

By: Representatives Bounds, Karriem

To: Rules

HOUSE BILL NO. 1788

1 AN ACT TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER  
2 \$50,000,000.00 TO THE MISSISSIPPI PANDEMIC RESPONSE BROADBAND  
3 AVAILABILITY GRANT PROGRAM FUND; TO CREATE THE "MISSISSIPPI  
4 PANDEMIC RESPONSE BROADBAND AVAILABILITY ACT"; TO PROVIDE A  
5 STATEMENT OF LEGISLATIVE INTENT AND FINDINGS; TO CREATE THE  
6 "MISSISSIPPI PANDEMIC RESPONSE BROADBAND AVAILABILITY GRANT  
7 PROGRAM FUND" AS A SPECIAL FUND IN THE STATE TREASURY FOR THE  
8 PURPOSE OF PROVIDING FUNDS FOR GRANTS TO MISSISSIPPI PUBLIC SCHOOL  
9 DISTRICTS, INDEPENDENT SCHOOLS AND NATIVE AMERICAN TRIBAL SCHOOL  
10 DISTRICTS; TO PROVIDE THAT THE MISSISSIPPI PANDEMIC RESPONSE  
11 BROADBAND AVAILABILITY GRANT PROGRAM SHALL BE ADMINISTERED BY THE  
12 MISSISSIPPI DEPARTMENT OF EDUCATION, FOR THE PURPOSE OF MAKING  
13 GRANTS TO ELIGIBLE SCHOOL DISTRICTS AND SCHOOLS TO PROVIDE THEM  
14 WITH GRANT MONIES FOR ELIGIBLE EXPENSES; TO DIRECT THE MISSISSIPPI  
15 DEPARTMENT OF EDUCATION TO DEVELOP REGULATIONS AND PROCEDURES TO  
16 GOVERN THE ADMINISTRATION OF THE PROGRAM; TO PRESCRIBE THE  
17 REQUIREMENTS FOR THE GRANTS; TO SPECIFY THAT THE USE OF GRANT  
18 FUNDS SHALL BE SUBJECT TO AUDIT AND REGULATION OF THE MISSISSIPPI  
19 DEPARTMENT OF EDUCATION, AND NONCOMPLIANCE WITH THE TERMS OF THE  
20 GRANT SHALL REQUIRE REPAYMENT OF GRANT MONIES TO THE STATE; TO  
21 SPECIFY THAT ALL MONIES SHALL BE DISBURSED FROM THIS SPECIAL FUND  
22 IN COMPLIANCE WITH THE REQUIREMENTS OF THE CARES ACT AND  
23 GUIDELINES FROM THE UNITED STATES DEPARTMENT OF THE TREASURY  
24 REGARDING THE USE OF MONIES FROM THE CORONAVIRUS RELIEF FUND; TO  
25 TRANSFER UNDISTRIBUTED MONIES IN THE FUND AS OF DECEMBER 1, 2020,  
26 TO THE UNEMPLOYMENT COMPENSATION FUND; TO PROVIDE THAT A  
27 DECLARATION OF ANY PORTION OF THIS ACT AS INVALID SHALL NOT AFFECT  
28 THE REMAINING PORTIONS OF THIS ACT; TO AMEND SECTION 31-7-13,  
29 MISSISSIPPI CODE OF 1972, TO EXEMPT PUBLIC SCHOOL DISTRICTS AND  
30 SCHOOLS FROM THE PROCUREMENT AND COMPETITIVE BIDDING REQUIREMENTS  
31 FOR CONTRACTS MADE UNDER THE MISSISSIPPI PANDEMIC RESPONSE  
32 BROADBAND AVAILABILITY ACT; AND FOR RELATED PURPOSES.

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



34           **SECTION 1.** Upon the effective date of this act, the State  
35 Fiscal Officer shall transfer to the Mississippi Pandemic Response  
36 Broadband Availability Grant Program Fund out of the Budget  
37 Contingency Fund .....\$  
38 50,000,000.00.

39           **SECTION 2.** Sections 2 through 5 of this act shall be known  
40 and may be cited as the "Mississippi Pandemic Response Broadband  
41 Availability Act."

42           **SECTION 3.** (1) The Legislature finds and declares that due  
43 to the COVID-19 pandemic there is an immediate increased need for  
44 reliable Internet service in Mississippi, including expanded  
45 broadband access, to facilitate and assist with distance learning.  
46 Therefore, the Mississippi Department of Education shall establish  
47 the Mississippi Pandemic Response Broadband Availability Grant  
48 Program to provide grants to Mississippi public school districts,  
49 independent schools and Native American tribal schools for the  
50 purpose of expanding broadband access in the unserved areas of the  
51 State of Mississippi.

52           (2) As used in this act, the following words and phrases  
53 shall have the meanings ascribed in this section unless the  
54 context clearly indicates otherwise:

55                   (a) "Broadband access" means access to broadband  
56 services as defined in Section 77-17-3(d).

57                   (b) "COVID-19" means the Coronavirus Disease 2019.



58 (c) "Department" means the Mississippi Department of  
59 Education.

60 (3) There is hereby created in the State Treasury a special  
61 fund to be designated as the "Mississippi Pandemic Response  
62 Broadband Availability Grant Program Fund," which shall consist of  
63 funds made available by the Legislature in any manner and funds  
64 from any other source designated for deposit into such fund.  
65 Unexpended amounts remaining in the fund at the end of a fiscal  
66 year shall not lapse into the State General Fund, and any  
67 investment earnings or interest earned on amounts in the fund  
68 shall be deposited to the credit of the fund. Monies in the fund  
69 shall be used for the purpose of providing payments to eligible  
70 Mississippi public school districts, independent schools and  
71 Native American tribal school districts as provided in this act.  
72 Monies in the fund shall be administered and disbursed by the  
73 department in compliance with the guidelines, guidance, rules,  
74 regulations and/or other criteria, as may be amended from time to  
75 time, of the United States Department of the Treasury regarding  
76 the use of monies from the Coronavirus Relief Fund established by  
77 the Coronavirus Aid, Relief, and Economic Security Act. If on  
78 December 1, 2020, there are undistributed monies in the fund, or  
79 if at any other time undistributed monies in the fund are  
80 determined by the department to be ineligible to be spent by the  
81 department, those monies shall be transferred to the Unemployment  
82 Compensation Fund.



