

By: Representatives Williams-Barnes,
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To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1014

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NOT LESS THAN THIRTY PERCENT OF THE ANTICIPATED
3 ANNUAL EXPENDITURES OF ANY AGENCY OR GOVERNING AUTHORITY FOR THE
4 PURCHASE OF COMMODITIES SHALL BE PURCHASED FROM MINORITY OWNED
5 BUSINESSES, WOMEN OWNED BUSINESSES, VETERAN OWNED BUSINESSES AND
6 DISADVANTAGED BUSINESSES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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



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

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

67 (i) **Publication requirement.**

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



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

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



96 not be used for any public contract for design or construction of
97 public facilities, including buildings, roads and bridges. The
98 Public Procurement Review Board must approve any contract entered
99 into by alternative process. The provisions of this item 2 shall
100 not apply to the individual state institutions of higher learning.

101 3. The date as published for the bid opening
102 shall not be less than seven (7) working days after the last
103 published notice; however, if the purchase involves a construction
104 project in which the estimated cost is in excess of Fifty Thousand
105 Dollars (\$50,000.00), such bids shall not be opened in less than
106 fifteen (15) working days after the last notice is published and
107 the notice for the purchase of such construction shall be
108 published once each week for two (2) consecutive weeks. However,
109 all American Recovery and Reinvestment Act projects in excess of
110 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
111 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
112 under the American Recovery and Reinvestment Act, publication
113 shall be made one (1) time and the bid opening for construction
114 projects shall not be less than ten (10) working days after the
115 date of the published notice. The notice of intention to let
116 contracts or purchase equipment shall state the time and place at
117 which bids shall be received, list the contracts to be made or
118 types of equipment or supplies to be purchased, and, if all plans
119 and/or specifications are not published, refer to the plans and/or
120 specifications on file. If there is no newspaper published in the



121 county or municipality, then such notice shall be given by posting
122 same at the courthouse, or for municipalities at the city hall,
123 and at two (2) other public places in the county or municipality,
124 and also by publication once each week for two (2) consecutive
125 weeks in some newspaper having a general circulation in the county
126 or municipality in the above-provided manner. On the same date
127 that the notice is submitted to the newspaper for publication, the
128 agency or governing authority involved shall mail written notice
129 to, or provide electronic notification to the main office of the
130 Mississippi Procurement Technical Assistance Program under the
131 Mississippi Development Authority that contains the same
132 information as that in the published notice. Submissions received
133 by the Mississippi Procurement Technical Assistance Program for
134 projects funded by the American Recovery and Reinvestment Act
135 shall be displayed on a separate and unique Internet web page
136 accessible to the public and maintained by the Mississippi
137 Development Authority for the Mississippi Procurement Technical
138 Assistance Program. Those American Recovery and Reinvestment Act
139 related submissions shall be publicly posted within twenty-four
140 (24) hours of receipt by the Mississippi Development Authority and
141 the bid opening shall not occur until the submission has been
142 posted for ten (10) consecutive days. The Department of Finance
143 and Administration shall maintain information regarding contracts
144 and other expenditures from the American Recovery and Reinvestment
145 Act, on a unique Internet web page accessible to the public. The



146 Department of Finance and Administration shall promulgate rules
147 regarding format, content and deadlines, unless otherwise
148 specified by law, of the posting of award notices, contract
149 execution and subsequent amendments, links to the contract
150 documents, expenditures against the awarded contracts and general
151 expenditures of funds from the American Recovery and Reinvestment
152 Act. Within one (1) working day of the contract award, the agency
153 or governing authority shall post to the designated web page
154 maintained by the Department of Finance and Administration, notice
155 of the award, including the award recipient, the contract amount,
156 and a brief summary of the contract in accordance with rules
157 promulgated by the department. Within one (1) working day of the
158 contract execution, the agency or governing authority shall post
159 to the designated web page maintained by the Department of Finance
160 and Administration a summary of the executed contract and make a
161 copy of the appropriately redacted contract documents available
162 for linking to the designated web page in accordance with the
163 rules promulgated by the department. The information provided by
164 the agency or governing authority shall be posted to the web page
165 for the duration of the American Recovery and Reinvestment Act
166 funding or until the project is completed, whichever is longer.

