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To: Education

SENATE BILL NO. 3044
(As Sent to Governor)

1 AN ACT TO ESTABLISH THE "EQUITY IN DISTANCE LEARNING ACT" TO
2 BE ADMINISTERED BY THE MISSISSIPPI DEPARTMENT OF EDUCATION TO
3 PROVIDE GUIDANCE, TECHNICAL SUPPORT AND FINANCIAL REIMBURSEMENT TO
4 SCHOOLS TO PROVIDE DISTANCE LEARNING AND ONLINE SERVICES; TO
5 PROVIDE FOR CERTAIN TRANSFERS BY THE STATE FISCAL OFFICER; TO
6 STATE LEGISLATIVE FINDINGS AND INTENT; TO DEFINE TERMS; TO
7 ESTABLISH THE "EQUITY IN DISTANCE LEARNING GRANT PROGRAM"; TO
8 PROVIDE THAT ALLOCATIONS UNDER THE PROGRAM SHALL BE MADE BASED ON
9 AVERAGE DAILY MEMBERSHIP; TO HIGHLY ENCOURAGE EACH SCHOOL TO
10 COMMIT A PORTION OF ITS FEDERAL ELEMENTARY AND SECONDARY SCHOOL
11 EMERGENCY RELIEF (ESSER) FUNDS TO PURCHASE EQUIPMENT FOR ITS
12 DISTANCE LEARNING PLAN; TO REQUIRE THE DEPARTMENT TO INFORM EACH
13 SCHOOL OF ITS PORTION OF AVAILABLE FUNDS, TO DEVELOP REGULATIONS
14 AND PROCEDURES TO GOVERN THE GRANT PROGRAM, AND TO COMPILE AN
15 EXPRESS PRODUCTS LIST; TO PRESCRIBE THE ELIGIBILITY REQUIREMENTS
16 FOR SCHOOLS TO BE REIMBURSED UNDER THE GRANT PROGRAM; TO CREATE A
17 SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE "EQUITY IN
18 DISTANCE LEARNING FUND"; TO AMEND SECTION 31-7-13, MISSISSIPPI
19 CODE OF 1972, TO PROVIDE THAT PURCHASES UNDER THE GRANT PROGRAM
20 CREATED UNDER THIS ACT AND THE DIRECTIVE THAT SCHOOL DISTRICTS
21 CREATE A DISTANCE LEARNING PLAN AND FULFILL TECHNOLOGY NEEDS
22 EXPEDITIOUSLY SHALL BE DEEMED AN EMERGENCY PURCHASE FOR PURPOSES
23 OF THE PROCUREMENT AND COMPETITIVE BIDDING LAW; TO PROVIDE THAT
24 THE PROVISIONS OF THIS ACT ARE SEVERABLE; AND FOR RELATED
25 PURPOSES.

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

27 **SECTION 1.** This act shall be known and may be cited as the
28 "Equity in Distance Learning Act."



29 **SECTION 2.** (1) Upon the effective date of this act, the
30 State Fiscal Officer shall transfer Three Hundred Thousand Dollars
31 (\$300,000.00) to the Equity in Distance Learning Fund, created in
32 Section 8 of this act, out of the Budget Contingency Fund. The
33 department shall spend the funds under this subsection (1) to
34 assist with technology upgrades to the Mississippi Student
35 Information System (MSIS) to support schools with the
36 implementation of their individual digital learning plans to
37 mitigate the impact of COVID-19.

38 (2) Upon the effective date of this act, the State Fiscal
39 Officer shall transfer One Hundred Twenty-nine Million Seven
40 Hundred Thousand Dollars (\$129,700,000.00) to the Equity in
41 Distance Learning Fund, created in Section 8 of this act, out of
42 the Budget Contingency Fund. The department shall allocate the
43 funds under this subsection (2) to the schools pursuant to Section
44 5(2) of this act.

45 (3) Upon the effective date of this act, the State Fiscal
46 Officer shall transfer Twenty Million Dollars (\$20,000,000.00) to
47 the Equity in Distance Learning Fund, created in Section 8 of this
48 act, out of the Budget Contingency Fund. The department shall
49 allocate the funds under this subsection (3) to the schools
50 according to the schools' needs assessment responses.

