

By: Representatives Weathersby, Dixon

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 558

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE PUBLIC PURCHASING AND BID LAW REQUIREMENT TO AUTHORIZE
 3 THE PREQUALIFICATION OF CONTRACTORS ON HIGH COMPLEXITY
 4 CONSTRUCTION PROJECTS; TO DEFINE "HIGH COMPLEXITY CONSTRUCTION
 5 PROJECT" TO MEAN MEDICAL, CLINICAL, RESEARCH, LABORATORY,
 6 ARCHIVAL, DATA CENTER AND SIMILAR PROJECTS AT WHICH THE
 7 CRITICALITY OF INSTALLED SYSTEMS OR COMPONENTS NECESSITATE THE USE
 8 OF HIGHLY SKILLED AND EXPERIENCED CONTRACTORS; TO PROVIDE THAT
 9 THIS PROCEDURE OF CONSTRUCTION CONTRACTING MAY BE USED ONLY WHEN
 10 THE DEPARTMENT OF FINANCE AND ADMINISTRATION DETERMINES THAT THE
 11 PREQUALIFICATION METHOD FOR A PARTICULAR PROJECT SATISFIES THE
 12 PUBLIC NEED BETTER THAN THE TRADITIONAL DESIGN-BID-BUILD METHOD;
 13 TO REQUIRE THE PREQUALIFICATION TO BE DETERMINED NOT LESS THAN 15
 14 WORKING DAYS BEFORE THE FIRST PUBLICATION NOTICE OF THE BID
 15 OPENING; TO ESTABLISH THE PREQUALIFICATION BID CRITERIA; AND FOR
 16 RELATED PURPOSES.

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

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

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



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

26 Purchases which do not involve an expenditure of more than Five
27 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
28 charges, may be made without advertising or otherwise requesting
29 competitive bids. However, nothing contained in this paragraph
30 (a) shall be construed to prohibit any agency or governing
31 authority from establishing procedures which require competitive
32 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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



74 signature of the vendor's representative unless required by
75 agencies or governing authorities.

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

77 (i) **Publication requirement.**

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

90 2. Reverse auctions shall be the primary
91 method for receiving bids during the bidding process. If a
92 purchasing entity determines that a reverse auction is not in the
93 best interest of the state, then that determination must be
94 approved by the Public Procurement Review Board. The purchasing
95 entity shall submit a detailed explanation of why a reverse
96 auction would not be in the best interest of the state and present
97 an alternative process to be approved by the Public Procurement
98 Review Board. If the Public Procurement Review Board authorizes



99 the purchasing entity to solicit bids with a method other than
100 reverse auction, then the purchasing entity may designate the
101 other methods by which the bids will be received, including, but
102 not limited to, bids sealed in an envelope, bids received
103 electronically in a secure system, or bids received by any other
104 method that promotes open competition and has been approved by the
105 Office of Purchasing and Travel. However, reverse auction shall
106 not be used for any public contract for design or construction of
107 public facilities, including buildings, roads and bridges. The
108 Public Procurement Review Board must approve any contract entered
109 into by alternative process. The provisions of this item 2 shall
110 not apply to the individual state institutions of higher learning.

111 3. The date as published for the bid opening
112 shall not be less than seven (7) working days after the last
113 published notice; however, if the purchase involves a construction
114 project in which the estimated cost is in excess of Fifty Thousand
115 Dollars (\$50,000.00), such bids shall not be opened in less than
116 fifteen (15) working days after the last notice is published and
117 the notice for the purchase of such construction shall be
118 published once each week for two (2) consecutive weeks. However,
119 all American Recovery and Reinvestment Act projects in excess of
120 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
121 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
122 under the American Recovery and Reinvestment Act, publication
123 shall be made one (1) time and the bid opening for construction



124 projects shall not be less than ten (10) working days after the
125 date of the published notice. The notice of intention to let
126 contracts or purchase equipment shall state the time and place at
127 which bids shall be received, list the contracts to be made or
128 types of equipment or supplies to be purchased, and, if all plans
129 and/or specifications are not published, refer to the plans and/or
130 specifications on file. If there is no newspaper published in the
131 county or municipality, then such notice shall be given by posting
132 same at the courthouse, or for municipalities at the city hall,
133 and at two (2) other public places in the county or municipality,
134 and also by publication once each week for two (2) consecutive
135 weeks in some newspaper having a general circulation in the county
136 or municipality in the above-provided manner. On the same date
137 that the notice is submitted to the newspaper for publication, the
138 agency or governing authority involved shall mail written notice
139 to, or provide electronic notification to the main office of the
140 Mississippi Procurement Technical Assistance Program under the
141 Mississippi Development Authority that contains the same
142 information as that in the published notice. Submissions received
143 by the Mississippi Procurement Technical Assistance Program for
144 projects funded by the American Recovery and Reinvestment Act
145 shall be displayed on a separate and unique Internet web page
146 accessible to the public and maintained by the Mississippi
147 Development Authority for the Mississippi Procurement Technical
148 Assistance Program. Those American Recovery and Reinvestment Act