167 (ii) **Bidding process amendment procedure.** If all
168 plans and/or specifications are published in the notification,
169 then the plans and/or specifications may not be amended. If all
170 plans and/or specifications are not published in the notification,



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

183 (iii) **Filing requirement.** In all cases involving
184 governing authorities, before the notice shall be published or
185 posted, the plans or specifications for the construction or
186 equipment being sought shall be filed with the clerk of the board
187 of the governing authority. In addition to these requirements, a
188 bid file shall be established which shall indicate those vendors
189 to whom such solicitations and specifications were issued, and
190 such file shall also contain such information as is pertinent to
191 the bid.

192 (iv) **Specification restrictions.**

193 1. Specifications pertinent to such bidding
194 shall be written so as not to exclude comparable equipment of
195 domestic manufacture. However, if valid justification is



196 presented, the Department of Finance and Administration or the
197 board of a governing authority may approve a request for specific
198 equipment necessary to perform a specific job. Further, such
199 justification, when placed on the minutes of the board of a
200 governing authority, may serve as authority for that governing
201 authority to write specifications to require a specific item of
202 equipment needed to perform a specific job. In addition to these
203 requirements, from and after July 1, 1990, vendors of relocatable
204 classrooms and the specifications for the purchase of such
205 relocatable classrooms published by local school boards shall meet
206 all pertinent regulations of the State Board of Education,
207 including prior approval of such bid by the State Department of
208 Education.

209 2. Specifications for construction projects
210 may include an allowance for commodities, equipment, furniture,
211 construction materials or systems in which prospective bidders are
212 instructed to include in their bids specified amounts for such
213 items so long as the allowance items are acquired by the vendor in
214 a commercially reasonable manner and approved by the
215 agency/governing authority. Such acquisitions shall not be made
216 to circumvent the public purchasing laws.

217 (v) **Electronic bids.** Agencies and governing
218 authorities shall provide a secure electronic interactive system
219 for the submittal of bids requiring competitive bidding that shall
220 be an additional bidding option for those bidders who choose to



221 submit their bids electronically. The Department of Finance and
222 Administration shall provide, by regulation, the standards that
223 agencies must follow when receiving electronic bids. Agencies and
224 governing authorities shall make the appropriate provisions
225 necessary to accept electronic bids from those bidders who choose
226 to submit their bids electronically for all purchases requiring
227 competitive bidding under this section. Any special condition or
228 requirement for the electronic bid submission shall be specified
229 in the advertisement for bids required by this section. Agencies
230 or governing authorities that are currently without available high
231 speed Internet access shall be exempt from the requirement of this
232 subparagraph (v) until such time that high speed Internet access
233 becomes available. Any county having a population of less than
234 twenty thousand (20,000) shall be exempt from the provisions of
235 this subparagraph (v). Any municipality having a population of
236 less than ten thousand (10,000) shall be exempt from the
237 provisions of this subparagraph (v). The provisions of this
238 subparagraph (v) shall not require any bidder to submit bids
239 electronically. When construction bids are submitted
240 electronically, the requirement for including a certificate of
241 responsibility, or a statement that the bid enclosed does not
242 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
243 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
244 deemed in compliance with by including same as an attachment with
245 the electronic bid submittal.



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

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

262 (ii) **Decision procedure for Certified Purchasing**
263 **Offices.** In addition to the decision procedure set forth in
264 subparagraph (i) of this paragraph (d), Certified Purchasing
265 Offices may also use the following procedure: Purchases may be
266 made from the bidder offering the best value. In determining the
267 best value bid, freight and shipping charges shall be included.
268 Life-cycle costing, total cost bids, warranties, guaranteed
269 buy-back provisions, documented previous experience, training
270 costs and other relevant provisions, including, but not limited



271 to, a bidder having a local office and inventory located within
272 the jurisdiction of the governing authority, may be included in
273 the best value calculation. This provision shall authorize
274 Certified Purchasing Offices to utilize a Request For Proposals
275 (RFP) process when purchasing commodities. All best value
276 procedures for state agencies must be in compliance with
277 regulations established by the Department of Finance and
278 Administration. No agency or governing authority shall accept a
279 bid based on items or criteria not included in the specifications.

