

By: Representative DeLano

To: Technology

HOUSE BILL NO. 1131
(As Passed the House)

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

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

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

25 31-7-13. All agencies and governing authorities shall
26 purchase their commodities and printing; contract for garbage
27 collection or disposal; contract for solid waste collection or



28 disposal; contract for sewage collection or disposal; contract for
29 public construction; and contract for rentals as herein provided.

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

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

35 (a) shall be construed to prohibit any agency or governing
36 authority from establishing procedures which require competitive
37 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

38 (b) **Bidding procedure for purchases over \$5,000.00 but
39 not over \$50,000.00.** Purchases which involve an expenditure of

40 more than Five Thousand Dollars (\$5,000.00) but not more than
41 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
42 shipping charges, may be made from the lowest and best bidder
43 without publishing or posting advertisement for bids, provided at

44 least two (2) competitive written bids have been obtained. Any
45 state agency or community/junior college purchasing commodities or
46 procuring construction pursuant to this paragraph (b) may

47 authorize its purchasing agent, or his designee, to accept the
48 lowest competitive written bid under Fifty Thousand Dollars
49 (\$50,000.00). Any governing authority purchasing commodities

50 pursuant to this paragraph (b) may authorize its purchasing agent,
51 or his designee, with regard to governing authorities other than
52 counties, or its purchase clerk, or his designee, with regard to



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



78 submitted by electronic transmission shall not require the
79 signature of the vendor's representative unless required by
80 agencies or governing authorities.

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

82 (i) **Publication requirement.**

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

95 2. Reverse auctions shall be the primary
96 method for receiving bids during the bidding process. If * * * an
97 agency or governing authority determines that a reverse auction is
98 not in the best interest of the * * * agency or governing
99 authority, then with respect to an agency, that determination must
100 be approved by the Public Procurement Review Board, and with
101 respect to a governing authority, that determination must be
102 approved by the governing body of the governing authority. * * *



103 An agency shall submit a detailed explanation of why a reverse
104 auction would not be in the best interest of the * * * agency and
105 present an alternative process to be approved by the Public
106 Procurement Review Board. A governing authority shall make
107 findings in its minutes of why a reverse auction would not be in
108 the best interest of the governing authority. If as to an agency,
109 the Public Procurement Review Board authorizes the purchasing
110 entity to solicit bids with a method other than reverse auction,
111 or if as to a governing authority, the governing board thereof
112 authorizes the purchasing entity to solicit bids with a method
113 other than reverse auction, then the purchasing entity may
114 designate the other methods by which the bids will be received,
115 including, but not limited to, bids sealed in an envelope, bids
116 received electronically in a secure system, or bids received by
117 any other method that promotes open competition and has been
118 approved by the Office of Purchasing and Travel. However, reverse
119 auction shall not be used for any public contract for design or
120 construction of public facilities, including buildings, roads and
121 bridges. * * * As to an agency, the Public Procurement Review
122 Board must approve any contract entered into by alternative
123 process. The provisions of this item 2 shall not apply to the
124 individual state institutions of higher learning.

125 3. The date as published for the bid opening
126 shall not be less than seven (7) working days after the last
127 published notice; however, if the purchase involves a construction



128 project in which the estimated cost is in excess of Fifty Thousand
129 Dollars (\$50,000.00), such bids shall not be opened in less than
130 fifteen (15) working days after the last notice is published and
131 the notice for the purchase of such construction shall be
132 published once each week for two (2) consecutive weeks. However,
133 all American Recovery and Reinvestment Act projects in excess of
134 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
135 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
136 under the American Recovery and Reinvestment Act, publication
137 shall be made one (1) time and the bid opening for construction
138 projects shall not be less than ten (10) working days after the
139 date of the published notice. The notice of intention to let
140 contracts or purchase equipment shall state the time and place at
141 which bids shall be received, list the contracts to be made or
142 types of equipment or supplies to be purchased, and, if all plans
143 and/or specifications are not published, refer to the plans and/or
144 specifications on file. If there is no newspaper published in the
145 county or municipality, then such notice shall be given by posting
146 same at the courthouse, or for municipalities at the city hall,
147 and at two (2) other public places in the county or municipality,
148 and also by publication once each week for two (2) consecutive
149 weeks in some newspaper having a general circulation in the county
150 or municipality in the above-provided manner. On the same date
151 that the notice is submitted to the newspaper for publication, the
152 agency or governing authority involved shall mail written notice