149 related submissions shall be publicly posted within twenty-four
150 (24) hours of receipt by the Mississippi Development Authority and
151 the bid opening shall not occur until the submission has been
152 posted for ten (10) consecutive days. The Department of Finance
153 and Administration shall maintain information regarding contracts
154 and other expenditures from the American Recovery and Reinvestment
155 Act, on a unique Internet web page accessible to the public. The
156 Department of Finance and Administration shall promulgate rules
157 regarding format, content and deadlines, unless otherwise
158 specified by law, of the posting of award notices, contract
159 execution and subsequent amendments, links to the contract
160 documents, expenditures against the awarded contracts and general
161 expenditures of funds from the American Recovery and Reinvestment
162 Act. Within one (1) working day of the contract award, the agency
163 or governing authority shall post to the designated web page
164 maintained by the Department of Finance and Administration, notice
165 of the award, including the award recipient, the contract amount,
166 and a brief summary of the contract in accordance with rules
167 promulgated by the department. Within one (1) working day of the
168 contract execution, the agency or governing authority shall post
169 to the designated web page maintained by the Department of Finance
170 and Administration a summary of the executed contract and make a
171 copy of the appropriately redacted contract documents available
172 for linking to the designated web page in accordance with the
173 rules promulgated by the department. The information provided by



174 the agency or governing authority shall be posted to the web page
175 for the duration of the American Recovery and Reinvestment Act
176 funding or until the project is completed, whichever is longer.

177 (ii) **Bidding process amendment procedure.** If all
178 plans and/or specifications are published in the notification,
179 then the plans and/or specifications may not be amended. If all
180 plans and/or specifications are not published in the notification,
181 then amendments to the plans/specifications, bid opening date, bid
182 opening time and place may be made, provided that the agency or
183 governing authority maintains a list of all prospective bidders
184 who are known to have received a copy of the bid documents and all
185 such prospective bidders are sent copies of all amendments. This
186 notification of amendments may be made via mail, facsimile,
187 electronic mail or other generally accepted method of information
188 distribution. No addendum to bid specifications may be issued
189 within two (2) working days of the time established for the
190 receipt of bids unless such addendum also amends the bid opening
191 to a date not less than five (5) working days after the date of
192 the addendum.

193 (iii) **Filing requirement.** In all cases involving
194 governing authorities, before the notice shall be published or
195 posted, the plans or specifications for the construction or
196 equipment being sought shall be filed with the clerk of the board
197 of the governing authority. In addition to these requirements, a
198 bid file shall be established which shall indicate those vendors



199 to whom such solicitations and specifications were issued, and
200 such file shall also contain such information as is pertinent to
201 the bid.

202 (iv) **Specification restrictions.**

203 1. Specifications pertinent to such bidding
204 shall be written so as not to exclude comparable equipment of
205 domestic manufacture. However, if valid justification is
206 presented, the Department of Finance and Administration or the
207 board of a governing authority may approve a request for specific
208 equipment necessary to perform a specific job. Further, such
209 justification, when placed on the minutes of the board of a
210 governing authority, may serve as authority for that governing
211 authority to write specifications to require a specific item of
212 equipment needed to perform a specific job. In addition to these
213 requirements, from and after July 1, 1990, vendors of relocatable
214 classrooms and the specifications for the purchase of such
215 relocatable classrooms published by local school boards shall meet
216 all pertinent regulations of the State Board of Education,
217 including prior approval of such bid by the State Department of
218 Education.

219 2. Specifications for construction projects
220 may include an allowance for commodities, equipment, furniture,
221 construction materials or systems in which prospective bidders are
222 instructed to include in their bids specified amounts for such
223 items so long as the allowance items are acquired by the vendor in



224 a commercially reasonable manner and approved by the
225 agency/governing authority. Such acquisitions shall not be made
226 to circumvent the public purchasing laws.

227 (v) **Electronic bids.** Agencies and governing
228 authorities shall provide a secure electronic interactive system
229 for the submittal of bids requiring competitive bidding that shall
230 be an additional bidding option for those bidders who choose to
231 submit their bids electronically. The Department of Finance and
232 Administration shall provide, by regulation, the standards that
233 agencies must follow when receiving electronic bids. Agencies and
234 governing authorities shall make the appropriate provisions
235 necessary to accept electronic bids from those bidders who choose
236 to submit their bids electronically for all purchases requiring
237 competitive bidding under this section. Any special condition or
238 requirement for the electronic bid submission shall be specified
239 in the advertisement for bids required by this section. Agencies
240 or governing authorities that are currently without available high
241 speed Internet access shall be exempt from the requirement of this
242 subparagraph (v) until such time that high speed Internet access
243 becomes available. Any county having a population of less than
244 twenty thousand (20,000) shall be exempt from the provisions of
245 this subparagraph (v). Any municipality having a population of
246 less than ten thousand (10,000) shall be exempt from the
247 provisions of this subparagraph (v). The provisions of this
248 subparagraph (v) shall not require any bidder to submit bids



249 electronically. When construction bids are submitted
250 electronically, the requirement for including a certificate of
251 responsibility, or a statement that the bid enclosed does not
252 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
253 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
254 deemed in compliance with by including same as an attachment with
255 the electronic bid submittal.