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

281 **Landmarks.** In addition to the decision procedure set forth in
282 subparagraph (i) of this paragraph (d), where purchase involves
283 renovation, restoration, or both, of the State Capitol Building or
284 any other historical building designated for at least five (5)
285 years as a Mississippi Landmark by the Board of Trustees of the
286 Department of Archives and History under the authority of Sections
287 39-7-7 and 39-7-11, the agency or governing authority may use the
288 following procedure: Purchases may be made from the lowest and
289 best prequalified bidder. Prequalification of bidders shall be
290 determined not less than fifteen (15) working days before the
291 first published notice of bid opening. Prequalification criteria
292 shall be limited to bidder's knowledge and experience in
293 historical restoration, preservation and renovation. In
294 determining the lowest and best bid, freight and shipping charges
295 shall be included. Life-cycle costing, total cost bids,



296 warranties, guaranteed buy-back provisions and other relevant
297 provisions may be included in the best bid calculation. All best
298 bid and prequalification procedures for state agencies must be in
299 compliance with regulations established by the Department of
300 Finance and Administration. If any governing authority accepts a
301 bid other than the lowest bid actually submitted, it shall place
302 on its minutes detailed calculations and narrative summary showing
303 that the accepted bid was determined to be the lowest and best
304 bid, including the dollar amount of the accepted bid and the
305 dollar amount of the lowest bid. No agency or governing authority
306 shall accept a bid based on items not included in the
307 specifications.

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

314 (e) **Lease-purchase authorization.** For the purposes of
315 this section, the term "equipment" shall mean equipment, furniture
316 and, if applicable, associated software and other applicable
317 direct costs associated with the acquisition. Any lease-purchase
318 of equipment which an agency is not required to lease-purchase
319 under the master lease-purchase program pursuant to Section
320 31-7-10 and any lease-purchase of equipment which a governing



321 authority elects to lease-purchase may be acquired by a
322 lease-purchase agreement under this paragraph (e). Lease-purchase
323 financing may also be obtained from the vendor or from a
324 third-party source after having solicited and obtained at least
325 two (2) written competitive bids, as defined in paragraph (b) of
326 this section, for such financing without advertising for such
327 bids. Solicitation for the bids for financing may occur before or
328 after acceptance of bids for the purchase of such equipment or,
329 where no such bids for purchase are required, at any time before
330 the purchase thereof. No such lease-purchase agreement shall be
331 for an annual rate of interest which is greater than the overall
332 maximum interest rate to maturity on general obligation
333 indebtedness permitted under Section 75-17-101, and the term of
334 such lease-purchase agreement shall not exceed the useful life of
335 equipment covered thereby as determined according to the upper
336 limit of the asset depreciation range (ADR) guidelines for the
337 Class Life Asset Depreciation Range System established by the
338 Internal Revenue Service pursuant to the United States Internal
339 Revenue Code and regulations thereunder as in effect on December
340 31, 1980, or comparable depreciation guidelines with respect to
341 any equipment not covered by ADR guidelines. Any lease-purchase
342 agreement entered into pursuant to this paragraph (e) may contain
343 any of the terms and conditions which a master lease-purchase
344 agreement may contain under the provisions of Section 31-7-10(5),
345 and shall contain an annual allocation dependency clause



346 substantially similar to that set forth in Section 31-7-10(8).
347 Each agency or governing authority entering into a lease-purchase
348 transaction pursuant to this paragraph (e) shall maintain with
349 respect to each such lease-purchase transaction the same
350 information as required to be maintained by the Department of
351 Finance and Administration pursuant to Section 31-7-10(13).
352 However, nothing contained in this section shall be construed to
353 permit agencies to acquire items of equipment with a total
354 acquisition cost in the aggregate of less than Ten Thousand
355 Dollars (\$10,000.00) by a single lease-purchase transaction. All
356 equipment, and the purchase thereof by any lessor, acquired by
357 lease-purchase under this paragraph and all lease-purchase
358 payments with respect thereto shall be exempt from all Mississippi
359 sales, use and ad valorem taxes. Interest paid on any
360 lease-purchase agreement under this section shall be exempt from
361 State of Mississippi income taxation.

362 (f) **Alternate bid authorization.** When necessary to
363 ensure ready availability of commodities for public works and the
364 timely completion of public projects, no more than two (2)
365 alternate bids may be accepted by a governing authority for
366 commodities. No purchases may be made through use of such
367 alternate bids procedure unless the lowest and best bidder cannot
368 deliver the commodities contained in his bid. In that event,
369 purchases of such commodities may be made from one (1) of the
370 bidders whose bid was accepted as an alternate.