51 **SECTION 3.** (1) The Mississippi Legislature finds the
52 following:



53 (a) The State of Emergency and ongoing public health
54 crisis related to COVID-19 requires all schools to plan and
55 implement distance learning programs, and plan to facilitate safe
56 classroom and remote instruction;

57 (b) The availability of unprecedented federal funding
58 for distance learning has created a unique opportunity for schools
59 to provide all students and teachers with better access to
60 technology to enhance traditional classroom teaching; and

61 (c) In recognition that every school's technology needs
62 are different, this act establishes the Equity in Distance
63 Learning Grant Program to require the Mississippi Department of
64 Education and schools to expend funds on eligible expenses, within
65 the relevant statutory provisions of this act and the regulations
66 promulgated, in order to assist schools in expeditiously
67 implementing distance learning programs and facilitating safe
68 classroom and remote instruction.

69 (2) Therefore, the intent of the Mississippi Legislature is:

70 (a) To provide funding for devices and other
71 technology, including technology related to connectivity and
72 online access, sufficient for students, teachers, and
73 administrators and other staff to engage in grade-appropriate
74 distance learning aligned with the state's College and Career
75 Readiness Standards, and provide funding for safe classroom or
76 remote instruction; and



77 (b) To provide funding for technical support and
78 professional development to facilitate distance learning and safe
79 classroom or remote instruction.

80 **SECTION 4.** For purposes of this act, the following words
81 shall have the meanings ascribed herein unless the context
82 otherwise requires:

83 (a) "Grant program" means the Equity in Distance
84 Learning Grant Program established in this act.

85 (b) "Department" means the Mississippi Department of
86 Education.

87 (c) "School" means public school districts,
88 agricultural high schools, the Mississippi School for the Deaf and
89 Blind, the Mississippi School of the Arts and the Mississippi
90 School for Mathematics and Science and public charter schools.

91 (d) "COVID-19" means the Coronavirus Disease 2019.

92 (e) "State of Emergency" means the State of Emergency
93 declared by Executive Order of the Governor of the State of
94 Mississippi on March 14, 2020, and any amendments thereto or
95 subsequent orders or amendments thereto.

96 (f) "Express Product List" or "EPL" means the
97 compilation of vendors and products adopted by the department for
98 use by schools for the purchase of devices, software, online
99 tools, and other equipment and technology necessary to support
100 distance learning.



101 (g) "Learning management system" means a software
102 application for the administration, documentation, tracking,
103 reporting, automation and delivery of educational courses,
104 training programs, or learning and development programs.

105 (h) "Eligible expenses" means a cost incurred by a
106 school, pursuant to this act, to facilitate or enhance distance
107 learning capabilities under its distance learning plan, including:

108 (i) The purchase of laptop computers, tablets,
109 assisted learning devices or other devices which can be used
110 personally by a student or teacher in their home or in the
111 classroom;

112 (ii) The purchase of learning management systems,
113 software and other online tools;

114 (iii) The purchase and installation of hardware to
115 provide for or enhance the internet connectivity of a school's
116 students, including the cost of establishing personal or centrally
117 located hotspots;

118 (iv) The enhancement of security related to
119 devices or connectivity to comply with state and federal law, and
120 to protect students, teachers and administrators and other staff
121 working within the school;

122 (v) The delivery of professional development
123 related to use of devices, connectivity and other relevant
124 components of distance learning for teachers, students and the



125 wider community, including parents or guardians of students
126 enrolled in the school; and

127 (vi) Materials or equipment necessary to increase
128 health and safety precautions in classrooms or other school
129 facilities.

130 **SECTION 5.** (1) There is established the Equity in Distance
131 Learning Grant Program which shall be administered by the
132 department for the purpose of reimbursing schools for eligible
133 expenses incurred in funding their distance learning plans, and in
134 facilitating safe classroom and remote instruction.

135 (2) Subject to appropriations by the Legislature,
136 allocations to schools shall be made based on average daily
137 membership, as defined in Section 37-151-5 and as calculated in
138 the 2019-2020 school year. For any school not funded under the
139 Mississippi Adequate Education Program, the department shall
140 calculate the average-daily-membership equivalent or fund the
141 school based on enrollment.

142 (3) Subject to the provisions of this act, and other
143 applicable federal law and regulations, schools shall have the
144 authority to use the funds provided in this grant program in a way
145 which best facilitates their distance learning plan, and safe
146 classroom or remote instruction.