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

257 (i) **Decision procedure.** Purchases may be made
258 from the lowest and best bidder. In determining the lowest and
259 best bid, freight and shipping charges shall be included.
260 Life-cycle costing, total cost bids, warranties, guaranteed
261 buy-back provisions and other relevant provisions may be included
262 in the best bid calculation. All best bid procedures for state
263 agencies must be in compliance with regulations established by the
264 Department of Finance and Administration. If any governing
265 authority accepts a bid other than the lowest bid actually
266 submitted, it shall place on its minutes detailed calculations and
267 narrative summary showing that the accepted bid was determined to
268 be the lowest and best bid, including the dollar amount of the
269 accepted bid and the dollar amount of the lowest bid. No agency
270 or governing authority shall accept a bid based on items not
271 included in the specifications.

272 (ii) **Decision procedure for Certified Purchasing**
273 **Offices.** In addition to the decision procedure set forth in



274 subparagraph (i) of this paragraph (d), Certified Purchasing
275 Offices may also use the following procedure: Purchases may be
276 made from the bidder offering the best value. In determining the
277 best value bid, freight and shipping charges shall be included.
278 Life-cycle costing, total cost bids, warranties, guaranteed
279 buy-back provisions, documented previous experience, training
280 costs and other relevant provisions, including, but not limited
281 to, a bidder having a local office and inventory located within
282 the jurisdiction of the governing authority, may be included in
283 the best value calculation. This provision shall authorize
284 Certified Purchasing Offices to utilize a Request For Proposals
285 (RFP) process when purchasing commodities. All best value
286 procedures for state agencies must be in compliance with
287 regulations established by the Department of Finance and
288 Administration. No agency or governing authority shall accept a
289 bid based on items or criteria not included in the specifications.

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

291 **Landmarks.** In addition to the decision procedure set forth in
292 subparagraph (i) of this paragraph (d), where purchase involves
293 renovation, restoration, or both, of the State Capitol Building or
294 any other historical building designated for at least five (5)
295 years as a Mississippi Landmark by the Board of Trustees of the
296 Department of Archives and History under the authority of Sections
297 39-7-7 and 39-7-11, the agency or governing authority may use the
298 following procedure: Purchases may be made from the lowest and



299 best prequalified bidder. Prequalification of bidders shall be
300 determined not less than fifteen (15) working days before the
301 first published notice of bid opening. Prequalification criteria
302 shall be limited to bidder's knowledge and experience in
303 historical restoration, preservation and renovation. In
304 determining the lowest and best bid, freight and shipping charges
305 shall be included. Life-cycle costing, total cost bids,
306 warranties, guaranteed buy-back provisions and other relevant
307 provisions may be included in the best bid calculation. All best
308 bid and prequalification procedures for state agencies must be in
309 compliance with regulations established by the Department of
310 Finance and Administration. If any governing authority accepts a
311 bid other than the lowest bid actually submitted, it shall place
312 on its minutes detailed calculations and narrative summary showing
313 that the accepted bid was determined to be the lowest and best
314 bid, including the dollar amount of the accepted bid and the
315 dollar amount of the lowest bid. No agency or governing authority
316 shall accept a bid based on items not included in the
317 specifications.

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



324 (v) Decision procedure for High Complexity

325 Construction Projects. In addition to the decision procedure set
326 forth in paragraph (d) (i), where purchase involves construction,
327 renovation, or both, of buildings or facilities of high
328 complexity, the agency or governing authority may use the
329 following procedure: Purchases may be made from the lowest and
330 best prequalified bidder. For the purposes of this section, the
331 term "high complexity construction project" means medical,
332 clinical, research, laboratory, archival, data center and similar
333 projects at which the criticality of installed systems or
334 components necessitate the use of highly skilled and experienced
335 contractors. This method of construction contracting may be used
336 only when the Department of Finance and Administration has
337 determined that the prequalification method for a particular
338 project satisfies the public need better than the traditional
339 design-bid-build method. Prequalification of bidders shall be
340 determined not less than fifteen (15) working days before the
341 first published notice of bid opening. Prequalification criteria
342 shall be limited to bidder's knowledge and experience in the
343 construction and/or renovation of high complexity buildings or
344 facilities. In determining the lowest and best bid, freight and
345 shipping charges shall be included. Life-cycle costing, total
346 cost bids, warranties, guaranteed buy-back provisions and other
347 relevant provisions may be included in the best bid calculation.
348 All best bid and prequalification procedures for state agencies



349 must be in compliance with regulations established by the
350 Department of Finance and Administration. If any governing
351 authority accepts a bid other than the lowest bid actually
352 submitted, it shall place on its minutes detailed calculations and
353 narrative summary showing that the accepted bid was determined to
354 be the lowest and best bid, including the dollar amount of the
355 accepted bid and the dollar amount of the lowest bid. No agency
356 or governing authority shall accept a bid based on items not
357 included in the specifications.