83           **SECTION 4.** (1) The department shall distribute grant  
84 monies, without the requirement of application by school districts  
85 or schools, as equitably and efficiently as possible after  
86 determining the unserved areas of the state using the latest  
87 publicly available Federal Communications Commission broadband  
88 data, and after determining which and to what extent Mississippi  
89 public school districts, independent schools and Native American  
90 tribal school districts educate students living in such unserved  
91 areas of the state. The Mississippi Department of Education shall  
92 consult with the Mississippi Association of Independent Schools  
93 and the administrations of the Native American tribal school  
94 districts in determining which and to what extent such schools and  
95 schools districts educate students living in such unserved areas  
96 of the state. Any grant monies provided under this act shall be  
97 spent by the recipient school district no later than December 1,  
98 2020, or by such later date as may be specified in the guidelines,  
99 guidance, rules, regulations and/or other criteria of the United  
100 States Department of the Treasury regarding the use of monies from  
101 the Coronavirus Relief Fund established in Section 5001 of the  
102 Coronavirus Aid, Relief, and Economic Security Act. Grants shall  
103 be conditioned on the school district or school broadband provider  
104 agreements including that broadband capacity shall be expanded to  
105 a significant extent for the district's or school's students  
106 during the COVID-19 public health emergency.



107 (2) The department may develop regulations and procedures to  
108 govern the administration of the program.

109 **SECTION 5.** (1) The grant monies distributed under this act  
110 shall be used by school districts and schools to negotiate and  
111 contract with existing or potential broadband providers to  
112 increase or gain broadband access for the unserved areas where  
113 their students reside. To achieve such increased broadband  
114 access, the school districts and schools may utilize any broadband  
115 technology available to increase or gain broadband access in the  
116 unserved areas.

117 (2) The use of grants shall be subject to audit by the  
118 United States Department of the Treasury's Office of Inspector  
119 General and the Mississippi Department of Education. A school  
120 district or school found to be fully or partially noncompliant  
121 with grant requirements shall return to the state all or a portion  
122 of the grant monies received. Recipient school districts and  
123 schools shall confirm their understanding of these terms.

124 (3) Mississippi public school districts, independent schools  
125 and Native American tribal schools that receive grant monies under  
126 this act shall provide periodic project status reports to the  
127 Mississippi Department of Education and any other documentation  
128 that the Mississippi Department of Education determines is  
129 necessary to ensure compliance with this act and the United States  
130 Department of the Treasury regarding the use of monies from the



131 Coronavirus Relief Fund established in Section 5001 of the  
132 Coronavirus Aid, Relief, and Economic Security Act.

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

135 31-7-13. All agencies and governing authorities shall  
136 purchase their commodities and printing; contract for garbage  
137 collection or disposal; contract for solid waste collection or  
138 disposal; contract for sewage collection or disposal; contract for  
139 public construction; and contract for rentals as herein provided.

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

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

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

148 (b) **Bidding procedure for purchases over \$5,000.00 but**

149 **not over \$50,000.00.** Purchases which involve an expenditure of  
150 more than Five Thousand Dollars (\$5,000.00) but not more than  
151 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
152 shipping charges, may be made from the lowest and best bidder  
153 without publishing or posting advertisement for bids, provided at  
154 least two (2) competitive written bids have been obtained. Any  
155 state agency or community/junior college purchasing commodities or



156 procuring construction pursuant to this paragraph (b) may  
157 authorize its purchasing agent, or his designee, to accept the  
158 lowest competitive written bid under Fifty Thousand Dollars  
159 (\$50,000.00). Any governing authority purchasing commodities  
160 pursuant to this paragraph (b) may authorize its purchasing agent,  
161 or his designee, with regard to governing authorities other than  
162 counties, or its purchase clerk, or his designee, with regard to  
163 counties, to accept the lowest and best competitive written bid.  
164 Such authorization shall be made in writing by the governing  
165 authority and shall be maintained on file in the primary office of  
166 the agency and recorded in the official minutes of the governing  
167 authority, as appropriate. The purchasing agent or the purchase  
168 clerk, or their designee, as the case may be, and not the  
169 governing authority, shall be liable for any penalties and/or  
170 damages as may be imposed by law for any act or omission of the  
171 purchasing agent or purchase clerk, or their designee,  
172 constituting a violation of law in accepting any bid without  
173 approval by the governing authority. The term "competitive  
174 written bid" shall mean a bid submitted on a bid form furnished by  
175 the buying agency or governing authority and signed by authorized  
176 personnel representing the vendor, or a bid submitted on a  
177 vendor's letterhead or identifiable bid form and signed by  
178 authorized personnel representing the vendor. "Competitive" shall  
179 mean that the bids are developed based upon comparable  
180 identification of the needs and are developed independently and



181 without knowledge of other bids or prospective bids. Any bid item  
182 for construction in excess of Five Thousand Dollars (\$5,000.00)  
183 shall be broken down by components to provide detail of component  
184 description and pricing. These details shall be submitted with  
185 the written bids and become part of the bid evaluation criteria.  
186 Bids may be submitted by facsimile, electronic mail or other  
187 generally accepted method of information distribution. Bids  
188 submitted by electronic transmission shall not require the  
189 signature of the vendor's representative unless required by  
190 agencies or governing authorities.

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

192 (i) **Publication requirement.**

193 1. Purchases which involve an expenditure of  
194 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
195 freight and shipping charges, may be made from the lowest and best  
196 bidder after advertising for competitive bids once each week for  
197 two (2) consecutive weeks in a regular newspaper published in the  
198 county or municipality in which such agency or governing authority  
199 is located. However, all American Recovery and Reinvestment Act  
200 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
201 shall be bid. All references to American Recovery and  
202 Reinvestment Act projects in this section shall not apply to  
203 programs identified in Division B of the American Recovery and  
204 Reinvestment Act.