147 (4) Schools are highly encouraged to commit a portion of
148 their federal ESSER funds, above the amount required by Section
149 7(b) of this act, as supplemental matching funds to offset the



150 total cost of purchasing sufficient electronic devices,
151 technological supports and systems of service for its distance
152 learning plan.

153 **SECTION 6.** (1) The department shall:

154 (a) Inform each school of its portion of the funds
155 appropriated to this grant program as provided for in Section 5(2)
156 of this act;

157 (b) Develop regulations and procedures to govern the
158 administration of this grant program, to include:

159 (i) A reimbursement process for schools to submit
160 expenditures and receive reimbursement for eligible expenses from
161 the department up to the total amount allocated to each school in
162 Section 5 of this act;

163 (ii) Provide guidance to schools in the
164 development of a technology sustainability plan, addressing how
165 devices and other technology purchased and used by the school
166 district, and students, teachers and other administrators and
167 staff, will be maintained throughout their usage and replaced
168 before the expiration of the term of their expected useful life;

169 (iii) Provide guidance to schools in the
170 development of a responsible use policy for students, teachers and
171 administrators or other staff to govern the use of devices and
172 other technology purchased under this grant program;

173 (c) Provide guidance to schools on the development and
174 implementation of a distance learning plan;



175 (d) Solicit bid proposals from vendors to establish an
176 EPL; and

177 (e) Seek an emergency exemption from the procurement
178 laws and bidding procedures established in Section 31-7-13 to
179 expedite the compilation of an EPL and to minimize the cost of
180 relevant devices or other technology for school districts through
181 bulk purchasing.

182 (2) The department may:

183 (a) Revise the adopted EPL based upon purchasing
184 demands as needed to provide schools with choice in the selection
185 of the electronic devices; and

186 (b) Use the federal ESSER funds set aside for
187 administration of the program to administer this grant program, to
188 the extent permissible under federal law.

189 **SECTION 7.** To be eligible under this grant program, a school
190 shall:

191 (a) Prioritize first the purchase of products listed in
192 Section 4(h)(i) of this act. Schools shall equip every student
193 with a grade-appropriate device, as recommended by the department,
194 before incurring the other expenses listed in Section 4(h)(ii) or
195 (iii) of this act, which shall receive next priority after the
196 products listed in Section 4(h)(i) of this act;

197 (b) Match twenty percent (20%) of the funds received
198 under this grant program with monies received by the school from
199 the Elementary and Secondary School Emergency Relief Fund or any



200 funds made available to a school district or charter school for
201 such purposes from any federal, state, public or private entity;

202 (c) Purchase products from vendors listed on the EPL,
203 if using funds under this grant program, unless the school can
204 demonstrate, to the department, that the products it purchases
205 from vendors not listed on the EPL:

206 (i) Meet or exceed the technological specification
207 and functionality required by the department; and

208 (ii) Can be purchased at a price that is less than
209 any of the prices listed on the EPL for a comparable product;

210 (d) Submit the original, itemized receipt of purchase
211 or an authentic copy of the receipt with its request for
212 reimbursement;

213 (e) Secure insurance and submit proof of insurance for
214 any items to be reimbursed under this program;

215 (f) Develop and submit to the department, by September
216 1, 2020:

217 (i) A distance learning plan, establishing an
218 appropriate and achievable plan by the school to develop,
219 implement and maintain distance learning capabilities with a focus
220 on device procurement and connectivity to the internet for
221 students and teachers. A school's distance learning plan shall
222 make specific provision for its students with special needs,
223 including the purchase of appropriate devices and equipment;



224 (ii) With the understanding that this grant
225 program is being funded with one-time federal funds, a technology
226 sustainability plan addressing how devices and other technology
227 purchased and used by the school, and students, teachers and other
228 administrators and staff, will be maintained throughout their
229 usage and replaced before the expiration of the term of their
230 expected useful life without additional state funds; and

231 (iii) A responsible use policy, addressing the use
232 of devices and other technology purchased under this grant
233 program. The policy shall include a provision requiring students,
234 parents or guardians, teachers, administrators and other staff to
235 agree in writing to the provisions in the policy, and may include
236 fines for intentional loss or damage to devices. The policy shall
237 also include a provision acknowledging that the school shall
238 assume the control of ownership and liability for personal devices
239 and other equipment purchased under this grant program until the
240 personal device or other equipment:

241 1. No longer serves the school or related
242 school purposes for which it was acquired and is sold by public
243 auction under Section 17-25-25;

244 2. Is sold to students in Grade 12 under the
245 provisions of Section 37-7-459; or

246 3. Is traded in to a vendor as part of a
247 subsequent purchase; and



248 (g) Compile and maintain an inventory list of all
249 devices purchased and issued to students, teachers and
250 administrators and other staff, as well as any supporting
251 technology or equipment used to support the school's distance
252 learning plan.