358 (e) **Lease-purchase authorization.** For the purposes of
359 this section, the term "equipment" shall mean equipment, furniture
360 and, if applicable, associated software and other applicable
361 direct costs associated with the acquisition. Any lease-purchase
362 of equipment which an agency is not required to lease-purchase
363 under the master lease-purchase program pursuant to Section
364 31-7-10 and any lease-purchase of equipment which a governing
365 authority elects to lease-purchase may be acquired by a
366 lease-purchase agreement under this paragraph (e). Lease-purchase
367 financing may also be obtained from the vendor or from a
368 third-party source after having solicited and obtained at least
369 two (2) written competitive bids, as defined in paragraph (b) of
370 this section, for such financing without advertising for such
371 bids. Solicitation for the bids for financing may occur before or
372 after acceptance of bids for the purchase of such equipment or,
373 where no such bids for purchase are required, at any time before



374 the purchase thereof. No such lease-purchase agreement shall be
375 for an annual rate of interest which is greater than the overall
376 maximum interest rate to maturity on general obligation
377 indebtedness permitted under Section 75-17-101, and the term of
378 such lease-purchase agreement shall not exceed the useful life of
379 equipment covered thereby as determined according to the upper
380 limit of the asset depreciation range (ADR) guidelines for the
381 Class Life Asset Depreciation Range System established by the
382 Internal Revenue Service pursuant to the United States Internal
383 Revenue Code and regulations thereunder as in effect on December
384 31, 1980, or comparable depreciation guidelines with respect to
385 any equipment not covered by ADR guidelines. Any lease-purchase
386 agreement entered into pursuant to this paragraph (e) may contain
387 any of the terms and conditions which a master lease-purchase
388 agreement may contain under the provisions of Section 31-7-10(5),
389 and shall contain an annual allocation dependency clause
390 substantially similar to that set forth in Section 31-7-10(8).
391 Each agency or governing authority entering into a lease-purchase
392 transaction pursuant to this paragraph (e) shall maintain with
393 respect to each such lease-purchase transaction the same
394 information as required to be maintained by the Department of
395 Finance and Administration pursuant to Section 31-7-10(13).
396 However, nothing contained in this section shall be construed to
397 permit agencies to acquire items of equipment with a total
398 acquisition cost in the aggregate of less than Ten Thousand



399 Dollars (\$10,000.00) by a single lease-purchase transaction. All
400 equipment, and the purchase thereof by any lessor, acquired by
401 lease-purchase under this paragraph and all lease-purchase
402 payments with respect thereto shall be exempt from all Mississippi
403 sales, use and ad valorem taxes. Interest paid on any
404 lease-purchase agreement under this section shall be exempt from
405 State of Mississippi income taxation.

406 (f) **Alternate bid authorization.** When necessary to
407 ensure ready availability of commodities for public works and the
408 timely completion of public projects, no more than two (2)
409 alternate bids may be accepted by a governing authority for
410 commodities. No purchases may be made through use of such
411 alternate bids procedure unless the lowest and best bidder cannot
412 deliver the commodities contained in his bid. In that event,
413 purchases of such commodities may be made from one (1) of the
414 bidders whose bid was accepted as an alternate.

415 (g) **Construction contract change authorization.** In the
416 event a determination is made by an agency or governing authority
417 after a construction contract is let that changes or modifications
418 to the original contract are necessary or would better serve the
419 purpose of the agency or the governing authority, such agency or
420 governing authority may, in its discretion, order such changes
421 pertaining to the construction that are necessary under the
422 circumstances without the necessity of further public bids;
423 provided that such change shall be made in a commercially



424 reasonable manner and shall not be made to circumvent the public
425 purchasing statutes. In addition to any other authorized person,
426 the architect or engineer hired by an agency or governing
427 authority with respect to any public construction contract shall
428 have the authority, when granted by an agency or governing
429 authority, to authorize changes or modifications to the original
430 contract without the necessity of prior approval of the agency or
431 governing authority when any such change or modification is less
432 than one percent (1%) of the total contract amount. The agency or
433 governing authority may limit the number, manner or frequency of
434 such emergency changes or modifications.

435 (h) **Petroleum purchase alternative.** In addition to
436 other methods of purchasing authorized in this chapter, when any
437 agency or governing authority shall have a need for gas, diesel
438 fuel, oils and/or other petroleum products in excess of the amount
439 set forth in paragraph (a) of this section, such agency or
440 governing authority may purchase the commodity after having
441 solicited and obtained at least two (2) competitive written bids,
442 as defined in paragraph (b) of this section. If two (2)
443 competitive written bids are not obtained, the entity shall comply
444 with the procedures set forth in paragraph (c) of this section.
445 In the event any agency or governing authority shall have
446 advertised for bids for the purchase of gas, diesel fuel, oils and
447 other petroleum products and coal and no acceptable bids can be
448 obtained, such agency or governing authority is authorized and



449 directed to enter into any negotiations necessary to secure the
450 lowest and best contract available for the purchase of such
451 commodities.

452 (i) **Road construction petroleum products price**
453 **adjustment clause authorization.** Any agency or governing
454 authority authorized to enter into contracts for the construction,
455 maintenance, surfacing or repair of highways, roads or streets,
456 may include in its bid proposal and contract documents a price
457 adjustment clause with relation to the cost to the contractor,
458 including taxes, based upon an industry-wide cost index, of
459 petroleum products including asphalt used in the performance or
460 execution of the contract or in the production or manufacture of
461 materials for use in such performance. Such industry-wide index
462 shall be established and published monthly by the Mississippi
463 Department of Transportation with a copy thereof to be mailed,
464 upon request, to the clerks of the governing authority of each
465 municipality and the clerks of each board of supervisors
466 throughout the state. The price adjustment clause shall be based
467 on the cost of such petroleum products only and shall not include
468 any additional profit or overhead as part of the adjustment. The
469 bid proposals or document contract shall contain the basis and
470 methods of adjusting unit prices for the change in the cost of
471 such petroleum products.