205                   2. Reverse auctions shall be the primary  
206 method for receiving bids during the bidding process. If a  
207 purchasing entity determines that a reverse auction is not in the  
208 best interest of the state, then that determination must be  
209 approved by the Public Procurement Review Board. The purchasing  
210 entity shall submit a detailed explanation of why a reverse  
211 auction would not be in the best interest of the state and present  
212 an alternative process to be approved by the Public Procurement  
213 Review Board. If the Public Procurement Review Board authorizes  
214 the purchasing entity to solicit bids with a method other than  
215 reverse auction, then the purchasing entity may designate the  
216 other methods by which the bids will be received, including, but  
217 not limited to, bids sealed in an envelope, bids received  
218 electronically in a secure system, or bids received by any other  
219 method that promotes open competition and has been approved by the  
220 Office of Purchasing and Travel. However, reverse auction shall  
221 not be used for any public contract for design or construction of  
222 public facilities, including buildings, roads and bridges. The  
223 Public Procurement Review Board must approve any contract entered  
224 into by alternative process. The provisions of this item 2 shall  
225 not apply to the individual state institutions of higher learning.

226                   3. The date as published for the bid opening  
227 shall not be less than seven (7) working days after the last  
228 published notice; however, if the purchase involves a construction  
229 project in which the estimated cost is in excess of Fifty Thousand



230 Dollars (\$50,000.00), such bids shall not be opened in less than  
231 fifteen (15) working days after the last notice is published and  
232 the notice for the purchase of such construction shall be  
233 published once each week for two (2) consecutive weeks. However,  
234 all American Recovery and Reinvestment Act projects in excess of  
235 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
236 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
237 under the American Recovery and Reinvestment Act, publication  
238 shall be made one (1) time and the bid opening for construction  
239 projects shall not be less than ten (10) working days after the  
240 date of the published notice. The notice of intention to let  
241 contracts or purchase equipment shall state the time and place at  
242 which bids shall be received, list the contracts to be made or  
243 types of equipment or supplies to be purchased, and, if all plans  
244 and/or specifications are not published, refer to the plans and/or  
245 specifications on file. If there is no newspaper published in the  
246 county or municipality, then such notice shall be given by posting  
247 same at the courthouse, or for municipalities at the city hall,  
248 and at two (2) other public places in the county or municipality,  
249 and also by publication once each week for two (2) consecutive  
250 weeks in some newspaper having a general circulation in the county  
251 or municipality in the above-provided manner. On the same date  
252 that the notice is submitted to the newspaper for publication, the  
253 agency or governing authority involved shall mail written notice  
254 to, or provide electronic notification to the main office of the



255 Mississippi Procurement Technical Assistance Program under the  
256 Mississippi Development Authority that contains the same  
257 information as that in the published notice. Submissions received  
258 by the Mississippi Procurement Technical Assistance Program for  
259 projects funded by the American Recovery and Reinvestment Act  
260 shall be displayed on a separate and unique Internet web page  
261 accessible to the public and maintained by the Mississippi  
262 Development Authority for the Mississippi Procurement Technical  
263 Assistance Program. Those American Recovery and Reinvestment Act  
264 related submissions shall be publicly posted within twenty-four  
265 (24) hours of receipt by the Mississippi Development Authority and  
266 the bid opening shall not occur until the submission has been  
267 posted for ten (10) consecutive days. The Department of Finance  
268 and Administration shall maintain information regarding contracts  
269 and other expenditures from the American Recovery and Reinvestment  
270 Act, on a unique Internet web page accessible to the public. The  
271 Department of Finance and Administration shall promulgate rules  
272 regarding format, content and deadlines, unless otherwise  
273 specified by law, of the posting of award notices, contract  
274 execution and subsequent amendments, links to the contract  
275 documents, expenditures against the awarded contracts and general  
276 expenditures of funds from the American Recovery and Reinvestment  
277 Act. Within one (1) working day of the contract award, the agency  
278 or governing authority shall post to the designated web page  
279 maintained by the Department of Finance and Administration, notice



280 of the award, including the award recipient, the contract amount,  
281 and a brief summary of the contract in accordance with rules  
282 promulgated by the department. Within one (1) working day of the  
283 contract execution, the agency or governing authority shall post  
284 to the designated web page maintained by the Department of Finance  
285 and Administration a summary of the executed contract and make a  
286 copy of the appropriately redacted contract documents available  
287 for linking to the designated web page in accordance with the  
288 rules promulgated by the department. The information provided by  
289 the agency or governing authority shall be posted to the web page  
290 for the duration of the American Recovery and Reinvestment Act  
291 funding or until the project is completed, whichever is longer.

292 (ii) **Bidding process amendment procedure.** If all  
293 plans and/or specifications are published in the notification,  
294 then the plans and/or specifications may not be amended. If all  
295 plans and/or specifications are not published in the notification,  
296 then amendments to the plans/specifications, bid opening date, bid  
297 opening time and place may be made, provided that the agency or  
298 governing authority maintains a list of all prospective bidders  
299 who are known to have received a copy of the bid documents and all  
300 such prospective bidders are sent copies of all amendments. This  
301 notification of amendments may be made via mail, facsimile,  
302 electronic mail or other generally accepted method of information  
303 distribution. No addendum to bid specifications may be issued  
304 within two (2) working days of the time established for the



305 receipt of bids unless such addendum also amends the bid opening  
306 to a date not less than five (5) working days after the date of  
307 the addendum.

308                   (iii) **Filing requirement.** In all cases involving  
309 governing authorities, before the notice shall be published or  
310 posted, the plans or specifications for the construction or  
311 equipment being sought shall be filed with the clerk of the board  
312 of the governing authority. In addition to these requirements, a  
313 bid file shall be established which shall indicate those vendors  
314 to whom such solicitations and specifications were issued, and  
315 such file shall also contain such information as is pertinent to  
316 the bid.

317                   (iv) **Specification restrictions.**

318                   1. Specifications pertinent to such bidding  
319 shall be written so as not to exclude comparable equipment of  
320 domestic manufacture. However, if valid justification is  
321 presented, the Department of Finance and Administration or the  
322 board of a governing authority may approve a request for specific  
323 equipment necessary to perform a specific job. Further, such  
324 justification, when placed on the minutes of the board of a  
325 governing authority, may serve as authority for that governing  
326 authority to write specifications to require a specific item of  
327 equipment needed to perform a specific job. In addition to these  
328 requirements, from and after July 1, 1990, vendors of relocatable  
329 classrooms and the specifications for the purchase of such



330 relocatable classrooms published by local school boards shall meet  
331 all pertinent regulations of the State Board of Education,  
332 including prior approval of such bid by the State Department of  
333 Education.