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

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



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

408 (i) **Road construction petroleum products price**
409 **adjustment clause authorization.** Any agency or governing
410 authority authorized to enter into contracts for the construction,
411 maintenance, surfacing or repair of highways, roads or streets,
412 may include in its bid proposal and contract documents a price
413 adjustment clause with relation to the cost to the contractor,
414 including taxes, based upon an industry-wide cost index, of
415 petroleum products including asphalt used in the performance or
416 execution of the contract or in the production or manufacture of
417 materials for use in such performance. Such industry-wide index
418 shall be established and published monthly by the Mississippi
419 Department of Transportation with a copy thereof to be mailed,
420 upon request, to the clerks of the governing authority of each



421 municipality and the clerks of each board of supervisors
422 throughout the state. The price adjustment clause shall be based
423 on the cost of such petroleum products only and shall not include
424 any additional profit or overhead as part of the adjustment. The
425 bid proposals or document contract shall contain the basis and
426 methods of adjusting unit prices for the change in the cost of
427 such petroleum products.

428 (j) **State agency emergency purchase procedure.** If the
429 governing board or the executive head, or his designees, of any
430 agency of the state shall determine that an emergency exists in
431 regard to the purchase of any commodities or repair contracts, so
432 that the delay incident to giving opportunity for competitive
433 bidding would be detrimental to the interests of the state, then
434 the head of such agency, or his designees, shall file with the
435 Department of Finance and Administration (i) a statement
436 explaining the conditions and circumstances of the emergency,
437 which shall include a detailed description of the events leading
438 up to the situation and the negative impact to the entity if the
439 purchase is made following the statutory requirements set forth in
440 paragraph (a), (b) or (c) of this section, and (ii) a certified
441 copy of the appropriate minutes of the board of such agency
442 requesting the emergency purchase, if applicable. Upon receipt of
443 the statement and applicable board certification, the State Fiscal
444 Officer, or his designees, may, in writing, authorize the purchase



445 or repair without having to comply with competitive bidding
446 requirements.

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

459 Total purchases made under this paragraph (j) shall only be
460 for the purpose of meeting needs created by the emergency
461 situation. Following the emergency purchase, documentation of the
462 purchase, including a description of the commodity purchased, the
463 purchase price thereof and the nature of the emergency shall be
464 filed with the Department of Finance and Administration. Any
465 contract awarded pursuant to this paragraph (j) shall not exceed a
466 term of one (1) year.

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

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



470 regard to the purchase of any commodities or repair contracts, so
471 that the delay incident to giving opportunity for competitive
472 bidding would be detrimental to the interest of the governing
473 authority, then the provisions herein for competitive bidding
474 shall not apply and any officer or agent of such governing
475 authority having general or special authority therefor in making
476 such purchase or repair shall approve the bill presented therefor,
477 and he shall certify in writing thereon from whom such purchase
478 was made, or with whom such a repair contract was made. At the
479 board meeting next following the emergency purchase or repair
480 contract, documentation of the purchase or repair contract,
481 including a description of the commodity purchased, the price
482 thereof and the nature of the emergency shall be presented to the
483 board and shall be placed on the minutes of the board of such
484 governing authority.

485 (1) **Hospital purchase, lease-purchase and lease**
486 **authorization.**

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

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



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

508 (m) **Exceptions from bidding requirements.** Excepted
509 from bid requirements are:

510 (i) **Purchasing agreements approved by department.**
511 Purchasing agreements, contracts and maximum price regulations
512 executed or approved by the Department of Finance and
513 Administration.

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



520 of the component; however, invoices identifying the equipment,
521 specific repairs made, parts identified by number and name,
522 supplies used in such repairs, and the number of hours of labor
523 and costs therefor shall be required for the payment for such
524 repairs.

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

531 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
532 of gravel or fill dirt which are to be removed and transported by
533 the purchaser.

534 (v) **Governmental equipment auctions.** Motor
535 vehicles or other equipment purchased from a federal agency or
536 authority, another governing authority or state agency of the
537 State of Mississippi, or any governing authority or state agency
538 of another state at a public auction held for the purpose of
539 disposing of such vehicles or other equipment. Any purchase by a
540 governing authority under the exemption authorized by this
541 subparagraph (v) shall require advance authorization spread upon
542 the minutes of the governing authority to include the listing of
543 the item or items authorized to be purchased and the maximum bid
544 authorized to be paid for each item or items.