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



474 agency of the state shall determine that an emergency exists in
475 regard to the purchase of any commodities or repair contracts, so
476 that the delay incident to giving opportunity for competitive
477 bidding would be detrimental to the interests of the state, then
478 the head of such agency, or his designees, shall file with the
479 Department of Finance and Administration (i) a statement
480 explaining the conditions and circumstances of the emergency,
481 which shall include a detailed description of the events leading
482 up to the situation and the negative impact to the entity if the
483 purchase is made following the statutory requirements set forth in
484 paragraph (a), (b) or (c) of this section, and (ii) a certified
485 copy of the appropriate minutes of the board of such agency
486 requesting the emergency purchase, if applicable. Upon receipt of
487 the statement and applicable board certification, the State Fiscal
488 Officer, or his designees, may, in writing, authorize the purchase
489 or repair without having to comply with competitive bidding
490 requirements.

491 If the governing board or the executive head, or his
492 designees, of any agency determines that an emergency exists in
493 regard to the purchase of any commodities or repair contracts, so
494 that the delay incident to giving opportunity for competitive
495 bidding would threaten the health or safety of any person, or the
496 preservation or protection of property, then the provisions in
497 this section for competitive bidding shall not apply, and any
498 officer or agent of the agency having general or specific



499 authority for making the purchase or repair contract shall approve
500 the bill presented for payment, and he shall certify in writing
501 from whom the purchase was made, or with whom the repair contract
502 was made.

503 Total purchases made under this paragraph (j) shall only be
504 for the purpose of meeting needs created by the emergency
505 situation. Following the emergency purchase, documentation of the
506 purchase, including a description of the commodity purchased, the
507 purchase price thereof and the nature of the emergency shall be
508 filed with the Department of Finance and Administration. Any
509 contract awarded pursuant to this paragraph (j) shall not exceed a
510 term of one (1) year.

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

512 If the governing authority, or the governing authority acting
513 through its designee, shall determine that an emergency exists in
514 regard to the purchase of any commodities or repair contracts, so
515 that the delay incident to giving opportunity for competitive
516 bidding would be detrimental to the interest of the governing
517 authority, then the provisions herein for competitive bidding
518 shall not apply and any officer or agent of such governing
519 authority having general or special authority therefor in making
520 such purchase or repair shall approve the bill presented therefor,
521 and he shall certify in writing thereon from whom such purchase
522 was made, or with whom such a repair contract was made. At the
523 board meeting next following the emergency purchase or repair



524 contract, documentation of the purchase or repair contract,
525 including a description of the commodity purchased, the price
526 thereof and the nature of the emergency shall be presented to the
527 board and shall be placed on the minutes of the board of such
528 governing authority.

529 (1) **Hospital purchase, lease-purchase and lease**
530 **authorization.**

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

536 (ii) In addition to the authority granted in
537 subparagraph (i) of this paragraph (1), the commissioners or board
538 of trustees is authorized to enter into contracts for the lease of
539 equipment or services, or both, which it considers necessary for
540 the proper care of patients if, in its opinion, it is not
541 financially feasible to purchase the necessary equipment or
542 services. Any such contract for the lease of equipment or
543 services executed by the commissioners or board shall not exceed a
544 maximum of five (5) years' duration and shall include a
545 cancellation clause based on unavailability of funds. If such
546 cancellation clause is exercised, there shall be no further
547 liability on the part of the lessee. Any such contract for the
548 lease of equipment or services executed on behalf of the



549 commissioners or board that complies with the provisions of this
550 subparagraph (ii) shall be excepted from the bid requirements set
551 forth in this section.

552 (m) **Exceptions from bidding requirements.** Excepted
553 from bid requirements are:

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

555 Purchasing agreements, contracts and maximum price regulations
556 executed or approved by the Department of Finance and
557 Administration.

558 (ii) **Outside equipment repairs.** Repairs to
559 equipment, when such repairs are made by repair facilities in the
560 private sector; however, engines, transmissions, rear axles and/or
561 other such components shall not be included in this exemption when
562 replaced as a complete unit instead of being repaired and the need
563 for such total component replacement is known before disassembly
564 of the component; however, invoices identifying the equipment,
565 specific repairs made, parts identified by number and name,
566 supplies used in such repairs, and the number of hours of labor
567 and costs therefor shall be required for the payment for such
568 repairs.

569 (iii) **In-house equipment repairs.** Purchases of
570 parts for repairs to equipment, when such repairs are made by
571 personnel of the agency or governing authority; however, entire
572 assemblies, such as engines or transmissions, shall not be



573 included in this exemption when the entire assembly is being
574 replaced instead of being repaired.

575 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
576 of gravel or fill dirt which are to be removed and transported by
577 the purchaser.

578 (v) **Governmental equipment auctions.** Motor
579 vehicles or other equipment purchased from a federal agency or
580 authority, another governing authority or state agency of the
581 State of Mississippi, or any governing authority or state agency
582 of another state at a public auction held for the purpose of
583 disposing of such vehicles or other equipment. Any purchase by a
584 governing authority under the exemption authorized by this
585 subparagraph (v) shall require advance authorization spread upon
586 the minutes of the governing authority to include the listing of
587 the item or items authorized to be purchased and the maximum bid
588 authorized to be paid for each item or items.