334                   2. Specifications for construction projects  
335 may include an allowance for commodities, equipment, furniture,  
336 construction materials or systems in which prospective bidders are  
337 instructed to include in their bids specified amounts for such  
338 items so long as the allowance items are acquired by the vendor in  
339 a commercially reasonable manner and approved by the  
340 agency/governing authority. Such acquisitions shall not be made  
341 to circumvent the public purchasing laws.

342                   (v) **Electronic bids.** Agencies and governing  
343 authorities shall provide a secure electronic interactive system  
344 for the submittal of bids requiring competitive bidding that shall  
345 be an additional bidding option for those bidders who choose to  
346 submit their bids electronically. The Department of Finance and  
347 Administration shall provide, by regulation, the standards that  
348 agencies must follow when receiving electronic bids. Agencies and  
349 governing authorities shall make the appropriate provisions  
350 necessary to accept electronic bids from those bidders who choose  
351 to submit their bids electronically for all purchases requiring  
352 competitive bidding under this section. Any special condition or  
353 requirement for the electronic bid submission shall be specified  
354 in the advertisement for bids required by this section. Agencies



355 or governing authorities that are currently without available high  
356 speed Internet access shall be exempt from the requirement of this  
357 subparagraph (v) until such time that high speed Internet access  
358 becomes available. Any county having a population of less than  
359 twenty thousand (20,000) shall be exempt from the provisions of  
360 this subparagraph (v). Any municipality having a population of  
361 less than ten thousand (10,000) shall be exempt from the  
362 provisions of this subparagraph (v). The provisions of this  
363 subparagraph (v) shall not require any bidder to submit bids  
364 electronically. When construction bids are submitted  
365 electronically, the requirement for including a certificate of  
366 responsibility, or a statement that the bid enclosed does not  
367 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
368 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
369 deemed in compliance with by including same as an attachment with  
370 the electronic bid submittal.

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

372 (i) **Decision procedure.** Purchases may be made  
373 from the lowest and best bidder. In determining the lowest and  
374 best bid, freight and shipping charges shall be included.  
375 Life-cycle costing, total cost bids, warranties, guaranteed  
376 buy-back provisions and other relevant provisions may be included  
377 in the best bid calculation. All best bid procedures for state  
378 agencies must be in compliance with regulations established by the  
379 Department of Finance and Administration. If any governing



380 authority accepts a bid other than the lowest bid actually  
381 submitted, it shall place on its minutes detailed calculations and  
382 narrative summary showing that the accepted bid was determined to  
383 be the lowest and best bid, including the dollar amount of the  
384 accepted bid and the dollar amount of the lowest bid. No agency  
385 or governing authority shall accept a bid based on items not  
386 included in the specifications.

387                   (ii) **Decision procedure for Certified Purchasing**  
388 **Offices.** In addition to the decision procedure set forth in  
389 subparagraph (i) of this paragraph (d), Certified Purchasing  
390 Offices may also use the following procedure: Purchases may be  
391 made from the bidder offering the best value. In determining the  
392 best value bid, freight and shipping charges shall be included.  
393 Life-cycle costing, total cost bids, warranties, guaranteed  
394 buy-back provisions, documented previous experience, training  
395 costs and other relevant provisions, including, but not limited  
396 to, a bidder having a local office and inventory located within  
397 the jurisdiction of the governing authority, may be included in  
398 the best value calculation. This provision shall authorize  
399 Certified Purchasing Offices to utilize a Request For Proposals  
400 (RFP) process when purchasing commodities. All best value  
401 procedures for state agencies must be in compliance with  
402 regulations established by the Department of Finance and  
403 Administration. No agency or governing authority shall accept a  
404 bid based on items or criteria not included in the specifications.





(iii) **Decision procedure for Mississippi**

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



430 dollar amount of the lowest bid. No agency or governing authority  
431 shall accept a bid based on items not included in the  
432 specifications.

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

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

439 (e) **Lease-purchase authorization.** For the purposes of  
440 this section, the term "equipment" shall mean equipment, furniture  
441 and, if applicable, associated software and other applicable  
442 direct costs associated with the acquisition. Any lease-purchase  
443 of equipment which an agency is not required to lease-purchase  
444 under the master lease-purchase program pursuant to Section  
445 31-7-10 and any lease-purchase of equipment which a governing  
446 authority elects to lease-purchase may be acquired by a  
447 lease-purchase agreement under this paragraph (e). Lease-purchase  
448 financing may also be obtained from the vendor or from a  
449 third-party source after having solicited and obtained at least  
450 two (2) written competitive bids, as defined in paragraph (b) of  
451 this section, for such financing without advertising for such  
452 bids. Solicitation for the bids for financing may occur before or  
453 after acceptance of bids for the purchase of such equipment or,  
454 where no such bids for purchase are required, at any time before



455 the purchase thereof. No such lease-purchase agreement shall be  
456 for an annual rate of interest which is greater than the overall  
457 maximum interest rate to maturity on general obligation  
458 indebtedness permitted under Section 75-17-101, and the term of  
459 such lease-purchase agreement shall not exceed the useful life of  
460 equipment covered thereby as determined according to the upper  
461 limit of the asset depreciation range (ADR) guidelines for the  
462 Class Life Asset Depreciation Range System established by the  
463 Internal Revenue Service pursuant to the United States Internal  
464 Revenue Code and regulations thereunder as in effect on December  
465 31, 1980, or comparable depreciation guidelines with respect to  
466 any equipment not covered by ADR guidelines. Any lease-purchase  
467 agreement entered into pursuant to this paragraph (e) may contain  
468 any of the terms and conditions which a master lease-purchase  
469 agreement may contain under the provisions of Section 31-7-10(5),  
470 and shall contain an annual allocation dependency clause  
471 substantially similar to that set forth in Section 31-7-10(8).  
472 Each agency or governing authority entering into a lease-purchase  
473 transaction pursuant to this paragraph (e) shall maintain with  
474 respect to each such lease-purchase transaction the same  
475 information as required to be maintained by the Department of  
476 Finance and Administration pursuant to Section 31-7-10(13).  
477 However, nothing contained in this section shall be construed to  
478 permit agencies to acquire items of equipment with a total  
479 acquisition cost in the aggregate of less than Ten Thousand



480 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
481 equipment, and the purchase thereof by any lessor, acquired by  
482 lease-purchase under this paragraph and all lease-purchase  
483 payments with respect thereto shall be exempt from all Mississippi  
484 sales, use and ad valorem taxes. Interest paid on any  
485 lease-purchase agreement under this section shall be exempt from  
486 State of Mississippi income taxation.