153 to, or provide electronic notification to the main office of the
154 Mississippi Procurement Technical Assistance Program under the
155 Mississippi Development Authority that contains the same
156 information as that in the published notice. Submissions received
157 by the Mississippi Procurement Technical Assistance Program for
158 projects funded by the American Recovery and Reinvestment Act
159 shall be displayed on a separate and unique Internet web page
160 accessible to the public and maintained by the Mississippi
161 Development Authority for the Mississippi Procurement Technical
162 Assistance Program. Those American Recovery and Reinvestment Act
163 related submissions shall be publicly posted within twenty-four
164 (24) hours of receipt by the Mississippi Development Authority and
165 the bid opening shall not occur until the submission has been
166 posted for ten (10) consecutive days. The Department of Finance
167 and Administration shall maintain information regarding contracts
168 and other expenditures from the American Recovery and Reinvestment
169 Act, on a unique Internet web page accessible to the public. The
170 Department of Finance and Administration shall promulgate rules
171 regarding format, content and deadlines, unless otherwise
172 specified by law, of the posting of award notices, contract
173 execution and subsequent amendments, links to the contract
174 documents, expenditures against the awarded contracts and general
175 expenditures of funds from the American Recovery and Reinvestment
176 Act. Within one (1) working day of the contract award, the agency
177 or governing authority shall post to the designated web page



178 maintained by the Department of Finance and Administration, notice
179 of the award, including the award recipient, the contract amount,
180 and a brief summary of the contract in accordance with rules
181 promulgated by the department. Within one (1) working day of the
182 contract execution, the agency or governing authority shall post
183 to the designated web page maintained by the Department of Finance
184 and Administration a summary of the executed contract and make a
185 copy of the appropriately redacted contract documents available
186 for linking to the designated web page in accordance with the
187 rules promulgated by the department. The information provided by
188 the agency or governing authority shall be posted to the web page
189 for the duration of the American Recovery and Reinvestment Act
190 funding or until the project is completed, whichever is longer.

191 (ii) **Bidding process amendment procedure.** If all
192 plans and/or specifications are published in the notification,
193 then the plans and/or specifications may not be amended. If all
194 plans and/or specifications are not published in the notification,
195 then amendments to the plans/specifications, bid opening date, bid
196 opening time and place may be made, provided that the agency or
197 governing authority maintains a list of all prospective bidders
198 who are known to have received a copy of the bid documents and all
199 such prospective bidders are sent copies of all amendments. This
200 notification of amendments may be made via mail, facsimile,
201 electronic mail or other generally accepted method of information
202 distribution. No addendum to bid specifications may be issued



203 within two (2) working days of the time established for the
204 receipt of bids unless such addendum also amends the bid opening
205 to a date not less than five (5) working days after the date of
206 the addendum.

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

216 (iv) **Specification restrictions.**

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



228 classrooms and the specifications for the purchase of such
229 relocatable classrooms published by local school boards shall meet
230 all pertinent regulations of the State Board of Education,
231 including prior approval of such bid by the State Department of
232 Education.

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

241 (v) **Electronic bids.** Agencies and governing
242 authorities shall provide a secure electronic interactive system
243 for the submittal of bids requiring competitive bidding that shall
244 be an additional bidding option for those bidders who choose to
245 submit their bids electronically. The Department of Finance and
246 Administration shall provide, by regulation, the standards that
247 agencies must follow when receiving electronic bids. Agencies and
248 governing authorities shall make the appropriate provisions
249 necessary to accept electronic bids from those bidders who choose
250 to submit their bids electronically for all purchases requiring
251 competitive bidding under this section. Any special condition or
252 requirement for the electronic bid submission shall be specified



253 in the advertisement for bids required by this section. Agencies
254 or governing authorities that are currently without available high
255 speed Internet access shall be exempt from the requirement of this
256 subparagraph (v) until such time that high speed Internet access
257 becomes available. Any county having a population of less than
258 twenty thousand (20,000) shall be exempt from the provisions of
259 this subparagraph (v). Any municipality having a population of
260 less than ten thousand (10,000) shall be exempt from the
261 provisions of this subparagraph (v). The provisions of this
262 subparagraph (v) shall not require any bidder to submit bids
263 electronically. When construction bids are submitted
264 electronically, the requirement for including a certificate of
265 responsibility, or a statement that the bid enclosed does not
266 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
267 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
268 deemed in compliance with by including same as an attachment with
269 the electronic bid submittal.

