

By: Senator(s) Hill

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2897

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE REVERSE AUCTION REQUIREMENT SHALL NOT APPLY TO
3 ANY PURCHASE BY A GOVERNING AUTHORITY UPON A FINDING AND
4 DETERMINATION BY THE GOVERNING AUTHORITY, BY RESOLUTION DULY AND
5 LAWFULLY ADOPTED AND SPREAD UPON ITS MINUTES, THAT THE REVERSE
6 AUCTION PROCESS IS NOT THE BEST METHOD FOR PURCHASING THAT
7 PARTICULAR ITEM; AND FOR RELATED PURPOSES.

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

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

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

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



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

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



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

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

68 (i) **Publication requirement.**

69 1. Purchases which involve an expenditure of
70 more than Fifty Thousand Dollars (\$50,000.00), exclusive of



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

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



Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning. The provisions of this item 2 shall not apply to any purchase by a governing authority upon a finding and determination by the governing authority, by resolution duly and lawfully adopted and spread upon its minutes, that the reverse auction process is not the best method for purchasing that particular item.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the



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



(24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page



for the duration of the American Recovery and Reinvestment Act
funding or until the project is completed, whichever is longer.

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

(iii) **Filing requirement.** In all cases involving
governing authorities, before the notice shall be published or
posted, the plans or specifications for the construction or
equipment being sought shall be filed with the clerk of the board
of the governing authority. In addition to these requirements, a
bid file shall be established which shall indicate those vendors
to whom such solicitations and specifications were issued, and



such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

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

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the



agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

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



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

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

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

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing



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

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

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



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

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

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



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



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

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



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

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



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

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

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



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

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



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

453 If the governing board or the executive head, or his
454 designees, of any agency determines 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 threaten the health or safety of any person, or the
458 preservation or protection of property, then the provisions in
459 this section for competitive bidding shall not apply, and any
460 officer or agent of the agency having general or specific
461 authority for making the purchase or repair contract shall approve
462 the bill presented for payment, and he shall certify in writing
463 from whom the purchase was made, or with whom the repair contract
464 was made.

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



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

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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



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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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



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

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

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



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

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



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

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



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

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

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

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

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

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



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

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

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



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

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