487 (f) **Alternate bid authorization.** When necessary to  
488 ensure ready availability of commodities for public works and the  
489 timely completion of public projects, no more than two (2)  
490 alternate bids may be accepted by a governing authority for  
491 commodities. No purchases may be made through use of such  
492 alternate bids procedure unless the lowest and best bidder cannot  
493 deliver the commodities contained in his bid. In that event,  
494 purchases of such commodities may be made from one (1) of the  
495 bidders whose bid was accepted as an alternate.

496 (g) **Construction contract change authorization.** In the  
497 event a determination is made by an agency or governing authority  
498 after a construction contract is let that changes or modifications  
499 to the original contract are necessary or would better serve the  
500 purpose of the agency or the governing authority, such agency or  
501 governing authority may, in its discretion, order such changes  
502 pertaining to the construction that are necessary under the  
503 circumstances without the necessity of further public bids;  
504 provided that such change shall be made in a commercially



505 reasonable manner and shall not be made to circumvent the public  
506 purchasing statutes. In addition to any other authorized person,  
507 the architect or engineer hired by an agency or governing  
508 authority with respect to any public construction contract shall  
509 have the authority, when granted by an agency or governing  
510 authority, to authorize changes or modifications to the original  
511 contract without the necessity of prior approval of the agency or  
512 governing authority when any such change or modification is less  
513 than one percent (1%) of the total contract amount. The agency or  
514 governing authority may limit the number, manner or frequency of  
515 such emergency changes or modifications.

516 (h) **Petroleum purchase alternative.** In addition to  
517 other methods of purchasing authorized in this chapter, when any  
518 agency or governing authority shall have a need for gas, diesel  
519 fuel, oils and/or other petroleum products in excess of the amount  
520 set forth in paragraph (a) of this section, such agency or  
521 governing authority may purchase the commodity after having  
522 solicited and obtained at least two (2) competitive written bids,  
523 as defined in paragraph (b) of this section. If two (2)  
524 competitive written bids are not obtained, the entity shall comply  
525 with the procedures set forth in paragraph (c) of this section.  
526 In the event any agency or governing authority shall have  
527 advertised for bids for the purchase of gas, diesel fuel, oils and  
528 other petroleum products and coal and no acceptable bids can be  
529 obtained, such agency or governing authority is authorized and



530 directed to enter into any negotiations necessary to secure the  
531 lowest and best contract available for the purchase of such  
532 commodities.

533           (i) **Road construction petroleum products price**  
534 **adjustment clause authorization.** Any agency or governing  
535 authority authorized to enter into contracts for the construction,  
536 maintenance, surfacing or repair of highways, roads or streets,  
537 may include in its bid proposal and contract documents a price  
538 adjustment clause with relation to the cost to the contractor,  
539 including taxes, based upon an industry-wide cost index, of  
540 petroleum products including asphalt used in the performance or  
541 execution of the contract or in the production or manufacture of  
542 materials for use in such performance. Such industry-wide index  
543 shall be established and published monthly by the Mississippi  
544 Department of Transportation with a copy thereof to be mailed,  
545 upon request, to the clerks of the governing authority of each  
546 municipality and the clerks of each board of supervisors  
547 throughout the state. The price adjustment clause shall be based  
548 on the cost of such petroleum products only and shall not include  
549 any additional profit or overhead as part of the adjustment. The  
550 bid proposals or document contract shall contain the basis and  
551 methods of adjusting unit prices for the change in the cost of  
552 such petroleum products.

553           (j) **State agency emergency purchase procedure.** If the  
554 governing board or the executive head, or his designees, of any



555 agency of the state shall determine that an emergency exists in  
556 regard to the purchase of any commodities or repair contracts, so  
557 that the delay incident to giving opportunity for competitive  
558 bidding would be detrimental to the interests of the state, then  
559 the head of such agency, or his designees, shall file with the  
560 Department of Finance and Administration (i) a statement  
561 explaining the conditions and circumstances of the emergency,  
562 which shall include a detailed description of the events leading  
563 up to the situation and the negative impact to the entity if the  
564 purchase is made following the statutory requirements set forth in  
565 paragraph (a), (b) or (c) of this section, and (ii) a certified  
566 copy of the appropriate minutes of the board of such agency  
567 requesting the emergency purchase, if applicable. Upon receipt of  
568 the statement and applicable board certification, the State Fiscal  
569 Officer, or his designees, may, in writing, authorize the purchase  
570 or repair without having to comply with competitive bidding  
571 requirements.

572         If the governing board or the executive head, or his  
573 designees, of any agency determines that an emergency exists in  
574 regard to the purchase of any commodities or repair contracts, so  
575 that the delay incident to giving opportunity for competitive  
576 bidding would threaten the health or safety of any person, or the  
577 preservation or protection of property, then the provisions in  
578 this section for competitive bidding shall not apply, and any  
579 officer or agent of the agency having general or specific



580 authority for making the purchase or repair contract shall approve  
581 the bill presented for payment, and he shall certify in writing  
582 from whom the purchase was made, or with whom the repair contract  
583 was made.

584 Total purchases made under this paragraph (j) shall only be  
585 for the purpose of meeting needs created by the emergency  
586 situation. Following the emergency purchase, documentation of the  
587 purchase, including a description of the commodity purchased, the  
588 purchase price thereof and the nature of the emergency shall be  
589 filed with the Department of Finance and Administration. Any  
590 contract awarded pursuant to this paragraph (j) shall not exceed a  
591 term of one (1) year.

