

By: Representatives McNeal, Tullos, Bain,
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To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 796

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT REVERSE AUCTIONS SHALL BE THE PRIMARY METHOD OF
3 RECEIVING BIDS DURING THE BIDDING PROCESS FOR AGENCIES; AND FOR
4 RELATED PURPOSES.

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

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

8 31-7-13. All agencies and governing authorities shall
9 purchase their commodities and printing; contract for garbage
10 collection or disposal; contract for solid waste collection or
11 disposal; contract for sewage collection or disposal; contract for
12 public construction; and contract for rentals as herein provided.

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

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

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



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

21 (b) **Bidding procedure for purchases over \$5,000.00 but**

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



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

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

65 (i) **Publication requirement.**

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



69 bidder after advertising for competitive bids once each week for
70 two (2) consecutive weeks in a regular newspaper published in the
71 county or municipality in which such agency or governing authority
72 is located. However, all American Recovery and Reinvestment Act
73 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
74 shall be bid. All references to American Recovery and
75 Reinvestment Act projects in this section shall not apply to
76 programs identified in Division B of the American Recovery and
77 Reinvestment Act.

78 2. The governing authority may designate the
79 method by which the bids will be received, including, but not
80 limited to, bids sealed in an envelope, bids received
81 electronically in a secure system, bids received via a reverse
82 auction, or bids received by any other method that promotes open
83 competition and has been approved by the Office of Purchasing and
84 Travel. Reverse auctions shall be the primary method for
85 receiving bids during the bidding process for agencies. If * * *
86 an agency determines that a reverse auction is not in the best
87 interest of the state, then that determination must be approved by
88 the Public Procurement Review Board. The * * * agency shall
89 submit a detailed explanation of why a reverse auction would not
90 be in the best interest of the state and present an alternative
91 process to be approved by the Public Procurement Review Board. If
92 the Public Procurement Review Board authorizes the * * * agency to
93 solicit bids with a method other than reverse auction, then



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

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



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



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



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

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

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



194 to whom such solicitations and specifications were issued, and
195 such file shall also contain such information as is pertinent to
196 the bid.

197 (iv) **Specification restrictions.**

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

214 2. Specifications for construction projects
215 may include an allowance for commodities, equipment, furniture,
216 construction materials or systems in which prospective bidders are
217 instructed to include in their bids specified amounts for such
218 items so long as the allowance items are acquired by the vendor in



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

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



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

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

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

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



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

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

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



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

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

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



319 (e) **Lease-purchase authorization.** For the purposes of
320 this section, the term "equipment" shall mean equipment, furniture
321 and, if applicable, associated software and other applicable
322 direct costs associated with the acquisition. Any lease-purchase
323 of equipment which an agency is not required to lease-purchase
324 under the master lease-purchase program pursuant to Section
325 31-7-10 and any lease-purchase of equipment which a governing
326 authority elects to lease-purchase may be acquired by a
327 lease-purchase agreement under this paragraph (e). Lease-purchase
328 financing may also be obtained from the vendor or from a
329 third-party source after having solicited and obtained at least
330 two (2) written competitive bids, as defined in paragraph (b) of
331 this section, for such financing without advertising for such
332 bids. Solicitation for the bids for financing may occur before or
333 after acceptance of bids for the purchase of such equipment or,
334 where no such bids for purchase are required, at any time before
335 the purchase thereof. No such lease-purchase agreement shall be
336 for an annual rate of interest which is greater than the overall
337 maximum interest rate to maturity on general obligation
338 indebtedness permitted under Section 75-17-101, and the term of
339 such lease-purchase agreement shall not exceed the useful life of
340 equipment covered thereby as determined according to the upper
341 limit of the asset depreciation range (ADR) guidelines for the
342 Class Life Asset Depreciation Range System established by the
343 Internal Revenue Service pursuant to the United States Internal