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

271 (i) **Decision procedure.** Purchases may be made
272 from the lowest and best bidder. In determining the lowest and
273 best bid, freight and shipping charges shall be included.
274 Life-cycle costing, total cost bids, warranties, guaranteed
275 buy-back provisions and other relevant provisions may be included
276 in the best bid calculation. All best bid procedures for state
277 agencies must be in compliance with regulations established by the



278 Department of Finance and Administration. If any governing
279 authority accepts a bid other than the lowest bid actually
280 submitted, it shall place on its minutes detailed calculations and
281 narrative summary showing that the accepted bid was determined to
282 be the lowest and best bid, including the dollar amount of the
283 accepted bid and the dollar amount of the lowest bid. No agency
284 or governing authority shall accept a bid based on items not
285 included in the specifications.

286 (ii) **Decision procedure for Certified Purchasing**
287 **Offices.** In addition to the decision procedure set forth in
288 subparagraph (i) of this paragraph (d), Certified Purchasing
289 Offices may also use the following procedure: Purchases may be
290 made from the bidder offering the best value. In determining the
291 best value bid, freight and shipping charges shall be included.
292 Life-cycle costing, total cost bids, warranties, guaranteed
293 buy-back provisions, documented previous experience, training
294 costs and other relevant provisions, including, but not limited
295 to, a bidder having a local office and inventory located within
296 the jurisdiction of the governing authority, may be included in
297 the best value calculation. This provision shall authorize
298 Certified Purchasing Offices to utilize a Request For Proposals
299 (RFP) process when purchasing commodities. All best value
300 procedures for state agencies must be in compliance with
301 regulations established by the Department of Finance and



302 Administration. No agency or governing authority shall accept a
303 bid based on items or criteria not included in the specifications.

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

305 **Landmarks.** In addition to the decision procedure set forth in
306 subparagraph (i) of this paragraph (d), where purchase involves
307 renovation, restoration, or both, of the State Capitol Building or
308 any other historical building designated for at least five (5)
309 years as a Mississippi Landmark by the Board of Trustees of the
310 Department of Archives and History under the authority of Sections
311 39-7-7 and 39-7-11, the agency or governing authority may use the
312 following procedure: Purchases may be made from the lowest and
313 best prequalified bidder. Prequalification of bidders shall be
314 determined not less than fifteen (15) working days before the
315 first published notice of bid opening. Prequalification criteria
316 shall be limited to bidder's knowledge and experience in
317 historical restoration, preservation and renovation. In
318 determining the lowest and best bid, freight and shipping charges
319 shall be included. Life-cycle costing, total cost bids,
320 warranties, guaranteed buy-back provisions and other relevant
321 provisions may be included in the best bid calculation. All best
322 bid and prequalification procedures for state agencies must be in
323 compliance with regulations established by the Department of
324 Finance and Administration. If any governing authority accepts a
325 bid other than the lowest bid actually submitted, it shall place
326 on its minutes detailed calculations and narrative summary showing



327 that the accepted bid was determined to be the lowest and best
328 bid, including the dollar amount of the accepted bid and the
329 dollar amount of the lowest bid. No agency or governing authority
330 shall accept a bid based on items not included in the
331 specifications.

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

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

338 (e) **Lease-purchase authorization.** For the purposes of
339 this section, the term "equipment" shall mean equipment, furniture
340 and, if applicable, associated software and other applicable
341 direct costs associated with the acquisition. Any lease-purchase
342 of equipment which an agency is not required to lease-purchase
343 under the master lease-purchase program pursuant to Section
344 31-7-10 and any lease-purchase of equipment which a governing
345 authority elects to lease-purchase may be acquired by a
346 lease-purchase agreement under this paragraph (e). Lease-purchase
347 financing may also be obtained from the vendor or from a
348 third-party source after having solicited and obtained at least
349 two (2) written competitive bids, as defined in paragraph (b) of
350 this section, for such financing without advertising for such
351 bids. Solicitation for the bids for financing may occur before or