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

565 (vii) **Perishable supplies or food.** Perishable
566 supplies or food purchased for use in connection with hospitals,
567 the school lunch programs, homemaking programs and for the feeding
568 of county or municipal prisoners.



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

587 (ix) **Waste disposal facility construction**
588 **contracts.** Construction of incinerators and other facilities for
589 disposal of solid wastes in which products either generated
590 therein, such as steam, or recovered therefrom, such as materials
591 for recycling, are to be sold or otherwise disposed of; however,
592 in constructing such facilities, a governing authority or agency
593 shall publicly issue requests for proposals, advertised for in the



594 same manner as provided herein for seeking bids for public
595 construction projects, concerning the design, construction,
596 ownership, operation and/or maintenance of such facilities,
597 wherein such requests for proposals when issued shall contain
598 terms and conditions relating to price, financial responsibility,
599 technology, environmental compatibility, legal responsibilities
600 and such other matters as are determined by the governing
601 authority or agency to be appropriate for inclusion; and after
602 responses to the request for proposals have been duly received,
603 the governing authority or agency may select the most qualified
604 proposal or proposals on the basis of price, technology and other
605 relevant factors and from such proposals, but not limited to the
606 terms thereof, negotiate and enter contracts with one or more of
607 the persons or firms submitting proposals.

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

611 (xi) **Information technology products.** Purchases
612 of information technology products made by governing authorities
613 under the provisions of purchase schedules, or contracts executed
614 or approved by the Mississippi Department of Information
615 Technology Services and designated for use by governing
616 authorities.

617 (xii) **Energy efficiency services and equipment.**
618 Energy efficiency services and equipment acquired by school



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

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

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

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

628 Purchases by libraries or for libraries of books and periodicals;
629 processed film, videocassette tapes, filmstrips and slides;
630 recorded audiotapes, cassettes and diskettes; and any such items
631 as would be used for teaching, research or other information
632 distribution; however, equipment such as projectors, recorders,
633 audio or video equipment, and monitor televisions are not exempt
634 under this subparagraph.

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

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

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

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



644 institution or private nonprofit organization whose purposes are
645 educational in regard to the construction, purchase, lease or
646 lease-purchase of facilities and equipment and the employment of
647 personnel for providing multichannel interactive video systems
648 (ITSF) in the school districts of this state.

649 (xviii) **Purchases of prison industry products by**
650 **the Department of Corrections, regional correctional facilities or**
651 **privately owned prisons.** Purchases made by the Mississippi
652 Department of Corrections, regional correctional facilities or
653 privately owned prisons involving any item that is manufactured,
654 processed, grown or produced from the state's prison industries.

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

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

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



669 (xxii) **Garbage, solid waste and sewage contracts.**
670 Contracts for garbage collection or disposal, contracts for solid
671 waste collection or disposal and contracts for sewage collection
672 or disposal.

673 (xxiii) **Municipal water tank maintenance**
674 **contracts.** Professional maintenance program contracts for the
675 repair or maintenance of municipal water tanks, which provide
676 professional services needed to maintain municipal water storage
677 tanks for a fixed annual fee for a duration of two (2) or more
678 years.

679 (xxiv) **Purchases of Mississippi Industries for the**
680 **Blind products.** Purchases made by state agencies or governing
681 authorities involving any item that is manufactured, processed or
682 produced by the Mississippi Industries for the Blind.

683 (xxv) **Purchases of state-adopted textbooks.**
684 Purchases of state-adopted textbooks by public school districts.

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

688 (xxvii) **Used heavy or specialized machinery or**
689 **equipment for installation of soil and water conservation**
690 **practices purchased at auction.** Used heavy or specialized
691 machinery or equipment used for the installation and
692 implementation of soil and water conservation practices or
693 measures purchased subject to the restrictions provided in



694 Sections 69-27-331 through 69-27-341. Any purchase by the State
695 Soil and Water Conservation Commission under the exemption
696 authorized by this subparagraph shall require advance
697 authorization spread upon the minutes of the commission to include
698 the listing of the item or items authorized to be purchased and
699 the maximum bid authorized to be paid for each item or items.

