantial
907 completion and one (1) final list immediately before final
908 completion and final payment.

909 (u) **Procurement of construction services by state**
910 **institutions of higher learning.** Contracts for privately financed
911 construction of auxiliary facilities on the campus of a state
912 institution of higher learning may be awarded by the Board of
913 Trustees of State Institutions of Higher Learning to the lowest
914 and best bidder, where sealed bids are solicited, or to the
915 offeror whose proposal is determined to represent the best value
916 to the citizens of the State of Mississippi, where requests for
917 proposals are solicited.

918 (v) **Insurability of bidders for public construction or**
919 **other public contracts.** In any solicitation for bids to perform
920 public construction or other public contracts to which this
921 section applies including, but not limited to, contracts for
922 repair and maintenance, for which the contract will require
923 insurance coverage in an amount of not less than One Million
924 Dollars (\$1,000,000.00), bidders shall be permitted to either
925 submit proof of current insurance coverage in the specified amount



926 or demonstrate ability to obtain the required coverage amount of
927 insurance if the contract is awarded to the bidder. Proof of
928 insurance coverage shall be submitted within five (5) business
929 days from bid acceptance.

930 (w) **Purchase authorization clarification.** Nothing in
931 this section shall be construed as authorizing any purchase not
932 authorized by law.

933 **SECTION 2.** This act shall take effect and be in force from
934 and after July 1, 2018.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT IF AN AGENCY OR GOVERNING AUTHORITY DETERMINES THAT A
3 REVERSE AUCTION WOULD NOT BE IN THE BEST INTEREST OF THE AGENCY OR
4 GOVERNING AUTHORITY, THAT DETERMINATION MUST BE APPROVED BY THE
5 PUBLIC PROCUREMENT REVIEW BOARD FOR AN AGENCY AND BY THE GOVERNING
6 BODY OF THE GOVERNING AUTHORITY FOR A GOVERNING AUTHORITY; TO
7 PROVIDE THAT AN AGENCY SHALL SUBMIT A DETAILED EXPLANATION OF WHY
8 A REVERSE AUCTION WOULD NOT BE IN THE BEST INTEREST OF THE AGENCY
9 AND PRESENT AN ALTERNATIVE PROCESS TO BE APPROVED BY THE PUBLIC
10 PROCUREMENT REVIEW BOARD; TO PROVIDE THAT A GOVERNING AUTHORITY
11 SHALL MAKE FINDINGS IN ITS MINUTES OF WHY A REVERSE AUCTION WOULD
12 NOT BE IN THE BEST INTEREST OF THE GOVERNING AUTHORITY; TO PROVIDE
13 THAT IF AS TO AN AGENCY, THE PUBLIC PROCUREMENT REVIEW BOARD
14 AUTHORIZES THE PURCHASING ENTITY TO SOLICIT BIDS WITH A METHOD
15 OTHER THAN REVERSE AUCTION, OR IF AS TO A GOVERNING AUTHORITY, THE
16 GOVERNING BOARD THEREOF AUTHORIZES THE PURCHASING ENTITY TO
17 SOLICIT BIDS WITH A METHOD OTHER THAN REVERSE AUCTION, THEN THE
18 PURCHASING ENTITY MAY DESIGNATE THE OTHER METHODS BY WHICH BIDS
19 WILL BE RECEIVED; TO PROVIDE THAT THE PUBLIC PROCUREMENT REVIEW
20 BOARD MUST APPROVE ANY CONTRACT THAT AN AGENCY ENTERS INTO BY
21 ALTERNATIVE PROCESS; AND FOR RELATED PURPOSES.