589 (vi) **Intergovernmental sales and transfers.**
590 Purchases, sales, transfers or trades by governing authorities or
591 state agencies when such purchases, sales, transfers or trades are
592 made by a private treaty agreement or through means of
593 negotiation, from any federal agency or authority, another
594 governing authority or state agency of the State of Mississippi,
595 or any state agency or governing authority of another state.
596 Nothing in this section shall permit such purchases through public
597 auction except as provided for in subparagraph (v) of this



598 paragraph (m). It is the intent of this section to allow
599 governmental entities to dispose of and/or purchase commodities
600 from other governmental entities at a price that is agreed to by
601 both parties. This shall allow for purchases and/or sales at
602 prices which may be determined to be below the market value if the
603 selling entity determines that the sale at below market value is
604 in the best interest of the taxpayers of the state. Governing
605 authorities shall place the terms of the agreement and any
606 justification on the minutes, and state agencies shall obtain
607 approval from the Department of Finance and Administration, prior
608 to releasing or taking possession of the commodities.

609 (vii) **Perishable supplies or food.** Perishable
610 supplies or food purchased for use in connection with hospitals,
611 the school lunch programs, homemaking programs and for the feeding
612 of county or municipal prisoners.

613 (viii) **Single source items.** Noncompetitive items
614 available from one (1) source only. In connection with the
615 purchase of noncompetitive items only available from one (1)
616 source, a certification of the conditions and circumstances
617 requiring the purchase shall be filed by the agency with the
618 Department of Finance and Administration and by the governing
619 authority with the board of the governing authority. Upon receipt
620 of that certification the Department of Finance and Administration
621 or the board of the governing authority, as the case may be, may,
622 in writing, authorize the purchase, which authority shall be noted



623 on the minutes of the body at the next regular meeting thereafter.
624 In those situations, a governing authority is not required to
625 obtain the approval of the Department of Finance and
626 Administration. Following the purchase, the executive head of the
627 state agency, or his designees, shall file with the Department of
628 Finance and Administration, documentation of the purchase,
629 including a description of the commodity purchased, the purchase
630 price thereof and the source from whom it was purchased.

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

632 **contracts.** Construction of incinerators and other facilities for
633 disposal of solid wastes in which products either generated
634 therein, such as steam, or recovered therefrom, such as materials
635 for recycling, are to be sold or otherwise disposed of; however,
636 in constructing such facilities, a governing authority or agency
637 shall publicly issue requests for proposals, advertised for in the
638 same manner as provided herein for seeking bids for public
639 construction projects, concerning the design, construction,
640 ownership, operation and/or maintenance of such facilities,
641 wherein such requests for proposals when issued shall contain
642 terms and conditions relating to price, financial responsibility,
643 technology, environmental compatibility, legal responsibilities
644 and such other matters as are determined by the governing
645 authority or agency to be appropriate for inclusion; and after
646 responses to the request for proposals have been duly received,
647 the governing authority or agency may select the most qualified



648 proposal or proposals on the basis of price, technology and other
649 relevant factors and from such proposals, but not limited to the
650 terms thereof, negotiate and enter contracts with one or more of
651 the persons or firms submitting proposals.

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

655 (xi) **Information technology products.** Purchases
656 of information technology products made by governing authorities
657 under the provisions of purchase schedules, or contracts executed
658 or approved by the Mississippi Department of Information
659 Technology Services and designated for use by governing
660 authorities.

661 (xii) **Energy efficiency services and equipment.**
662 Energy efficiency services and equipment acquired by school
663 districts, community and junior colleges, institutions of higher
664 learning and state agencies or other applicable governmental
665 entities on a shared-savings, lease or lease-purchase basis
666 pursuant to Section 31-7-14.

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

671 (xiv) **Library books and other reference materials.**
672 Purchases by libraries or for libraries of books and periodicals;



673 processed film, videocassette tapes, filmstrips and slides;
674 recorded audiotapes, cassettes and diskettes; and any such items
675 as would be used for teaching, research or other information
676 distribution; however, equipment such as projectors, recorders,
677 audio or video equipment, and monitor televisions are not exempt
678 under this subparagraph.

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

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

685 (xvii) **Multichannel interactive video systems.**
686 From and after July 1, 1990, contracts by Mississippi Authority
687 for Educational Television with any private educational
688 institution or private nonprofit organization whose purposes are
689 educational in regard to the construction, purchase, lease or
690 lease-purchase of facilities and equipment and the employment of
691 personnel for providing multichannel interactive video systems
692 (ITSF) in the school districts of this state.

693 (xviii) **Purchases of prison industry products by**
694 **the Department of Corrections, regional correctional facilities or**
695 **privately owned prisons.** Purchases made by the Mississippi
696 Department of Corrections, regional correctional facilities or



697 privately owned prisons involving any item that is manufactured,
698 processed, grown or produced from the state's prison industries.

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

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

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

713 (xxii) **Garbage, solid waste and sewage contracts.**
714 Contracts for garbage collection or disposal, contracts for solid
715 waste collection or disposal and contracts for sewage collection
716 or disposal.

717 (xxiii) **Municipal water tank maintenance**
718 **contracts.** Professional maintenance program contracts for the
719 repair or maintenance of municipal water tanks, which provide
720 professional services needed to maintain municipal water storage



721 tanks for a fixed annual fee for a duration of two (2) or more
722 years.

