

By: Representative Byrd

To: Accountability,
Efficiency, Transparency

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1561

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT REVERSE AUCTIONS SHALL NOT BE USED FOR CERTAIN TERM
3 CONTRACTS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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



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

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

64 (i) **Publication requirement.**

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



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

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



93 not be used for any public contract for design or construction of
94 public facilities, including buildings, roads and bridges and term
95 contracts as provided in paragraph (n) of this section. The
96 Public Procurement Review Board must approve any contract entered
97 into by alternative process. The provisions of this item 2 shall
98 not apply to the individual state institutions of higher learning.

99 3. The date as published for the bid opening
100 shall not be less than seven (7) working days after the last
101 published notice; however, if the purchase involves a construction
102 project in which the estimated cost is in excess of Fifty Thousand
103 Dollars (\$50,000.00), such bids shall not be opened in less than
104 fifteen (15) working days after the last notice is published and
105 the notice for the purchase of such construction shall be
106 published once each week for two (2) consecutive weeks. However,
107 all American Recovery and Reinvestment Act projects in excess of
108 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
109 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
110 under the American Recovery and Reinvestment Act, publication
111 shall be made one (1) time and the bid opening for construction
112 projects shall not be less than ten (10) working days after the
113 date of the published notice. The notice of intention to let
114 contracts or purchase equipment shall state the time and place at
115 which bids shall be received, list the contracts to be made or
116 types of equipment or supplies to be purchased, and, if all plans
117 and/or specifications are not published, refer to the plans and/or



118 specifications on file. If there is no newspaper published in the
119 county or municipality, then such notice shall be given by posting
120 same at the courthouse, or for municipalities at the city hall,
121 and at two (2) other public places in the county or municipality,
122 and also by publication once each week for two (2) consecutive
123 weeks in some newspaper having a general circulation in the county
124 or municipality in the above-provided manner. On the same date
125 that the notice is submitted to the newspaper for publication, the
126 agency or governing authority involved shall mail written notice
127 to, or provide electronic notification to the main office of the
128 Mississippi Procurement Technical Assistance Program under the
129 Mississippi Development Authority that contains the same
130 information as that in the published notice. Submissions received
131 by the Mississippi Procurement Technical Assistance Program for
132 projects funded by the American Recovery and Reinvestment Act
133 shall be displayed on a separate and unique Internet web page
134 accessible to the public and maintained by the Mississippi
135 Development Authority for the Mississippi Procurement Technical
136 Assistance Program. Those American Recovery and Reinvestment Act
137 related submissions shall be publicly posted within twenty-four
138 (24) hours of receipt by the Mississippi Development Authority and
139 the bid opening shall not occur until the submission has been
140 posted for ten (10) consecutive days. The Department of Finance
141 and Administration shall maintain information regarding contracts
142 and other expenditures from the American Recovery and Reinvestment



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

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



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

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

190 (iv) **Specification restrictions.**

191 1. Specifications pertinent to such bidding
192 shall be written so as not to exclude comparable equipment of



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

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

215 (v) **Electronic bids.** Agencies and governing
216 authorities shall provide a secure electronic interactive system
217 for the submittal of bids requiring competitive bidding that shall



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



242 deemed in compliance with by including same as an attachment with
243 the electronic bid submittal.

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

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

260 (ii) **Decision procedure for Certified Purchasing**
261 **Offices.** In addition to the decision procedure set forth in
262 subparagraph (i) of this paragraph (d), Certified Purchasing
263 Offices may also use the following procedure: Purchases may be
264 made from the bidder offering the best value. In determining the
265 best value bid, freight and shipping charges shall be included.
266 Life-cycle costing, total cost bids, warranties, guaranteed



267 buy-back provisions, documented previous experience, training
268 costs and other relevant provisions, including, but not limited
269 to, a bidder having a local office and inventory located within
270 the jurisdiction of the governing authority, may be included in
271 the best value calculation. This provision shall authorize
272 Certified Purchasing Offices to utilize a Request For Proposals
273 (RFP) process when purchasing commodities. All best value
274 procedures for state agencies must be in compliance with
275 regulations established by the Department of Finance and
276 Administration. No agency or governing authority shall accept a
277 bid based on items or criteria not included in the specifications.