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

593 If the governing authority, or the governing authority acting  
594 through its designee, shall determine that an emergency exists in  
595 regard to the purchase of any commodities or repair contracts, so  
596 that the delay incident to giving opportunity for competitive  
597 bidding would be detrimental to the interest of the governing  
598 authority, then the provisions herein for competitive bidding  
599 shall not apply and any officer or agent of such governing  
600 authority having general or special authority therefor in making  
601 such purchase or repair shall approve the bill presented therefor,  
602 and he shall certify in writing thereon from whom such purchase  
603 was made, or with whom such a repair contract was made. At the  
604 board meeting next following the emergency purchase or repair





605 contract, documentation of the purchase or repair contract,  
606 including a description of the commodity purchased, the price  
607 thereof and the nature of the emergency shall be presented to the  
608 board and shall be placed on the minutes of the board of such  
609 governing authority.

610 (1) **Hospital purchase, lease-purchase and lease**  
611 **authorization.**

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

617 (ii) In addition to the authority granted in  
618 subparagraph (i) of this paragraph (1), the commissioners or board  
619 of trustees is authorized to enter into contracts for the lease of  
620 equipment or services, or both, which it considers necessary for  
621 the proper care of patients if, in its opinion, it is not  
622 financially feasible to purchase the necessary equipment or  
623 services. Any such contract for the lease of equipment or  
624 services executed by the commissioners or board shall not exceed a  
625 maximum of five (5) years' duration and shall include a  
626 cancellation clause based on unavailability of funds. If such  
627 cancellation clause is exercised, there shall be no further  
628 liability on the part of the lessee. Any such contract for the  
629 lease of equipment or services executed on behalf of the



630 commissioners or board that complies with the provisions of this  
631 subparagraph (ii) shall be excepted from the bid requirements set  
632 forth in this section.

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

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

636 Purchasing agreements, contracts and maximum price regulations  
637 executed or approved by the Department of Finance and  
638 Administration.

639 (ii) **Outside equipment repairs.** Repairs to  
640 equipment, when such repairs are made by repair facilities in the  
641 private sector; however, engines, transmissions, rear axles and/or  
642 other such components shall not be included in this exemption when  
643 replaced as a complete unit instead of being repaired and the need  
644 for such total component replacement is known before disassembly  
645 of the component; however, invoices identifying the equipment,  
646 specific repairs made, parts identified by number and name,  
647 supplies used in such repairs, and the number of hours of labor  
648 and costs therefor shall be required for the payment for such  
649 repairs.

650 (iii) **In-house equipment repairs.** Purchases of  
651 parts for repairs to equipment, when such repairs are made by  
652 personnel of the agency or governing authority; however, entire  
653 assemblies, such as engines or transmissions, shall not be



654 included in this exemption when the entire assembly is being  
655 replaced instead of being repaired.

656 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
657 of gravel or fill dirt which are to be removed and transported by  
658 the purchaser.

659 (v) **Governmental equipment auctions.** Motor  
660 vehicles or other equipment purchased from a federal agency or  
661 authority, another governing authority or state agency of the  
662 State of Mississippi, or any governing authority or state agency  
663 of another state at a public auction held for the purpose of  
664 disposing of such vehicles or other equipment. Any purchase by a  
665 governing authority under the exemption authorized by this  
666 subparagraph (v) shall require advance authorization spread upon  
667 the minutes of the governing authority to include the listing of  
668 the item or items authorized to be purchased and the maximum bid  
669 authorized to be paid for each item or items.

670 (vi) **Intergovernmental sales and transfers.**  
671 Purchases, sales, transfers or trades by governing authorities or  
672 state agencies when such purchases, sales, transfers or trades are  
673 made by a private treaty agreement or through means of  
674 negotiation, from any federal agency or authority, another  
675 governing authority or state agency of the State of Mississippi,  
676 or any state agency or governing authority of another state.  
677 Nothing in this section shall permit such purchases through public  
678 auction except as provided for in subparagraph (v) of this



679 paragraph (m). It is the intent of this section to allow  
680 governmental entities to dispose of and/or purchase commodities  
681 from other governmental entities at a price that is agreed to by  
682 both parties. This shall allow for purchases and/or sales at  
683 prices which may be determined to be below the market value if the  
684 selling entity determines that the sale at below market value is  
685 in the best interest of the taxpayers of the state. Governing  
686 authorities shall place the terms of the agreement and any  
687 justification on the minutes, and state agencies shall obtain  
688 approval from the Department of Finance and Administration, prior  
689 to releasing or taking possession of the commodities.

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

694 (viii) **Single source items.** Noncompetitive items  
695 available from one (1) source only. In connection with the  
696 purchase of noncompetitive items only available from one (1)  
697 source, a certification of the conditions and circumstances  
698 requiring the purchase shall be filed by the agency with the  
699 Department of Finance and Administration and by the governing  
700 authority with the board of the governing authority. Upon receipt  
701 of that certification the Department of Finance and Administration  
702 or the board of the governing authority, as the case may be, may,  
703 in writing, authorize the purchase, which authority shall be noted



704 on the minutes of the body at the next regular meeting thereafter.  
705 In those situations, a governing authority is not required to  
706 obtain the approval of the Department of Finance and  
707 Administration. Following the purchase, the executive head of the  
708 state agency, or his designees, shall file with the Department of  
709 Finance and Administration, documentation of the purchase,  
710 including a description of the commodity purchased, the purchase  
711 price thereof and the source from whom it was purchased.

712 (ix) **Waste disposal facility construction**

713 **contracts.** Construction of incinerators and other facilities for  
714 disposal of solid wastes in which products either generated  
715 therein, such as steam, or recovered therefrom, such as materials  
716 for recycling, are to be sold or otherwise disposed of; however,  
717 in constructing such facilities, a governing authority or agency  
718 shall publicly issue requests for proposals, advertised for in the  
719 same manner as provided herein for seeking bids for public  
720 construction projects, concerning the design, construction,  
721 ownership, operation and/or maintenance of such facilities,  
722 wherein such requests for proposals when issued shall contain  
723 terms and conditions relating to price, financial responsibility,  
724 technology, environmental compatibility, legal responsibilities  
725 and such other matters as are determined by the governing  
726 authority or agency to be appropriate for inclusion; and after  
727 responses to the request for proposals have been duly received,  
728 the governing authority or agency may select the most qualified



729 proposal or proposals on the basis of price, technology and other  
730 relevant factors and from such proposals, but not limited to the  
731 terms thereof, negotiate and enter contracts with one or more of  
732 the persons or firms submitting proposals.