344 Revenue Code and regulations thereunder as in effect on December
345 31, 1980, or comparable depreciation guidelines with respect to
346 any equipment not covered by ADR guidelines. Any lease-purchase
347 agreement entered into pursuant to this paragraph (e) may contain
348 any of the terms and conditions which a master lease-purchase
349 agreement may contain under the provisions of Section 31-7-10(5),
350 and shall contain an annual allocation dependency clause
351 substantially similar to that set forth in Section 31-7-10(8).
352 Each agency or governing authority entering into a lease-purchase
353 transaction pursuant to this paragraph (e) shall maintain with
354 respect to each such lease-purchase transaction the same
355 information as required to be maintained by the Department of
356 Finance and Administration pursuant to Section 31-7-10(13).
357 However, nothing contained in this section shall be construed to
358 permit agencies to acquire items of equipment with a total
359 acquisition cost in the aggregate of less than Ten Thousand
360 Dollars (\$10,000.00) by a single lease-purchase transaction. All
361 equipment, and the purchase thereof by any lessor, acquired by
362 lease-purchase under this paragraph and all lease-purchase
363 payments with respect thereto shall be exempt from all Mississippi
364 sales, use and ad valorem taxes. Interest paid on any
365 lease-purchase agreement under this section shall be exempt from
366 State of Mississippi income taxation.

367 (f) **Alternate bid authorization.** When necessary to
368 ensure ready availability of commodities for public works and the



369 timely completion of public projects, no more than two (2)
370 alternate bids may be accepted by a governing authority for
371 commodities. No purchases may be made through use of such
372 alternate bids procedure unless the lowest and best bidder cannot
373 deliver the commodities contained in his bid. In that event,
374 purchases of such commodities may be made from one (1) of the
375 bidders whose bid was accepted as an alternate.

376 (g) **Construction contract change authorization.** In the
377 event a determination is made by an agency or governing authority
378 after a construction contract is let that changes or modifications
379 to the original contract are necessary or would better serve the
380 purpose of the agency or the governing authority, such agency or
381 governing authority may, in its discretion, order such changes
382 pertaining to the construction that are necessary under the
383 circumstances without the necessity of further public bids;
384 provided that such change shall be made in a commercially
385 reasonable manner and shall not be made to circumvent the public
386 purchasing statutes. In addition to any other authorized person,
387 the architect or engineer hired by an agency or governing
388 authority with respect to any public construction contract shall
389 have the authority, when granted by an agency or governing
390 authority, to authorize changes or modifications to the original
391 contract without the necessity of prior approval of the agency or
392 governing authority when any such change or modification is less
393 than one percent (1%) of the total contract amount. The agency or



394 governing authority may limit the number, manner or frequency of
395 such emergency changes or modifications.

396 (h) **Petroleum purchase alternative.** In addition to
397 other methods of purchasing authorized in this chapter, when any
398 agency or governing authority shall have a need for gas, diesel
399 fuel, oils and/or other petroleum products in excess of the amount
400 set forth in paragraph (a) of this section, such agency or
401 governing authority may purchase the commodity after having
402 solicited and obtained at least two (2) competitive written bids,
403 as defined in paragraph (b) of this section. If two (2)
404 competitive written bids are not obtained, the entity shall comply
405 with the procedures set forth in paragraph (c) of this section.
406 In the event any agency or governing authority shall have
407 advertised for bids for the purchase of gas, diesel fuel, oils and
408 other petroleum products and coal and no acceptable bids can be
409 obtained, such agency or governing authority is authorized and
410 directed to enter into any negotiations necessary to secure the
411 lowest and best contract available for the purchase of such
412 commodities.

413 (i) **Road construction petroleum products price**
414 **adjustment clause authorization.** Any agency or governing
415 authority authorized to enter into contracts for the construction,
416 maintenance, surfacing or repair of highways, roads or streets,
417 may include in its bid proposal and contract documents a price
418 adjustment clause with relation to the cost to the contractor,



419 including taxes, based upon an industry-wide cost index, of
420 petroleum products including asphalt used in the performance or
421 execution of the contract or in the production or manufacture of
422 materials for use in such performance. Such industry-wide index
423 shall be established and published monthly by the Mississippi
424 Department of Transportation with a copy thereof to be mailed,
425 upon request, to the clerks of the governing authority of each
426 municipality and the clerks of each board of supervisors
427 throughout the state. The price adjustment clause shall be based
428 on the cost of such petroleum products only and shall not include
429 any additional profit or overhead as part of the adjustment. The
430 bid proposals or document contract shall contain the basis and
431 methods of adjusting unit prices for the change in the cost of
432 such petroleum products.