723 (xxiv) **Purchases of Mississippi Industries for the**
724 **Blind products.** Purchases made by state agencies or governing
725 authorities involving any item that is manufactured, processed or
726 produced by the Mississippi Industries for the Blind.

727 (xxv) **Purchases of state-adopted textbooks.**
728 Purchases of state-adopted textbooks by public school districts.

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

732 (xxvii) **Used heavy or specialized machinery or**
733 **equipment for installation of soil and water conservation**
734 **practices purchased at auction.** Used heavy or specialized
735 machinery or equipment used for the installation and
736 implementation of soil and water conservation practices or
737 measures purchased subject to the restrictions provided in
738 Sections 69-27-331 through 69-27-341. Any purchase by the State
739 Soil and Water Conservation Commission under the exemption
740 authorized by this subparagraph shall require advance
741 authorization spread upon the minutes of the commission to include
742 the listing of the item or items authorized to be purchased and
743 the maximum bid authorized to be paid for each item or items.



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

747 (xxix) **Purchases made pursuant to qualified**
748 **cooperative purchasing agreements.** Purchases made by certified
749 purchasing offices of state agencies or governing authorities
750 under cooperative purchasing agreements previously approved by the
751 Office of Purchasing and Travel and established by or for any
752 municipality, county, parish or state government or the federal
753 government, provided that the notification to potential
754 contractors includes a clause that sets forth the availability of
755 the cooperative purchasing agreement to other governmental
756 entities. Such purchases shall only be made if the use of the
757 cooperative purchasing agreements is determined to be in the best
758 interest of the governmental entity.

759 (xxx) **School yearbooks.** Purchases of school
760 yearbooks by state agencies or governing authorities; provided,
761 however, that state agencies and governing authorities shall use
762 for these purchases the RFP process as set forth in the
763 Mississippi Procurement Manual adopted by the Office of Purchasing
764 and Travel.

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



768 (xxxii) **Toll roads and bridge construction**
769 **projects.** Contracts entered into under the provisions of Section
770 65-43-1 or 65-43-3.

771 (xxxiii) **Certain purchases under Section 57-1-221.**
772 Contracts entered into pursuant to the provisions of Section
773 57-1-221.

774 (xxxiv) **Certain transfers made pursuant to the**
775 **provisions of Section 57-105-1(7).** Transfers of public property
776 or facilities under Section 57-105-1(7) and construction related
777 to such public property or facilities.

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

781 (xxxvi) **Certain purchases by an academic medical**
782 **center or health sciences school.** Purchases by an academic
783 medical center or health sciences school, as defined in Section
784 37-115-50, of commodities that are used for clinical purposes and
785 1. intended for use in the diagnosis of disease or other
786 conditions or in the cure, mitigation, treatment or prevention of
787 disease, and 2. medical devices, biological, drugs and
788 radiation-emitting devices as defined by the United States Food
789 and Drug Administration.

790 (n) **Term contract authorization.** All contracts for the
791 purchase of:



792 (i) All contracts for the purchase of commodities,
793 equipment and public construction (including, but not limited to,
794 repair and maintenance), may be let for periods of not more than
795 sixty (60) months in advance, subject to applicable statutory
796 provisions prohibiting the letting of contracts during specified
797 periods near the end of terms of office. Term contracts for a
798 period exceeding twenty-four (24) months shall also be subject to
799 ratification or cancellation by governing authority boards taking
800 office subsequent to the governing authority board entering the
801 contract.

802 (ii) Bid proposals and contracts may include price
803 adjustment clauses with relation to the cost to the contractor
804 based upon a nationally published industry-wide or nationally
805 published and recognized cost index. The cost index used in a
806 price adjustment clause shall be determined by the Department of
807 Finance and Administration for the state agencies and by the
808 governing board for governing authorities. The bid proposal and
809 contract documents utilizing a price adjustment clause shall
810 contain the basis and method of adjusting unit prices for the
811 change in the cost of such commodities, equipment and public
812 construction.

813 (o) **Purchase law violation prohibition and vendor**
814 **penalty.** No contract or purchase as herein authorized shall be
815 made for the purpose of circumventing the provisions of this
816 section requiring competitive bids, nor shall it be lawful for any



817 person or concern to submit individual invoices for amounts within
818 those authorized for a contract or purchase where the actual value
819 of the contract or commodity purchased exceeds the authorized
820 amount and the invoices therefor are split so as to appear to be
821 authorized as purchases for which competitive bids are not
822 required. Submission of such invoices shall constitute a
823 misdemeanor punishable by a fine of not less than Five Hundred
824 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
825 or by imprisonment for thirty (30) days in the county jail, or
826 both such fine and imprisonment. In addition, the claim or claims
827 submitted shall be forfeited.

828 (p) **Electrical utility petroleum-based equipment**
829 **purchase procedure.** When in response to a proper advertisement
830 therefor, no bid firm as to price is submitted to an electric
831 utility for power transformers, distribution transformers, power
832 breakers, reclosers or other articles containing a petroleum
833 product, the electric utility may accept the lowest and best bid
834 therefor although the price is not firm.