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

736                   (xi) **Information technology products.** Purchases  
737 of information technology products made by governing authorities  
738 under the provisions of purchase schedules, or contracts executed  
739 or approved by the Mississippi Department of Information  
740 Technology Services and designated for use by governing  
741 authorities.

742                   (xii) **Energy efficiency services and equipment.**  
743 Energy efficiency services and equipment acquired by school  
744 districts, community and junior colleges, institutions of higher  
745 learning and state agencies or other applicable governmental  
746 entities on a shared-savings, lease or lease-purchase basis  
747 pursuant to Section 31-7-14.

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

752                   (xiv) **Library books and other reference materials.**  
753 Purchases by libraries or for libraries of books and periodicals;



754 processed film, videocassette tapes, filmstrips and slides;  
755 recorded audiotapes, cassettes and diskettes; and any such items  
756 as would be used for teaching, research or other information  
757 distribution; however, equipment such as projectors, recorders,  
758 audio or video equipment, and monitor televisions are not exempt  
759 under this subparagraph.

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

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

766 (xvii) **Multichannel interactive video systems.**  
767 From and after July 1, 1990, contracts by Mississippi Authority  
768 for Educational Television with any private educational  
769 institution or private nonprofit organization whose purposes are  
770 educational in regard to the construction, purchase, lease or  
771 lease-purchase of facilities and equipment and the employment of  
772 personnel for providing multichannel interactive video systems  
773 (ITSF) in the school districts of this state.

774 (xviii) **Purchases of prison industry products by**  
775 **the Department of Corrections, regional correctional facilities or**  
776 **privately owned prisons.** Purchases made by the Mississippi  
777 Department of Corrections, regional correctional facilities or



778 privately owned prisons involving any item that is manufactured,  
779 processed, grown or produced from the state's prison industries.

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

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

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

794                   (xxii) **Garbage, solid waste and sewage contracts.**  
795 Contracts for garbage collection or disposal, contracts for solid  
796 waste collection or disposal and contracts for sewage collection  
797 or disposal.

798                   (xxiii) **Municipal water tank maintenance**  
799 **contracts.** Professional maintenance program contracts for the  
800 repair or maintenance of municipal water tanks, which provide  
801 professional services needed to maintain municipal water storage





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

804 (xxiv) **Purchases of Mississippi Industries for the**  
805 **Blind products.** Purchases made by state agencies or governing  
806 authorities involving any item that is manufactured, processed or  
807 produced by the Mississippi Industries for the Blind.

808 (xxv) **Purchases of state-adopted textbooks.**  
809 Purchases of state-adopted textbooks by public school districts.

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

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



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

828                   (xxix) **Purchases made pursuant to qualified**  
829 **cooperative purchasing agreements.** Purchases made by certified  
830 purchasing offices of state agencies or governing authorities  
831 under cooperative purchasing agreements previously approved by the  
832 Office of Purchasing and Travel and established by or for any  
833 municipality, county, parish or state government or the federal  
834 government, provided that the notification to potential  
835 contractors includes a clause that sets forth the availability of  
836 the cooperative purchasing agreement to other governmental  
837 entities. Such purchases shall only be made if the use of the  
838 cooperative purchasing agreements is determined to be in the best  
839 interest of the governmental entity.

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

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



849 (xxxii) **Toll roads and bridge construction**  
850 **projects.** Contracts entered into under the provisions of Section  
851 65-43-1 or 65-43-3.

852 (xxxiii) **Certain purchases under Section 57-1-221.**  
853 Contracts entered into pursuant to the provisions of Section  
854 57-1-221.

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

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

862 (xxxvi) **Certain purchases by an academic medical**  
863 **center or health sciences school.** Purchases by an academic  
864 medical center or health sciences school, as defined in Section  
865 37-115-50, of commodities that are used for clinical purposes and  
866 1. intended for use in the diagnosis of disease or other  
867 conditions or in the cure, mitigation, treatment or prevention of  
868 disease, and 2. medical devices, biological, drugs and  
869 radiation-emitting devices as defined by the United States Food  
870 and Drug Administration.

871 (xxxvii) **Certain purchases made under the Alyce G.**  
872 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



873 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
874 Lottery Law.

875 (xxxviii) Certain purchases made under the  
876 Mississippi Pandemic Response Broadband Availability Act.

877 Contracts made by a public school district or school pursuant to  
878 the Mississippi Pandemic Response Broadband Availability Act.

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

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

891 (ii) Bid proposals and contracts may include price  
892 adjustment clauses with relation to the cost to the contractor  
893 based upon a nationally published industry-wide or nationally  
894 published and recognized cost index. The cost index used in a  
895 price adjustment clause shall be determined by the Department of  
896 Finance and Administration for the state agencies and by the  
897 governing board for governing authorities. The bid proposal and



898 contract documents utilizing a price adjustment clause shall  
899 contain the basis and method of adjusting unit prices for the  
900 change in the cost of such commodities, equipment and public  
901 construction.

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

917           (p) **Electrical utility petroleum-based equipment**  
918 **purchase procedure.** When in response to a proper advertisement  
919 therefor, no bid firm as to price is submitted to an electric  
920 utility for power transformers, distribution transformers, power  
921 breakers, reclosers or other articles containing a petroleum



922 product, the electric utility may accept the lowest and best bid  
923 therefor although the price is not firm.