433 (j) **State agency emergency purchase procedure.** If the
434 governing board or the executive head, or his designees, of any
435 agency of the state shall determine that an emergency exists in
436 regard to the purchase of any commodities or repair contracts, so
437 that the delay incident to giving opportunity for competitive
438 bidding would be detrimental to the interests of the state, then
439 the head of such agency, or his designees, shall file with the
440 Department of Finance and Administration (i) a statement
441 explaining the conditions and circumstances of the emergency,
442 which shall include a detailed description of the events leading
443 up to the situation and the negative impact to the entity if the



444 purchase is made following the statutory requirements set forth in
445 paragraph (a), (b) or (c) of this section, and (ii) a certified
446 copy of the appropriate minutes of the board of such agency
447 requesting the emergency purchase, if applicable. Upon receipt of
448 the statement and applicable board certification, the State Fiscal
449 Officer, or his designees, may, in writing, authorize the purchase
450 or repair without having to comply with competitive bidding
451 requirements.

452 If the governing board or the executive head, or his
453 designees, of any agency determines that an emergency exists in
454 regard to the purchase of any commodities or repair contracts, so
455 that the delay incident to giving opportunity for competitive
456 bidding would threaten the health or safety of any person, or the
457 preservation or protection of property, then the provisions in
458 this section for competitive bidding shall not apply, and any
459 officer or agent of the agency having general or specific
460 authority for making the purchase or repair contract shall approve
461 the bill presented for payment, and he shall certify in writing
462 from whom the purchase was made, or with whom the repair contract
463 was made.

464 Total purchases made under this paragraph (j) shall only be
465 for the purpose of meeting needs created by the emergency
466 situation. Following the emergency purchase, documentation of the
467 purchase, including a description of the commodity purchased, the
468 purchase price thereof and the nature of the emergency shall be



469 filed with the Department of Finance and Administration. Any
470 contract awarded pursuant to this paragraph (j) shall not exceed a
471 term of one (1) year.

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

473 If the governing authority, or the governing authority acting
474 through its designee, 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 interest of the governing
478 authority, then the provisions herein for competitive bidding
479 shall not apply and any officer or agent of such governing
480 authority having general or special authority therefor in making
481 such purchase or repair shall approve the bill presented therefor,
482 and he shall certify in writing thereon from whom such purchase
483 was made, or with whom such a repair contract was made. At the
484 board meeting next following the emergency purchase or repair
485 contract, documentation of the purchase or repair contract,
486 including a description of the commodity purchased, the price
487 thereof and the nature of the emergency shall be presented to the
488 board and shall be placed on the minutes of the board of such
489 governing authority.

490 (l) **Hospital purchase, lease-purchase and lease**
491 **authorization.**

492 (i) The commissioners or board of trustees of any
493 public hospital may contract with such lowest and best bidder for



494 the purchase or lease-purchase of any commodity under a contract
495 of purchase or lease-purchase agreement whose obligatory payment
496 terms do not exceed five (5) years.

497 (ii) In addition to the authority granted in
498 subparagraph (i) of this paragraph (1), the commissioners or board
499 of trustees is authorized to enter into contracts for the lease of
500 equipment or services, or both, which it considers necessary for
501 the proper care of patients if, in its opinion, it is not
502 financially feasible to purchase the necessary equipment or
503 services. Any such contract for the lease of equipment or
504 services executed by the commissioners or board shall not exceed a
505 maximum of five (5) years' duration and shall include a
506 cancellation clause based on unavailability of funds. If such
507 cancellation clause is exercised, there shall be no further
508 liability on the part of the lessee. Any such contract for the
509 lease of equipment or services executed on behalf of the
510 commissioners or board that complies with the provisions of this
511 subparagraph (ii) shall be excepted from the bid requirements set
512 forth in this section.

513 (m) **Exceptions from bidding requirements.** Excepted
514 from bid requirements are:

515 (i) **Purchasing agreements approved by department.**
516 Purchasing agreements, contracts and maximum price regulations
517 executed or approved by the Department of Finance and
518 Administration.



519 (ii) **Outside equipment repairs.** Repairs to
520 equipment, when such repairs are made by repair facilities in the
521 private sector; however, engines, transmissions, rear axles and/or
522 other such components shall not be included in this exemption when
523 replaced as a complete unit instead of being repaired and the need
524 for such total component replacement is known before disassembly
525 of the component; however, invoices identifying the equipment,
526 specific repairs made, parts identified by number and name,
527 supplies used in such repairs, and the number of hours of labor
528 and costs therefor shall be required for the payment for such
529 repairs.