253 **SECTION 8.** (1) (a) There is created a special fund in the
254 State Treasury, to be known as the "Equity in Distance Learning
255 Fund," from which the grants authorized by this act shall be
256 disbursed by the department. All monies shall be disbursed from
257 the fund in compliance with the guidelines, guidance, rules,
258 regulations and/or other criteria, as may be amended from time to
259 time, by the United States Department of the Treasury regarding
260 the use of monies from the Coronavirus Relief Fund established by
261 the CARES Act. If on November 1, 2020, there are unobligated
262 monies in the fund from either the department or schools, the
263 department shall have the discretion to distribute the monies for
264 eligible expenditures pursuant to the CARES Act to schools by
265 application. However, unexpended amounts of any monies unrelated
266 to the Coronavirus Relief Fund, whether appropriated by the
267 Legislature or donated by any public or private entity, remaining
268 in the fund at the end of a fiscal year shall not lapse into the
269 Budget Contingency Fund or the State General Fund, and any
270 investment earnings or interest earned on amounts in the grant
271 program fund shall be deposited to the credit of the grant program
272 fund.



273 (b) If on December 29, 2020, there are unexpended
274 Coronavirus Relief Fund monies remaining in the fund, those funds
275 shall lapse into the Budget Contingency Fund, to be transferred,
276 by the State Fiscal Officer, into the Unemployment Compensation
277 Fund on or before December 30, 2020.

278 (2) The use of funds allocated under this grant program
279 shall be subject to audit by the United States Department of the
280 Treasury's Office of Inspector General and the Mississippi Office
281 of the State Auditor. Each school, or other entity or person
282 receiving funds under this grant program, found to be fully or
283 partially noncompliant with the requirements in this act, shall
284 return to the state all or a portion of the funds received.

285 **SECTION 9.** The department shall provide a comprehensive
286 report on the use of funds distributed under this grant program
287 and the effectiveness of distance learning plans adopted by
288 schools to the Governor, Lieutenant Governor, Speaker of the House
289 of Representatives, and Chairs of the Senate and House
290 Appropriations and Education Committees by October 1, 2020.

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

293 31-7-13. All agencies and governing authorities shall
294 purchase their commodities and printing; contract for garbage
295 collection or disposal; contract for solid waste collection or
296 disposal; contract for sewage collection or disposal; contract for
297 public construction; and contract for rentals as herein provided.



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

299 Purchases which do not involve an expenditure of more than Five
300 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
301 charges, may be made without advertising or otherwise requesting
302 competitive bids. However, nothing contained in this paragraph
303 (a) shall be construed to prohibit any agency or governing
304 authority from establishing procedures which require competitive
305 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

306 (b) **Bidding procedure for purchases over \$5,000.00 but**
307 **not over \$50,000.00.** Purchases which involve an expenditure of
308 more than Five Thousand Dollars (\$5,000.00) but not more than
309 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
310 shipping charges, may be made from the lowest and best bidder
311 without publishing or posting advertisement for bids, provided at
312 least two (2) competitive written bids have been obtained. Any
313 state agency or community/junior college purchasing commodities or
314 procuring construction pursuant to this paragraph (b) may
315 authorize its purchasing agent, or his designee, to accept the
316 lowest competitive written bid under Fifty Thousand Dollars
317 (\$50,000.00). Any governing authority purchasing commodities
318 pursuant to this paragraph (b) may authorize its purchasing agent,
319 or his designee, with regard to governing authorities other than
320 counties, or its purchase clerk, or his designee, with regard to
321 counties, to accept the lowest and best competitive written bid.
322 Such authorization shall be made in writing by the governing