352 after acceptance of bids for the purchase of such equipment or,
353 where no such bids for purchase are required, at any time before
354 the purchase thereof. No such lease-purchase agreement shall be
355 for an annual rate of interest which is greater than the overall
356 maximum interest rate to maturity on general obligation
357 indebtedness permitted under Section 75-17-101, and the term of
358 such lease-purchase agreement shall not exceed the useful life of
359 equipment covered thereby as determined according to the upper
360 limit of the asset depreciation range (ADR) guidelines for the
361 Class Life Asset Depreciation Range System established by the
362 Internal Revenue Service pursuant to the United States Internal
363 Revenue Code and regulations thereunder as in effect on December
364 31, 1980, or comparable depreciation guidelines with respect to
365 any equipment not covered by ADR guidelines. Any lease-purchase
366 agreement entered into pursuant to this paragraph (e) may contain
367 any of the terms and conditions which a master lease-purchase
368 agreement may contain under the provisions of Section 31-7-10(5),
369 and shall contain an annual allocation dependency clause
370 substantially similar to that set forth in Section 31-7-10(8).
371 Each agency or governing authority entering into a lease-purchase
372 transaction pursuant to this paragraph (e) shall maintain with
373 respect to each such lease-purchase transaction the same
374 information as required to be maintained by the Department of
375 Finance and Administration pursuant to Section 31-7-10(13).
376 However, nothing contained in this section shall be construed to



377 permit agencies to acquire items of equipment with a total
378 acquisition cost in the aggregate of less than Ten Thousand
379 Dollars (\$10,000.00) by a single lease-purchase transaction. All
380 equipment, and the purchase thereof by any lessor, acquired by
381 lease-purchase under this paragraph and all lease-purchase
382 payments with respect thereto shall be exempt from all Mississippi
383 sales, use and ad valorem taxes. Interest paid on any
384 lease-purchase agreement under this section shall be exempt from
385 State of Mississippi income taxation.

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

395 (g) **Construction contract change authorization.** In the
396 event a determination is made by an agency or governing authority
397 after a construction contract is let that changes or modifications
398 to the original contract are necessary or would better serve the
399 purpose of the agency or the governing authority, such agency or
400 governing authority may, in its discretion, order such changes
401 pertaining to the construction that are necessary under the



402 circumstances without the necessity of further public bids;
403 provided that such change shall be made in a commercially
404 reasonable manner and shall not be made to circumvent the public
405 purchasing statutes. In addition to any other authorized person,
406 the architect or engineer hired by an agency or governing
407 authority with respect to any public construction contract shall
408 have the authority, when granted by an agency or governing
409 authority, to authorize changes or modifications to the original
410 contract without the necessity of prior approval of the agency or
411 governing authority when any such change or modification is less
412 than one percent (1%) of the total contract amount. The agency or
413 governing authority may limit the number, manner or frequency of
414 such emergency changes or modifications.

415 (h) **Petroleum purchase alternative.** In addition to
416 other methods of purchasing authorized in this chapter, when any
417 agency or governing authority shall have a need for gas, diesel
418 fuel, oils and/or other petroleum products in excess of the amount
419 set forth in paragraph (a) of this section, such agency or
420 governing authority may purchase the commodity after having
421 solicited and obtained at least two (2) competitive written bids,
422 as defined in paragraph (b) of this section. If two (2)
423 competitive written bids are not obtained, the entity shall comply
424 with the procedures set forth in paragraph (c) of this section.
425 In the event any agency or governing authority shall have
426 advertised for bids for the purchase of gas, diesel fuel, oils and



427 other petroleum products and coal and no acceptable bids can be
428 obtained, such agency or governing authority is authorized and
429 directed to enter into any negotiations necessary to secure the
430 lowest and best contract available for the purchase of such
431 commodities.

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



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

471 If the governing board or the executive head, or his
472 designees, of any agency determines that an emergency exists in
473 regard to the purchase of any commodities or repair contracts, so
474 that the delay incident to giving opportunity for competitive
475 bidding would threaten the health or safety of any person, or the
476 preservation or protection of property, then the provisions in



477 this section for competitive bidding shall not apply, and any
478 officer or agent of the agency having general or specific
479 authority for making the purchase or repair contract shall approve
480 the bill presented for payment, and he shall certify in writing
481 from whom the purchase was made, or with whom the repair contract
482 was made.

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

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

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



502 was made, or with whom such a repair contract was made. At the
503 board meeting next following the emergency purchase or repair
504 contract, documentation of the purchase or repair contract,
505 including a description of the commodity purchased, the price
506 thereof and the nature of the emergency shall be presented to the
507 board and shall be placed on the minutes of the board of such
508 governing authority.

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

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

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



527 liability on the part of the lessee. Any such contract for the
528 lease of equipment or services executed on behalf of the
529 commissioners or board that complies with the provisions of this
530 subparagraph (ii) shall be excepted from the bid requirements set
531 forth in this section.