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

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



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

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

312 (e) **Lease-purchase authorization.** For the purposes of
313 this section, the term "equipment" shall mean equipment, furniture
314 and, if applicable, associated software and other applicable
315 direct costs associated with the acquisition. Any lease-purchase
316 of equipment which an agency is not required to lease-purchase



317 under the master lease-purchase program pursuant to Section
318 31-7-10 and any lease-purchase of equipment which a governing
319 authority elects to lease-purchase may be acquired by a
320 lease-purchase agreement under this paragraph (e). Lease-purchase
321 financing may also be obtained from the vendor or from a
322 third-party source after having solicited and obtained at least
323 two (2) written competitive bids, as defined in paragraph (b) of
324 this section, for such financing without advertising for such
325 bids. Solicitation for the bids for financing may occur before or
326 after acceptance of bids for the purchase of such equipment or,
327 where no such bids for purchase are required, at any time before
328 the purchase thereof. No such lease-purchase agreement shall be
329 for an annual rate of interest which is greater than the overall
330 maximum interest rate to maturity on general obligation
331 indebtedness permitted under Section 75-17-101, and the term of
332 such lease-purchase agreement shall not exceed the useful life of
333 equipment covered thereby as determined according to the upper
334 limit of the asset depreciation range (ADR) guidelines for the
335 Class Life Asset Depreciation Range System established by the
336 Internal Revenue Service pursuant to the United States Internal
337 Revenue Code and regulations thereunder as in effect on December
338 31, 1980, or comparable depreciation guidelines with respect to
339 any equipment not covered by ADR guidelines. Any lease-purchase
340 agreement entered into pursuant to this paragraph (e) may contain
341 any of the terms and conditions which a master lease-purchase



342 agreement may contain under the provisions of Section 31-7-10(5),
343 and shall contain an annual allocation dependency clause
344 substantially similar to that set forth in Section 31-7-10(8).
345 Each agency or governing authority entering into a lease-purchase
346 transaction pursuant to this paragraph (e) shall maintain with
347 respect to each such lease-purchase transaction the same
348 information as required to be maintained by the Department of
349 Finance and Administration pursuant to Section 31-7-10(13).
350 However, nothing contained in this section shall be construed to
351 permit agencies to acquire items of equipment with a total
352 acquisition cost in the aggregate of less than Ten Thousand
353 Dollars (\$10,000.00) by a single lease-purchase transaction. All
354 equipment, and the purchase thereof by any lessor, acquired by
355 lease-purchase under this paragraph and all lease-purchase
356 payments with respect thereto shall be exempt from all Mississippi
357 sales, use and ad valorem taxes. Interest paid on any
358 lease-purchase agreement under this section shall be exempt from
359 State of Mississippi income taxation.

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



367 purchases of such commodities may be made from one (1) of the
368 bidders whose bid was accepted as an alternate.

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

389 (h) **Petroleum purchase alternative.** In addition to
390 other methods of purchasing authorized in this chapter, when any
391 agency or governing authority shall have a need for gas, diesel



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

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



417 Department of Transportation with a copy thereof to be mailed,
418 upon request, to the clerks of the governing authority of each
419 municipality and the clerks of each board of supervisors
420 throughout the state. The price adjustment clause shall be based
421 on the cost of such petroleum products only and shall not include
422 any additional profit or overhead as part of the adjustment. The
423 bid proposals or document contract shall contain the basis and
424 methods of adjusting unit prices for the change in the cost of
425 such petroleum products.

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



442 Officer, or his designees, may, in writing, authorize the purchase
443 or repair without having to comply with competitive bidding
444 requirements.

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

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

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

466 If the governing authority, or the governing authority acting



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

483 (1) **Hospital purchase, lease-purchase and lease**
484 **authorization.**

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

490 (ii) In addition to the authority granted in
491 subparagraph (i) of this paragraph (1), the commissioners or board



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

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

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

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



517 for such total component replacement is known before disassembly
518 of the component; however, invoices identifying the equipment,
519 specific repairs made, parts identified by number and name,
520 supplies used in such repairs, and the number of hours of labor
521 and costs therefor shall be required for the payment for such
522 repairs.

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

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

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



541 the item or items authorized to be purchased and the maximum bid
542 authorized to be paid for each item or items.

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

544 Purchases, sales, transfers or trades by governing authorities or
545 state agencies when such purchases, sales, transfers or trades are
546 made by a private treaty agreement or through means of
547 negotiation, from any federal agency or authority, another
548 governing authority or state agency of the State of Mississippi,
549 or any state agency or governing authority of another state.