835 (q) **Fuel management system bidding procedure.** Any
836 governing authority or agency of the state shall, before
837 contracting for the services and products of a fuel management or
838 fuel access system, enter into negotiations with not fewer than
839 two (2) sellers of fuel management or fuel access systems for
840 competitive written bids to provide the services and products for
841 the systems. In the event that the governing authority or agency



842 cannot locate two (2) sellers of such systems or cannot obtain
843 bids from two (2) sellers of such systems, it shall show proof
844 that it made a diligent, good-faith effort to locate and negotiate
845 with two (2) sellers of such systems. Such proof shall include,
846 but not be limited to, publications of a request for proposals and
847 letters soliciting negotiations and bids. For purposes of this
848 paragraph (q), a fuel management or fuel access system is an
849 automated system of acquiring fuel for vehicles as well as
850 management reports detailing fuel use by vehicles and drivers, and
851 the term "competitive written bid" shall have the meaning as
852 defined in paragraph (b) of this section. Governing authorities
853 and agencies shall be exempt from this process when contracting
854 for the services and products of fuel management or fuel access
855 systems under the terms of a state contract established by the
856 Office of Purchasing and Travel.

857 (r) **Solid waste contract proposal procedure.** Before
858 entering into any contract for garbage collection or disposal,
859 contract for solid waste collection or disposal or contract for
860 sewage collection or disposal, which involves an expenditure of
861 more than Fifty Thousand Dollars (\$50,000.00), a governing
862 authority or agency shall issue publicly a request for proposals
863 concerning the specifications for such services which shall be
864 advertised for in the same manner as provided in this section for
865 seeking bids for purchases which involve an expenditure of more
866 than the amount provided in paragraph (c) of this section. Any



867 request for proposals when issued shall contain terms and
868 conditions relating to price, financial responsibility,
869 technology, legal responsibilities and other relevant factors as
870 are determined by the governing authority or agency to be
871 appropriate for inclusion; all factors determined relevant by the
872 governing authority or agency or required by this paragraph (r)
873 shall be duly included in the advertisement to elicit proposals.
874 After responses to the request for proposals have been duly
875 received, the governing authority or agency shall select the most
876 qualified proposal or proposals on the basis of price, technology
877 and other relevant factors and from such proposals, but not
878 limited to the terms thereof, negotiate and enter into contracts
879 with one or more of the persons or firms submitting proposals. If
880 the governing authority or agency deems none of the proposals to
881 be qualified or otherwise acceptable, the request for proposals
882 process may be reinitiated. Notwithstanding any other provisions
883 of this paragraph, where a county with at least thirty-five
884 thousand (35,000) nor more than forty thousand (40,000)
885 population, according to the 1990 federal decennial census, owns
886 or operates a solid waste landfill, the governing authorities of
887 any other county or municipality may contract with the governing
888 authorities of the county owning or operating the landfill,
889 pursuant to a resolution duly adopted and spread upon the minutes
890 of each governing authority involved, for garbage or solid waste
891 collection or disposal services through contract negotiations.



892 (s) **Minority set-aside authorization.** Notwithstanding
893 any provision of this section to the contrary, any agency or
894 governing authority, by order placed on its minutes, may, in its
895 discretion, set aside not more than twenty percent (20%) of its
896 anticipated annual expenditures for the purchase of commodities
897 from minority businesses; however, all such set-aside purchases
898 shall comply with all purchasing regulations promulgated by the
899 Department of Finance and Administration and shall be subject to
900 bid requirements under this section. Set-aside purchases for
901 which competitive bids are required shall be made from the lowest
902 and best minority business bidder. For the purposes of this
903 paragraph, the term "minority business" means a business which is
904 owned by a majority of persons who are United States citizens or
905 permanent resident aliens (as defined by the Immigration and
906 Naturalization Service) of the United States, and who are Asian,
907 Black, Hispanic or Native American, according to the following
908 definitions:

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

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

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



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

920 (t) **Construction punch list restriction.** The
921 architect, engineer or other representative designated by the
922 agency or governing authority that is contracting for public
923 construction or renovation may prepare and submit to the
924 contractor only one (1) preliminary punch list of items that do
925 not meet the contract requirements at the time of substantial
926 completion and one (1) final list immediately before final
927 completion and final payment.

928 (u) **Procurement of construction services by state**
929 **institutions of higher learning.** Contracts for privately financed
930 construction of auxiliary facilities on the campus of a state
931 institution of higher learning may be awarded by the Board of
932 Trustees of State Institutions of Higher Learning to the lowest
933 and best bidder, where sealed bids are solicited, or to the
934 offeror whose proposal is determined to represent the best value
935 to the citizens of the State of Mississippi, where requests for
936 proposals are solicited.

937 (v) **Insurability of bidders for public construction or**
938 **other public contracts.** In any solicitation for bids to perform
939 public construction or other public contracts to which this
940 section applies including, but not limited to, contracts for
941 repair and maintenance, for which the contract will require



942 insurance coverage in an amount of not less than One Million
943 Dollars (\$1,000,000.00), bidders shall be permitted to either
944 submit proof of current insurance coverage in the specified amount
945 or demonstrate ability to obtain the required coverage amount of
946 insurance if the contract is awarded to the bidder. Proof of
947 insurance coverage shall be submitted within five (5) business
948 days from bid acceptance.

949 (w) **Purchase authorization clarification.** Nothing in
950 this section shall be construed as authorizing any purchase not
951 authorized by law.

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