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

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

535 Purchasing agreements, contracts and maximum price regulations
536 executed or approved by the Department of Finance and
537 Administration.

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

549 (iii) **In-house equipment repairs.** Purchases of
550 parts for repairs to equipment, when such repairs are made by
551 personnel of the agency or governing authority; however, entire



552 assemblies, such as engines or transmissions, shall not be
553 included in this exemption when the entire assembly is being
554 replaced instead of being repaired.

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

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

569 (vi) **Intergovernmental sales and transfers.**
570 Purchases, sales, transfers or trades by governing authorities or
571 state agencies when such purchases, sales, transfers or trades are
572 made by a private treaty agreement or through means of
573 negotiation, from any federal agency or authority, another
574 governing authority or state agency of the State of Mississippi,
575 or any state agency or governing authority of another state.
576 Nothing in this section shall permit such purchases through public



577 auction except as provided for in subparagraph (v) of this
578 paragraph (m). It is the intent of this section to allow
579 governmental entities to dispose of and/or purchase commodities
580 from other governmental entities at a price that is agreed to by
581 both parties. This shall allow for purchases and/or sales at
582 prices which may be determined to be below the market value if the
583 selling entity determines that the sale at below market value is
584 in the best interest of the taxpayers of the state. Governing
585 authorities shall place the terms of the agreement and any
586 justification on the minutes, and state agencies shall obtain
587 approval from the Department of Finance and Administration, prior
588 to releasing or taking possession of the commodities.

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

593 (viii) **Single source items.** Noncompetitive items
594 available from one (1) source only. In connection with the
595 purchase of noncompetitive items only available from one (1)
596 source, a certification of the conditions and circumstances
597 requiring the purchase shall be filed by the agency with the
598 Department of Finance and Administration and by the governing
599 authority with the board of the governing authority. Upon receipt
600 of that certification the Department of Finance and Administration
601 or the board of the governing authority, as the case may be, may,



602 in writing, authorize the purchase, which authority shall be noted
603 on the minutes of the body at the next regular meeting thereafter.
604 In those situations, a governing authority is not required to
605 obtain the approval of the Department of Finance and
606 Administration. Following the purchase, the executive head of the
607 state agency, or his designees, shall file with the Department of
608 Finance and Administration, documentation of the purchase,
609 including a description of the commodity purchased, the purchase
610 price thereof and the source from whom it was purchased.

611 (ix) **Waste disposal facility construction**
612 **contracts.** Construction of incinerators and other facilities for
613 disposal of solid wastes in which products either generated
614 therein, such as steam, or recovered therefrom, such as materials
615 for recycling, are to be sold or otherwise disposed of; however,
616 in constructing such facilities, a governing authority or agency
617 shall publicly issue requests for proposals, advertised for in the
618 same manner as provided herein for seeking bids for public
619 construction projects, concerning the design, construction,
620 ownership, operation and/or maintenance of such facilities,
621 wherein such requests for proposals when issued shall contain
622 terms and conditions relating to price, financial responsibility,
623 technology, environmental compatibility, legal responsibilities
624 and such other matters as are determined by the governing
625 authority or agency to be appropriate for inclusion; and after
626 responses to the request for proposals have been duly received,



627 the governing authority or agency may select the most qualified
628 proposal or proposals on the basis of price, technology and other
629 relevant factors and from such proposals, but not limited to the
630 terms thereof, negotiate and enter contracts with one or more of
631 the persons or firms submitting proposals.

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

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

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

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



651 (xiv) **Library books and other reference materials.**
652 Purchases by libraries or for libraries of books and periodicals;
653 processed film, videocassette tapes, filmstrips and slides;
654 recorded audiotapes, cassettes and diskettes; and any such items
655 as would be used for teaching, research or other information
656 distribution; however, equipment such as projectors, recorders,
657 audio or video equipment, and monitor televisions are not exempt
658 under this subparagraph.

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

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

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

673 (xviii) **Purchases of prison industry products by**
674 **the Department of Corrections, regional correctional facilities or**
675 **privately owned prisons.** Purchases made by the Mississippi



676 Department of Corrections, regional correctional facilities or
677 privately owned prisons involving any item that is manufactured,
678 processed, grown or produced from the state's prison industries.

