

By: Representatives Bell (21st), Bain, Barnett, Barton, Bell (65th), Boyd, Brown, Denton, Hale, Kinkade, Massengill, McLeod, McNeal, Pigott, Reynolds, Roberson, Rosebud, Staples, Steverson, Sullivan, Wallace, White

To: Accountability, Efficiency, Transparency

HOUSE BILL NO. 1560

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

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

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

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

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

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

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



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

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



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

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

65 (i) **Publication requirement.**

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



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

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



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

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



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



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



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

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

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





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

197 (iv) **Specification restrictions.**

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

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



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

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



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

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

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

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



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

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

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



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

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

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



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



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

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



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

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





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

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

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



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

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



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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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



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

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

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





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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

742                    (xxxvi)   **Certain purchases by an academic medical**  
743 **center or health sciences school.** Purchases by an academic  
744 medical center or health sciences school, as defined in Section  
745 37-115-50, of commodities that are used for clinical purposes and  
746 1. intended for use in the diagnosis of disease or other  
747 conditions or in the cure, mitigation, treatment or prevention of  
748 disease, and 2. medical devices, biological, drugs and  
749 radiation-emitting devices as defined by the United States Food  
750 and Drug Administration.

751                    (xxxvii)   **Certain purchases made under the Alyce G.**  
752 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi  
753 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
754 Lottery Law.

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

757                    (i)    All contracts for the purchase of commodities,  
758 equipment and public construction (including, but not limited to,  
759 repair and maintenance), may be let for periods of not more than  
760 sixty (60) months in advance, subject to applicable statutory  
761 provisions prohibiting the letting of contracts during specified  
762 periods near the end of terms of office. Term contracts for a  
763 period exceeding twenty-four (24) months shall also be subject to



764 ratification or cancellation by governing authority boards taking  
765 office subsequent to the governing authority board entering the  
766 contract.

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

778 (o) **Purchase law violation prohibition and vendor**  
779 **penalty.** No contract or purchase as herein authorized shall be  
780 made for the purpose of circumventing the provisions of this  
781 section requiring competitive bids, nor shall it be lawful for any  
782 person or concern to submit individual invoices for amounts within  
783 those authorized for a contract or purchase where the actual value  
784 of the contract or commodity purchased exceeds the authorized  
785 amount and the invoices therefor are split so as to appear to be  
786 authorized as purchases for which competitive bids are not  
787 required. Submission of such invoices shall constitute a  
788 misdemeanor punishable by a fine of not less than Five Hundred





789 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
790 or by imprisonment for thirty (30) days in the county jail, or  
791 both such fine and imprisonment. In addition, the claim or claims  
792 submitted shall be forfeited.

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

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



814 automated system of acquiring fuel for vehicles as well as  
815 management reports detailing fuel use by vehicles and drivers, and  
816 the term "competitive written bid" shall have the meaning as  
817 defined in paragraph (b) of this section. Governing authorities  
818 and agencies shall be exempt from this process when contracting  
819 for the services and products of fuel management or fuel access  
820 systems under the terms of a state contract established by the  
821 Office of Purchasing and Travel.

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



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

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



864 Department of Finance and Administration and shall be subject to  
865 bid requirements under this section. Set-aside purchases for  
866 which competitive bids are required shall be made from the lowest  
867 and best minority business bidder. For the purposes of this  
868 paragraph, the term "minority business" means a business which is  
869 owned by a majority of persons who are United States citizens or  
870 permanent resident aliens (as defined by the Immigration and  
871 Naturalization Service) of the United States, and who are Asian,  
872 Black, Hispanic or Native American, according to the following  
873 definitions:

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

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

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

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

885 (t) **Construction punch list restriction.** The  
886 architect, engineer or other representative designated by the  
887 agency or governing authority that is contracting for public  
888 construction or renovation may prepare and submit to the



889 contractor only one (1) preliminary punch list of items that do  
890 not meet the contract requirements at the time of substantial  
891 completion and one (1) final list immediately before final  
892 completion and final payment.

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

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



914                   (w) **Purchase authorization clarification.** Nothing in  
915 this section shall be construed as authorizing any purchase not  
916 authorized by law.

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