700 (xxviii) **Hospital lease of equipment or services.**

701 Leases by hospitals of equipment or services if the leases are in
702 compliance with paragraph (1)(ii).

703 (xxix) **Purchases made pursuant to qualified**

704 **cooperative purchasing agreements.** Purchases made by certified
705 purchasing offices of state agencies or governing authorities
706 under cooperative purchasing agreements previously approved by the
707 Office of Purchasing and Travel and established by or for any
708 municipality, county, parish or state government or the federal
709 government, provided that the notification to potential
710 contractors includes a clause that sets forth the availability of
711 the cooperative purchasing agreement to other governmental
712 entities. Such purchases shall only be made if the use of the
713 cooperative purchasing agreements is determined to be in the best
714 interest of the governmental entity.

715 (xxx) **School yearbooks.** Purchases of school

716 yearbooks by state agencies or governing authorities; provided,
717 however, that state agencies and governing authorities shall use
718 for these purchases the RFP process as set forth in the



719 Mississippi Procurement Manual adopted by the Office of Purchasing
720 and Travel.

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

724 (xxxiii) **Toll roads and bridge construction**
725 **projects.** Contracts entered into under the provisions of Section
726 65-43-1 or 65-43-3.

727 (xxxiiii) **Certain purchases under Section 57-1-221.**
728 Contracts entered into pursuant to the provisions of Section
729 57-1-221.

730 (xxxiv) **Certain transfers made pursuant to the**
731 **provisions of Section 57-105-1(7).** Transfers of public property
732 or facilities under Section 57-105-1(7) and construction related
733 to such public property or facilities.

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

737 (xxxvi) **Certain purchases by an academic medical**
738 **center or health sciences school.** Purchases by an academic
739 medical center or health sciences school, as defined in Section
740 37-115-50, of commodities that are used for clinical purposes and
741 1. intended for use in the diagnosis of disease or other
742 conditions or in the cure, mitigation, treatment or prevention of
743 disease, and 2. medical devices, biological, drugs and



744 radiation-emitting devices as defined by the United States Food
745 and Drug Administration.

746 (n) **Term contract authorization.** All contracts for the
747 purchase of:

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

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



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

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

791 (q) **Fuel management system bidding procedure.** Any
792 governing authority or agency of the state shall, before
793 contracting for the services and products of a fuel management or



794 fuel access system, enter into negotiations with not fewer than
795 two (2) sellers of fuel management or fuel access systems for
796 competitive written bids to provide the services and products for
797 the systems. In the event that the governing authority or agency
798 cannot locate two (2) sellers of such systems or cannot obtain
799 bids from two (2) sellers of such systems, it shall show proof
800 that it made a diligent, good-faith effort to locate and negotiate
801 with two (2) sellers of such systems. Such proof shall include,
802 but not be limited to, publications of a request for proposals and
803 letters soliciting negotiations and bids. For purposes of this
804 paragraph (q), a fuel management or fuel access system is an
805 automated system of acquiring fuel for vehicles as well as
806 management reports detailing fuel use by vehicles and drivers, and
807 the term "competitive written bid" shall have the meaning as
808 defined in paragraph (b) of this section. Governing authorities
809 and agencies shall be exempt from this process when contracting
810 for the services and products of fuel management or fuel access
811 systems under the terms of a state contract established by the
812 Office of Purchasing and Travel.

813 (r) **Solid waste contract proposal procedure.** Before
814 entering into any contract for garbage collection or disposal,
815 contract for solid waste collection or disposal or contract for
816 sewage collection or disposal, which involves an expenditure of
817 more than Fifty Thousand Dollars (\$50,000.00), a governing
818 authority or agency shall issue publicly a request for proposals



819 concerning the specifications for such services which shall be
820 advertised for in the same manner as provided in this section for
821 seeking bids for purchases which involve an expenditure of more
822 than the amount provided in paragraph (c) of this section. Any
823 request for proposals when issued shall contain terms and
824 conditions relating to price, financial responsibility,
825 technology, legal responsibilities and other relevant factors as
826 are determined by the governing authority or agency to be
827 appropriate for inclusion; all factors determined relevant by the
828 governing authority or agency or required by this paragraph (r)
829 shall be duly included in the advertisement to elicit proposals.
830 After responses to the request for proposals have been duly
831 received, the governing authority or agency shall select the most
832 qualified proposal or proposals on the basis of price, technology
833 and other relevant factors and from such proposals, but not
834 limited to the terms thereof, negotiate and enter into contracts
835 with one or more of the persons or firms submitting proposals. If
836 the governing authority or agency deems none of the proposals to
837 be qualified or otherwise acceptable, the request for proposals
838 process may be reinitiated. Notwithstanding any other provisions
839 of this paragraph, where a county with at least thirty-five
840 thousand (35,000) nor more than forty thousand (40,000)
841 population, according to the 1990 federal decennial census, owns
842 or operates a solid waste landfill, the governing authorities of
843 any other county or municipality may contract with the governing