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

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

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

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

697 (xxiii) **Municipal water tank maintenance**
698 **contracts.** Professional maintenance program contracts for the
699 repair or maintenance of municipal water tanks, which provide
700 professional services needed to maintain municipal water storage



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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



772 (i) All contracts for the purchase of commodities,
773 equipment and public construction (including, but not limited to,
774 repair and maintenance), may be let for periods of not more than
775 sixty (60) months in advance, subject to applicable statutory
776 provisions prohibiting the letting of contracts during specified
777 periods near the end of terms of office. Term contracts for a
778 period exceeding twenty-four (24) months shall also be subject to
779 ratification or cancellation by governing authority boards taking
780 office subsequent to the governing authority board entering the
781 contract.

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

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



797 person or concern to submit individual invoices for amounts within
798 those authorized for a contract or purchase where the actual value
799 of the contract or commodity purchased exceeds the authorized
800 amount and the invoices therefor are split so as to appear to be
801 authorized as purchases for which competitive bids are not
802 required. Submission of such invoices shall constitute a
803 misdemeanor punishable by a fine of not less than Five Hundred
804 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
805 or by imprisonment for thirty (30) days in the county jail, or
806 both such fine and imprisonment. In addition, the claim or claims
807 submitted shall be forfeited.

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

815 (q) **Fuel management system bidding procedure.** Any
816 governing authority or agency of the state shall, before
817 contracting for the services and products of a fuel management or
818 fuel access system, enter into negotiations with not fewer than
819 two (2) sellers of fuel management or fuel access systems for
820 competitive written bids to provide the services and products for
821 the systems. In the event that the governing authority or agency



822 cannot locate two (2) sellers of such systems or cannot obtain
823 bids from two (2) sellers of such systems, it shall show proof
824 that it made a diligent, good-faith effort to locate and negotiate
825 with two (2) sellers of such systems. Such proof shall include,
826 but not be limited to, publications of a request for proposals and
827 letters soliciting negotiations and bids. For purposes of this
828 paragraph (q), a fuel management or fuel access system is an
829 automated system of acquiring fuel for vehicles as well as
830 management reports detailing fuel use by vehicles and drivers, and
831 the term "competitive written bid" shall have the meaning as
832 defined in paragraph (b) of this section. Governing authorities
833 and agencies shall be exempt from this process when contracting
834 for the services and products of fuel management or fuel access
835 systems under the terms of a state contract established by the
836 Office of Purchasing and Travel.

837 (r) **Solid waste contract proposal procedure.** Before
838 entering into any contract for garbage collection or disposal,
839 contract for solid waste collection or disposal or contract for
840 sewage collection or disposal, which involves an expenditure of
841 more than Fifty Thousand Dollars (\$50,000.00), a governing
842 authority or agency shall issue publicly a request for proposals
843 concerning the specifications for such services which shall be
844 advertised for in the same manner as provided in this section for
845 seeking bids for purchases which involve an expenditure of more
846 than the amount provided in paragraph (c) of this section. Any



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



872 (s) **Minority set-aside authorization.** Notwithstanding
873 any provision of this section to the contrary, any agency or
874 governing authority, by order placed on its minutes, may, in its
875 discretion, set aside not more than twenty percent (20%) of its
876 anticipated annual expenditures for the purchase of commodities
877 from minority businesses; however, all such set-aside purchases
878 shall comply with all purchasing regulations promulgated by the
879 Department of Finance and Administration and shall be subject to
880 bid requirements under this section. Set-aside purchases for
881 which competitive bids are required shall be made from the lowest
882 and best minority business bidder. For the purposes of this
883 paragraph, the term "minority business" means a business which is
884 owned by a majority of persons who are United States citizens or
885 permanent resident aliens (as defined by the Immigration and
886 Naturalization Service) of the United States, and who are Asian,
887 Black, Hispanic or Native American, according to the following
888 definitions:

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

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

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



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

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

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

917 (v) **Insurability of bidders for public construction or**
918 **other public contracts.** In any solicitation for bids to perform
919 public construction or other public contracts to which this
920 section applies including, but not limited to, contracts for
921 repair and maintenance, for which the contract will require



922 insurance coverage in an amount of not less than One Million
923 Dollars (\$1,000,000.00), bidders shall be permitted to either
924 submit proof of current insurance coverage in the specified amount
925 or demonstrate ability to obtain the required coverage amount of
926 insurance if the contract is awarded to the bidder. Proof of
927 insurance coverage shall be submitted within five (5) business
928 days from bid acceptance.

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

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