924           (q) **Fuel management system bidding procedure.** Any  
925 governing authority or agency of the state shall, before  
926 contracting for the services and products of a fuel management or  
927 fuel access system, enter into negotiations with not fewer than  
928 two (2) sellers of fuel management or fuel access systems for  
929 competitive written bids to provide the services and products for  
930 the systems. In the event that the governing authority or agency  
931 cannot locate two (2) sellers of such systems or cannot obtain  
932 bids from two (2) sellers of such systems, it shall show proof  
933 that it made a diligent, good-faith effort to locate and negotiate  
934 with two (2) sellers of such systems. Such proof shall include,  
935 but not be limited to, publications of a request for proposals and  
936 letters soliciting negotiations and bids. For purposes of this  
937 paragraph (q), a fuel management or fuel access system is an  
938 automated system of acquiring fuel for vehicles as well as  
939 management reports detailing fuel use by vehicles and drivers, and  
940 the term "competitive written bid" shall have the meaning as  
941 defined in paragraph (b) of this section. Governing authorities  
942 and agencies shall be exempt from this process when contracting  
943 for the services and products of fuel management or fuel access  
944 systems under the terms of a state contract established by the  
945 Office of Purchasing and Travel.



946           (r) **Solid waste contract proposal procedure.** Before  
947 entering into any contract for garbage collection or disposal,  
948 contract for solid waste collection or disposal or contract for  
949 sewage collection or disposal, which involves an expenditure of  
950 more than Fifty Thousand Dollars (\$50,000.00), a governing  
951 authority or agency shall issue publicly a request for proposals  
952 concerning the specifications for such services which shall be  
953 advertised for in the same manner as provided in this section for  
954 seeking bids for purchases which involve an expenditure of more  
955 than the amount provided in paragraph (c) of this section. Any  
956 request for proposals when issued shall contain terms and  
957 conditions relating to price, financial responsibility,  
958 technology, legal responsibilities and other relevant factors as  
959 are determined by the governing authority or agency to be  
960 appropriate for inclusion; all factors determined relevant by the  
961 governing authority or agency or required by this paragraph (r)  
962 shall be duly included in the advertisement to elicit proposals.  
963 After responses to the request for proposals have been duly  
964 received, the governing authority or agency shall select the most  
965 qualified proposal or proposals on the basis of price, technology  
966 and other relevant factors and from such proposals, but not  
967 limited to the terms thereof, negotiate and enter into contracts  
968 with one or more of the persons or firms submitting proposals. If  
969 the governing authority or agency deems none of the proposals to  
970 be qualified or otherwise acceptable, the request for proposals



971 process may be reinitiated. Notwithstanding any other provisions  
972 of this paragraph, where a county with at least thirty-five  
973 thousand (35,000) nor more than forty thousand (40,000)  
974 population, according to the 1990 federal decennial census, owns  
975 or operates a solid waste landfill, the governing authorities of  
976 any other county or municipality may contract with the governing  
977 authorities of the county owning or operating the landfill,  
978 pursuant to a resolution duly adopted and spread upon the minutes  
979 of each governing authority involved, for garbage or solid waste  
980 collection or disposal services through contract negotiations.

981 (s) **Minority set-aside authorization.** Notwithstanding  
982 any provision of this section to the contrary, any agency or  
983 governing authority, by order placed on its minutes, may, in its  
984 discretion, set aside not more than twenty percent (20%) of its  
985 anticipated annual expenditures for the purchase of commodities  
986 from minority businesses; however, all such set-aside purchases  
987 shall comply with all purchasing regulations promulgated by the  
988 Department of Finance and Administration and shall be subject to  
989 bid requirements under this section. Set-aside purchases for  
990 which competitive bids are required shall be made from the lowest  
991 and best minority business bidder. For the purposes of this  
992 paragraph, the term "minority business" means a business which is  
993 owned by a majority of persons who are United States citizens or  
994 permanent resident aliens (as defined by the Immigration and  
995 Naturalization Service) of the United States, and who are Asian,





996 Black, Hispanic or Native American, according to the following  
997 definitions:

998 (i) "Asian" means persons having origins in any of  
999 the original people of the Far East, Southeast Asia, the Indian  
1000 subcontinent, or the Pacific Islands.

1001 (ii) "Black" means persons having origins in any  
1002 black racial group of Africa.

1003 (iii) "Hispanic" means persons of Spanish or  
1004 Portuguese culture with origins in Mexico, South or Central  
1005 America, or the Caribbean Islands, regardless of race.

1006 (iv) "Native American" means persons having  
1007 origins in any of the original people of North America, including  
1008 American Indians, Eskimos and Aleuts.

1009 (t) **Construction punch list restriction.** The  
1010 architect, engineer or other representative designated by the  
1011 agency or governing authority that is contracting for public  
1012 construction or renovation may prepare and submit to the  
1013 contractor only one (1) preliminary punch list of items that do  
1014 not meet the contract requirements at the time of substantial  
1015 completion and one (1) final list immediately before final  
1016 completion and final payment.

1017 (u) **Procurement of construction services by state**  
1018 **institutions of higher learning.** Contracts for privately financed  
1019 construction of auxiliary facilities on the campus of a state  
1020 institution of higher learning may be awarded by the Board of



1021 Trustees of State Institutions of Higher Learning to the lowest  
1022 and best bidder, where sealed bids are solicited, or to the  
1023 offeror whose proposal is determined to represent the best value  
1024 to the citizens of the State of Mississippi, where requests for  
1025 proposals are solicited.

1026           (v) **Insurability of bidders for public construction or**  
1027 **other public contracts.** In any solicitation for bids to perform  
1028 public construction or other public contracts to which this  
1029 section applies including, but not limited to, contracts for  
1030 repair and maintenance, for which the contract will require  
1031 insurance coverage in an amount of not less than One Million  
1032 Dollars (\$1,000,000.00), bidders shall be permitted to either  
1033 submit proof of current insurance coverage in the specified amount  
1034 or demonstrate ability to obtain the required coverage amount of  
1035 insurance if the contract is awarded to the bidder. Proof of  
1036 insurance coverage shall be submitted within five (5) business  
1037 days from bid acceptance.

1038           (w) **Purchase authorization clarification.** Nothing in  
1039 this section shall be construed as authorizing any purchase not  
1040 authorized by law.

1041           **SECTION 7.** If any section, paragraph, sentence, clause,  
1042 phrase or any part of this act is declared to be in conflict with  
1043 federal law, or if for any reason is declared to be invalid or of  
1044 no effect, the remaining sections, paragraphs, sentences, clauses,



1045 phrases or parts thereof shall be in no manner affected thereby  
1046 but shall remain in full force and effect.

1047           **SECTION 8.** This act shall take effect and be in force from  
1048 and after its passage.