530 (iii) **In-house equipment repairs.** Purchases of
531 parts for repairs to equipment, when such repairs are made by
532 personnel of the agency or governing authority; however, entire
533 assemblies, such as engines or transmissions, shall not be
534 included in this exemption when the entire assembly is being
535 replaced instead of being repaired.

536 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
537 of gravel or fill dirt which are to be removed and transported by
538 the purchaser.

539 (v) **Governmental equipment auctions.** Motor
540 vehicles or other equipment purchased from a federal agency or
541 authority, another governing authority or state agency of the
542 State of Mississippi, or any governing authority or state agency
543 of another state at a public auction held for the purpose of



544 disposing of such vehicles or other equipment. Any purchase by a
545 governing authority under the exemption authorized by this
546 subparagraph (v) shall require advance authorization spread upon
547 the minutes of the governing authority to include the listing of
548 the item or items authorized to be purchased and the maximum bid
549 authorized to be paid for each item or items.

550 (vi) **Intergovernmental sales and transfers.**

551 Purchases, sales, transfers or trades by governing authorities or
552 state agencies when such purchases, sales, transfers or trades are
553 made by a private treaty agreement or through means of
554 negotiation, from any federal agency or authority, another
555 governing authority or state agency of the State of Mississippi,
556 or any state agency or governing authority of another state.
557 Nothing in this section shall permit such purchases through public
558 auction except as provided for in subparagraph (v) of this
559 paragraph (m). It is the intent of this section to allow
560 governmental entities to dispose of and/or purchase commodities
561 from other governmental entities at a price that is agreed to by
562 both parties. This shall allow for purchases and/or sales at
563 prices which may be determined to be below the market value if the
564 selling entity determines that the sale at below market value is
565 in the best interest of the taxpayers of the state. Governing
566 authorities shall place the terms of the agreement and any
567 justification on the minutes, and state agencies shall obtain



568 approval from the Department of Finance and Administration, prior
569 to releasing or taking possession of the commodities.

570 (vii) **Perishable supplies or food.** Perishable
571 supplies or food purchased for use in connection with hospitals,
572 the school lunch programs, homemaking programs and for the feeding
573 of county or municipal prisoners.

574 (viii) **Single source items.** Noncompetitive items
575 available from one (1) source only. In connection with the
576 purchase of noncompetitive items only available from one (1)
577 source, a certification of the conditions and circumstances
578 requiring the purchase shall be filed by the agency with the
579 Department of Finance and Administration and by the governing
580 authority with the board of the governing authority. Upon receipt
581 of that certification the Department of Finance and Administration
582 or the board of the governing authority, as the case may be, may,
583 in writing, authorize the purchase, which authority shall be noted
584 on the minutes of the body at the next regular meeting thereafter.
585 In those situations, a governing authority is not required to
586 obtain the approval of the Department of Finance and
587 Administration. Following the purchase, the executive head of the
588 state agency, or his designees, shall file with the Department of
589 Finance and Administration, documentation of the purchase,
590 including a description of the commodity purchased, the purchase
591 price thereof and the source from whom it was purchased.



592 (ix) **Waste disposal facility construction**
593 **contracts.** Construction of incinerators and other facilities for
594 disposal of solid wastes in which products either generated
595 therein, such as steam, or recovered therefrom, such as materials
596 for recycling, are to be sold or otherwise disposed of; however,
597 in constructing such facilities, a governing authority or agency
598 shall publicly issue requests for proposals, advertised for in the
599 same manner as provided herein for seeking bids for public
600 construction projects, concerning the design, construction,
601 ownership, operation and/or maintenance of such facilities,
602 wherein such requests for proposals when issued shall contain
603 terms and conditions relating to price, financial responsibility,
604 technology, environmental compatibility, legal responsibilities
605 and such other matters as are determined by the governing
606 authority or agency to be appropriate for inclusion; and after
607 responses to the request for proposals have been duly received,
608 the governing authority or agency may select the most qualified
609 proposal or proposals on the basis of price, technology and other
610 relevant factors and from such proposals, but not limited to the
611 terms thereof, negotiate and enter contracts with one or more of
612 the persons or firms submitting proposals.