844 authorities of the county owning or operating the landfill,
845 pursuant to a resolution duly adopted and spread upon the minutes
846 of each governing authority involved, for garbage or solid waste
847 collection or disposal services through contract negotiations.

848 (s) **Minority set-aside authorization.** Notwithstanding
849 any provision of this section to the contrary, any agency or
850 governing authority, by order placed on its minutes, * * * shall
851 set aside not * * * less than * * * thirty percent (30%) of its
852 anticipated annual expenditures for the purchase of commodities
853 from minority owned businesses, woman owned businesses, veteran
854 owned businesses and disadvantaged businesses * * *. The thirty
855 percent (30%) of anticipated annual expenditures for the purchase
856 of commodities shall be set aside as follows:

857 (i) Ten percent (10%) to minority owned
858 businesses, which for the purposes of this paragraph (s), means a
859 business which is owned by a majority of persons who are United
860 States citizens or permanent resident aliens (as defined by the
861 Immigration and Naturalization Service) of the United States, and
862 who are Asian, Black, Hispanic or Native American, according to
863 the following definitions:

864 1. "Asian" means persons having origins in
865 any of the original people of the Far East, Southeast Asia, the
866 Indian subcontinent, or the Pacific Islands;

867 2. "Black" means persons having origins in
868 any black racial group of Africa;



869 3. "Hispanic" means persons of Spanish or
870 Portuguese culture with origins in Mexico, South or Central
871 America, or the Caribbean Islands, regardless of race;

872 4. "Native American" means persons having
873 origins in any of the original people of North America, including
874 American Indians, Eskimos and Aleuts;

875 (ii) Ten percent (10%) to veteran owned
876 businesses, which for the purposes of this paragraph (s), means a
877 business which is owned by a majority of persons who are United
878 States citizens or permanent resident aliens (as defined by the
879 Immigration and Naturalization Service) of the United States, and
880 who are veterans as that term is defined in 38 USCS 101(2);

881 (iii) Five percent (5%) to woman owned businesses,
882 which for the purposes of this paragraph (s), means a business
883 which is owned by a majority of persons who are United States
884 citizens or permanent resident aliens (as defined by the
885 Immigration and Naturalization Service) of the United States, and
886 who are women; and

887 (iv) Five percent (5%) to disadvantaged
888 businesses, which for the purposes of this paragraph (s), means a
889 business which is owned by a majority of persons who are United
890 States citizens or permanent resident aliens (as defined by the
891 Immigration and Naturalization Service) of the United States, and
892 who are socially and economically disadvantaged individuals as



893 that term is defined in Section 8(d) of the Small Business Act (15
894 USCS, Section 637(d)).

895 All such set-aside purchases shall comply with all purchasing
896 regulations promulgated by the Department of Finance and
897 Administration and shall be subject to bid requirements under this
898 section. Set-aside purchases for which competitive bids are
899 required shall be made from the lowest and best minority owned
900 business, woman owned business, veteran owned business or
901 disadvantaged business bidder. * * *

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

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



917 to the citizens of the State of Mississippi, where requests for
918 proposals are solicited.

919 (v) **Insurability of bidders for public construction or**
920 **other public contracts.** In any solicitation for bids to perform
921 public construction or other public contracts to which this
922 section applies including, but not limited to, contracts for
923 repair and maintenance, for which the contract will require
924 insurance coverage in an amount of not less than One Million
925 Dollars (\$1,000,000.00), bidders shall be permitted to either
926 submit proof of current insurance coverage in the specified amount
927 or demonstrate ability to obtain the required coverage amount of
928 insurance if the contract is awarded to the bidder. Proof of
929 insurance coverage shall be submitted within five (5) business
930 days from bid acceptance.

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

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