550 Nothing in this section shall permit such purchases through public
551 auction except as provided for in subparagraph (v) of this
552 paragraph (m). It is the intent of this section to allow
553 governmental entities to dispose of and/or purchase commodities
554 from other governmental entities at a price that is agreed to by
555 both parties. This shall allow for purchases and/or sales at
556 prices which may be determined to be below the market value if the
557 selling entity determines that the sale at below market value is
558 in the best interest of the taxpayers of the state. Governing
559 authorities shall place the terms of the agreement and any
560 justification on the minutes, and state agencies shall obtain
561 approval from the Department of Finance and Administration, prior
562 to releasing or taking possession of the commodities.

563 (vii) **Perishable supplies or food.** Perishable
564 supplies or food purchased for use in connection with hospitals,



565 the school lunch programs, homemaking programs and for the feeding
566 of county or municipal prisoners.

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

585 (ix) **Waste disposal facility construction**
586 **contracts.** Construction of incinerators and other facilities for
587 disposal of solid wastes in which products either generated
588 therein, such as steam, or recovered therefrom, such as materials
589 for recycling, are to be sold or otherwise disposed of; however,



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

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

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



615 (xii) **Energy efficiency services and equipment.**
616 Energy efficiency services and equipment acquired by school
617 districts, community and junior colleges, institutions of higher
618 learning and state agencies or other applicable governmental
619 entities on a shared-savings, lease or lease-purchase basis
620 pursuant to Section 31-7-14.

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

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

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

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



639 (xvii) **Multichannel interactive video systems.**
640 From and after July 1, 1990, contracts by Mississippi Authority
641 for Educational Television with any private educational
642 institution or private nonprofit organization whose purposes are
643 educational in regard to the construction, purchase, lease or
644 lease-purchase of facilities and equipment and the employment of
645 personnel for providing multichannel interactive video systems
646 (ITSF) in the school districts of this state.

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

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

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

662 (xxi) **Certain school district purchases.**
663 Purchases of commodities made by school districts from vendors



664 with which any levying authority of the school district, as
665 defined in Section 37-57-1, has contracted through competitive
666 bidding procedures for purchases of the same commodities.

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

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

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

681 (xxv) **Purchases of state-adopted textbooks.**
682 Purchases of state-adopted textbooks by public school districts.

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

686 (xxvii) **Used heavy or specialized machinery or**
687 **equipment for installation of soil and water conservation**
688 **practices purchased at auction.** Used heavy or specialized



689 machinery or equipment used for the installation and
690 implementation of soil and water conservation practices or
691 measures purchased subject to the restrictions provided in
692 Sections 69-27-331 through 69-27-341. Any purchase by the State
693 Soil and Water Conservation Commission under the exemption
694 authorized by this subparagraph shall require advance
695 authorization spread upon the minutes of the commission to include
696 the listing of the item or items authorized to be purchased and
697 the maximum bid authorized to be paid for each item or items.

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

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

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

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



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

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

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

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

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

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

735 (xxxvi) **Certain purchases by an academic medical**
736 **center or health sciences school.** Purchases by an academic
737 medical center or health sciences school, as defined in Section



738 37-115-50, of commodities that are used for clinical purposes and
739 1. intended for use in the diagnosis of disease or other
740 conditions or in the cure, mitigation, treatment or prevention of
741 disease, and 2. medical devices, biological, drugs and
742 radiation-emitting devices as defined by the United States Food
743 and Drug Administration.

744 (xxxvii) **Certain purchases made under the Alyce G.**
745 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
746 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
747 Lottery Law.

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

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

760 (ii) Bid proposals and contracts may include price
761 adjustment clauses with relation to the cost to the contractor
762 based upon a nationally published industry-wide or nationally



763 published and recognized cost index. The cost index used in a
764 price adjustment clause shall be determined by the Department of
765 Finance and Administration for the state agencies and by the
766 governing board for governing authorities. The bid proposal and
767 contract documents utilizing a price adjustment clause shall
768 contain the basis and method of adjusting unit prices for the
769 change in the cost of such commodities, equipment and public
770 construction.

771 (iii) For the purposes of this section, "term
772 contract" means any purchase of various commodities, goods and
773 merchandise, but not commodities purchased for resale or raw
774 materials converted into products for resale, by an agency or
775 governing authority that is for an unknown quantity to be procured
776 over a defined period of time.

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



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

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

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



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

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



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

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



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

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

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

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

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

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



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

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

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



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

916 **SECTION 2.** This act shall take effect and be in force from
917 and after July 1, 2019.