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



616 (xi) **Information technology products.** Purchases
617 of information technology products made by governing authorities
618 under the provisions of purchase schedules, or contracts executed
619 or approved by the Mississippi Department of Information
620 Technology Services and designated for use by governing
621 authorities.

622 (xii) **Energy efficiency services and equipment.**
623 Energy efficiency services and equipment acquired by school
624 districts, community and junior colleges, institutions of higher
625 learning and state agencies or other applicable governmental
626 entities on a shared-savings, lease or lease-purchase basis
627 pursuant to Section 31-7-14.

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

632 (xiv) **Library books and other reference materials.**
633 Purchases by libraries or for libraries of books and periodicals;
634 processed film, videocassette tapes, filmstrips and slides;
635 recorded audiotapes, cassettes and diskettes; and any such items
636 as would be used for teaching, research or other information
637 distribution; however, equipment such as projectors, recorders,
638 audio or video equipment, and monitor televisions are not exempt
639 under this subparagraph.



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

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

646 (xvii) **Multichannel interactive video systems.**
647 From and after July 1, 1990, contracts by Mississippi Authority
648 for Educational Television with any private educational
649 institution or private nonprofit organization whose purposes are
650 educational in regard to the construction, purchase, lease or
651 lease-purchase of facilities and equipment and the employment of
652 personnel for providing multichannel interactive video systems
653 (ITSF) in the school districts of this state.

654 (xviii) **Purchases of prison industry products by**
655 **the Department of Corrections, regional correctional facilities or**
656 **privately owned prisons.** Purchases made by the Mississippi
657 Department of Corrections, regional correctional facilities or
658 privately owned prisons involving any item that is manufactured,
659 processed, grown or produced from the state's prison industries.

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



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

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

674 (xxii) **Garbage, solid waste and sewage contracts.**
675 Contracts for garbage collection or disposal, contracts for solid
676 waste collection or disposal and contracts for sewage collection
677 or disposal.

678 (xxiii) **Municipal water tank maintenance**
679 **contracts.** Professional maintenance program contracts for the
680 repair or maintenance of municipal water tanks, which provide
681 professional services needed to maintain municipal water storage
682 tanks for a fixed annual fee for a duration of two (2) or more
683 years.

684 (xxiv) **Purchases of Mississippi Industries for the**
685 **Blind products.** Purchases made by state agencies or governing
686 authorities involving any item that is manufactured, processed or
687 produced by the Mississippi Industries for the Blind.

688 (xxv) **Purchases of state-adopted textbooks.**
689 Purchases of state-adopted textbooks by public school districts.



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

693 (xxvii) **Used heavy or specialized machinery or**
694 **equipment for installation of soil and water conservation**
695 **practices purchased at auction.** Used heavy or specialized
696 machinery or equipment used for the installation and
697 implementation of soil and water conservation practices or
698 measures purchased subject to the restrictions provided in
699 Sections 69-27-331 through 69-27-341. Any purchase by the State
700 Soil and Water Conservation Commission under the exemption
701 authorized by this subparagraph shall require advance
702 authorization spread upon the minutes of the commission to include
703 the listing of the item or items authorized to be purchased and
704 the maximum bid authorized to be paid for each item or items.

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

708 (xxix) **Purchases made pursuant to qualified**
709 **cooperative purchasing agreements.** Purchases made by certified
710 purchasing offices of state agencies or governing authorities
711 under cooperative purchasing agreements previously approved by the
712 Office of Purchasing and Travel and established by or for any
713 municipality, county, parish or state government or the federal
714 government, provided that the notification to potential



715 contractors includes a clause that sets forth the availability of
716 the cooperative purchasing agreement to other governmental
717 entities. Such purchases shall only be made if the use of the
718 cooperative purchasing agreements is determined to be in the best
719 interest of the governmental entity.

720 (xxx) **School yearbooks.** Purchases of school
721 yearbooks by state agencies or governing authorities; provided,
722 however, that state agencies and governing authorities shall use
723 for these purchases the RFP process as set forth in the
724 Mississippi Procurement Manual adopted by the Office of Purchasing
725 and Travel.

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

729 (xxxiii) **Toll roads and bridge construction**
730 **projects.** Contracts entered into under the provisions of Section
731 65-43-1 or 65-43-3.

732 (xxxiiii) **Certain purchases under Section 57-1-221.**
733 Contracts entered into pursuant to the provisions of Section
734 57-1-221.

735 (xxxv) **Certain transfers made pursuant to the**
736 **provisions of Section 57-105-1(7).** Transfers of public property
737 or facilities under Section 57-105-1(7) and construction related
738 to such public property or facilities.



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

742 (xxxvi) **Certain purchases by an academic medical**
743 **center or health sciences school.** Purchases by an academic
744 medical center or health sciences school, as defined in Section 1
745 of House Bill No. 926, 2017 Regular Session, of commodities that
746 are used for clinical purposes and 1. intended for use in the
747 diagnosis of disease or other conditions or in the cure,
748 mitigation, treatment or prevention of disease, and 2. medical
749 devices, biological, drugs and radiation-emitting devices as
750 defined by the United States Food and Drug Administration.

751 (n) **Term contract authorization.** All contracts for the
752 purchase of:

753 (i) All contracts for the purchase of commodities,
754 equipment and public construction (including, but not limited to,
755 repair and maintenance), may be let for periods of not more than
756 sixty (60) months in advance, subject to applicable statutory
757 provisions prohibiting the letting of contracts during specified
758 periods near the end of terms of office. Term contracts for a
759 period exceeding twenty-four (24) months shall also be subject to
760 ratification or cancellation by governing authority boards taking
761 office subsequent to the governing authority board entering the
762 contract.



763 (ii) Bid proposals and contracts may include price
764 adjustment clauses with relation to the cost to the contractor
765 based upon a nationally published industry-wide or nationally
766 published and recognized cost index. The cost index used in a
767 price adjustment clause shall be determined by the Department of
768 Finance and Administration for the state agencies and by the
769 governing board for governing authorities. The bid proposal and
770 contract documents utilizing a price adjustment clause shall
771 contain the basis and method of adjusting unit prices for the
772 change in the cost of such commodities, equipment and public
773 construction.

774 (o) **Purchase law violation prohibition and vendor**
775 **penalty.** No contract or purchase as herein authorized shall be
776 made for the purpose of circumventing the provisions of this
777 section requiring competitive bids, nor shall it be lawful for any
778 person or concern to submit individual invoices for amounts within
779 those authorized for a contract or purchase where the actual value
780 of the contract or commodity purchased exceeds the authorized
781 amount and the invoices therefor are split so as to appear to be
782 authorized as purchases for which competitive bids are not
783 required. Submission of such invoices shall constitute a
784 misdemeanor punishable by a fine of not less than Five Hundred
785 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
786 or by imprisonment for thirty (30) days in the county jail, or



787 both such fine and imprisonment. In addition, the claim or claims
788 submitted shall be forfeited.

789 (p) **Electrical utility petroleum-based equipment**
790 **purchase procedure.** When in response to a proper advertisement
791 therefor, no bid firm as to price is submitted to an electric
792 utility for power transformers, distribution transformers, power
793 breakers, reclosers or other articles containing a petroleum
794 product, the electric utility may accept the lowest and best bid
795 therefor although the price is not firm.

796 (q) **Fuel management system bidding procedure.** Any
797 governing authority or agency of the state shall, before
798 contracting for the services and products of a fuel management or
799 fuel access system, enter into negotiations with not fewer than
800 two (2) sellers of fuel management or fuel access systems for
801 competitive written bids to provide the services and products for
802 the systems. In the event that the governing authority or agency
803 cannot locate two (2) sellers of such systems or cannot obtain
804 bids from two (2) sellers of such systems, it shall show proof
805 that it made a diligent, good-faith effort to locate and negotiate
806 with two (2) sellers of such systems. Such proof shall include,
807 but not be limited to, publications of a request for proposals and
808 letters soliciting negotiations and bids. For purposes of this
809 paragraph (q), a fuel management or fuel access system is an
810 automated system of acquiring fuel for vehicles as well as
811 management reports detailing fuel use by vehicles and drivers, and



812 the term "competitive written bid" shall have the meaning as
813 defined in paragraph (b) of this section. Governing authorities
814 and agencies shall be exempt from this process when contracting
815 for the services and products of fuel management or fuel access
816 systems under the terms of a state contract established by the
817 Office of Purchasing and Travel.

818 (r) **Solid waste contract proposal procedure.** Before
819 entering into any contract for garbage collection or disposal,
820 contract for solid waste collection or disposal or contract for
821 sewage collection or disposal, which involves an expenditure of
822 more than Fifty Thousand Dollars (\$50,000.00), a governing
823 authority or agency shall issue publicly a request for proposals
824 concerning the specifications for such services which shall be
825 advertised for in the same manner as provided in this section for
826 seeking bids for purchases which involve an expenditure of more
827 than the amount provided in paragraph (c) of this section. Any
828 request for proposals when issued shall contain terms and
829 conditions relating to price, financial responsibility,
830 technology, legal responsibilities and other relevant factors as
831 are determined by the governing authority or agency to be
832 appropriate for inclusion; all factors determined relevant by the
833 governing authority or agency or required by this paragraph (r)
834 shall be duly included in the advertisement to elicit proposals.
835 After responses to the request for proposals have been duly
836 received, the governing authority or agency shall select the most



837 qualified proposal or proposals on the basis of price, technology
838 and other relevant factors and from such proposals, but not
839 limited to the terms thereof, negotiate and enter into contracts
840 with one or more of the persons or firms submitting proposals. If
841 the governing authority or agency deems none of the proposals to
842 be qualified or otherwise acceptable, the request for proposals
843 process may be reinitiated. Notwithstanding any other provisions
844 of this paragraph, where a county with at least thirty-five
845 thousand (35,000) nor more than forty thousand (40,000)
846 population, according to the 1990 federal decennial census, owns
847 or operates a solid waste landfill, the governing authorities of
848 any other county or municipality may contract with the governing
849 authorities of the county owning or operating the landfill,
850 pursuant to a resolution duly adopted and spread upon the minutes
851 of each governing authority involved, for garbage or solid waste
852 collection or disposal services through contract negotiations.

853 (s) **Minority set-aside authorization.** Notwithstanding
854 any provision of this section to the contrary, any agency or
855 governing authority, by order placed on its minutes, may, in its
856 discretion, set aside not more than twenty percent (20%) of its
857 anticipated annual expenditures for the purchase of commodities
858 from minority businesses; however, all such set-aside purchases
859 shall comply with all purchasing regulations promulgated by the
860 Department of Finance and Administration and shall be subject to
861 bid requirements under this section. Set-aside purchases for



862 which competitive bids are required shall be made from the lowest
863 and best minority business bidder. For the purposes of this
864 paragraph, the term "minority business" means a business which is
865 owned by a majority of persons who are United States citizens or
866 permanent resident aliens (as defined by the Immigration and
867 Naturalization Service) of the United States, and who are Asian,
868 Black, Hispanic or Native American, according to the following
869 definitions:

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

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

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

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

881 (t) **Construction punch list restriction.** The
882 architect, engineer or other representative designated by the
883 agency or governing authority that is contracting for public
884 construction or renovation may prepare and submit to the
885 contractor only one (1) preliminary punch list of items that do
886 not meet the contract requirements at the time of substantial



887 completion and one (1) final list immediately before final
888 completion and final payment.

889 (u) **Procurement of construction services by state**
890 **institutions of higher learning.** Contracts for privately financed
891 construction of auxiliary facilities on the campus of a state
892 institution of higher learning may be awarded by the Board of
893 Trustees of State Institutions of Higher Learning to the lowest
894 and best bidder, where sealed bids are solicited, or to the
895 offeror whose proposal is determined to represent the best value
896 to the citizens of the State of Mississippi, where requests for
897 proposals are solicited.

898 (v) **Insurability of bidders for public construction or**
899 **other public contracts.** In any solicitation for bids to perform
900 public construction or other public contracts to which this
901 section applies including, but not limited to, contracts for
902 repair and maintenance, for which the contract will require
903 insurance coverage in an amount of not less than One Million
904 Dollars (\$1,000,000.00), bidders shall be permitted to either
905 submit proof of current insurance coverage in the specified amount
906 or demonstrate ability to obtain the required coverage amount of
907 insurance if the contract is awarded to the bidder. Proof of
908 insurance coverage shall be submitted within five (5) business
909 days from bid acceptance.



910 (w) **Purchase authorization clarification.** Nothing in
911 this section shall be construed as authorizing any purchase not
912 authorized by law.

913 **SECTION 2.** This act shall take effect and be in force from
914 and after its passage.