323 authority and shall be maintained on file in the primary office of
324 the agency and recorded in the official minutes of the governing
325 authority, as appropriate. The purchasing agent or the purchase
326 clerk, or their designee, as the case may be, and not the
327 governing authority, shall be liable for any penalties and/or
328 damages as may be imposed by law for any act or omission of the
329 purchasing agent or purchase clerk, or their designee,
330 constituting a violation of law in accepting any bid without
331 approval by the governing authority. The term "competitive
332 written bid" shall mean a bid submitted on a bid form furnished by
333 the buying agency or governing authority and signed by authorized
334 personnel representing the vendor, or a bid submitted on a
335 vendor's letterhead or identifiable bid form and signed by
336 authorized personnel representing the vendor. "Competitive" shall
337 mean that the bids are developed based upon comparable
338 identification of the needs and are developed independently and
339 without knowledge of other bids or prospective bids. Any bid item
340 for construction in excess of Five Thousand Dollars (\$5,000.00)
341 shall be broken down by components to provide detail of component
342 description and pricing. These details shall be submitted with
343 the written bids and become part of the bid evaluation criteria.
344 Bids may be submitted by facsimile, electronic mail or other
345 generally accepted method of information distribution. Bids
346 submitted by electronic transmission shall not require the



347 signature of the vendor's representative unless required by
348 agencies or governing authorities.

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

350 (i) **Publication requirement.**

351 1. Purchases which involve an expenditure of
352 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
353 freight and shipping charges, may be made from the lowest and best
354 bidder after advertising for competitive bids once each week for
355 two (2) consecutive weeks in a regular newspaper published in the
356 county or municipality in which such agency or governing authority
357 is located. However, all American Recovery and Reinvestment Act
358 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
359 shall be bid. All references to American Recovery and
360 Reinvestment Act projects in this section shall not apply to
361 programs identified in Division B of the American Recovery and
362 Reinvestment Act.

363 2. Reverse auctions shall be the primary
364 method for receiving bids during the bidding process. If a
365 purchasing entity determines that a reverse auction is not in the
366 best interest of the state, then that determination must be
367 approved by the Public Procurement Review Board. The purchasing
368 entity shall submit a detailed explanation of why a reverse
369 auction would not be in the best interest of the state and present
370 an alternative process to be approved by the Public Procurement
371 Review Board. If the Public Procurement Review Board authorizes



372 the purchasing entity to solicit bids with a method other than
373 reverse auction, then the purchasing entity may designate the
374 other methods by which the bids will be received, including, but
375 not limited to, bids sealed in an envelope, bids received
376 electronically in a secure system, or bids received by any other
377 method that promotes open competition and has been approved by the
378 Office of Purchasing and Travel. However, reverse auction shall
379 not be used for any public contract for design or construction of
380 public facilities, including buildings, roads and bridges. The
381 Public Procurement Review Board must approve any contract entered
382 into by alternative process. The provisions of this item 2 shall
383 not apply to the individual state institutions of higher learning.

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



397 projects shall not be less than ten (10) working days after the
398 date of the published notice. The notice of intention to let
399 contracts or purchase equipment shall state the time and place at
400 which bids shall be received, list the contracts to be made or
401 types of equipment or supplies to be purchased, and, if all plans
402 and/or specifications are not published, refer to the plans and/or
403 specifications on file. If there is no newspaper published in the
404 county or municipality, then such notice shall be given by posting
405 same at the courthouse, or for municipalities at the city hall,
406 and at two (2) other public places in the county or municipality,
407 and also by publication once each week for two (2) consecutive
408 weeks in some newspaper having a general circulation in the county
409 or municipality in the above-provided manner. On the same date
410 that the notice is submitted to the newspaper for publication, the
411 agency or governing authority involved shall mail written notice
412 to, or provide electronic notification to the main office of the
413 Mississippi Procurement Technical Assistance Program under the
414 Mississippi Development Authority that contains the same
415 information as that in the published notice. Submissions received
416 by the Mississippi Procurement Technical Assistance Program for
417 projects funded by the American Recovery and Reinvestment Act
418 shall be displayed on a separate and unique internet web page
419 accessible to the public and maintained by the Mississippi
420 Development Authority for the Mississippi Procurement Technical
421 Assistance Program. Those American Recovery and Reinvestment Act



422 related submissions shall be publicly posted within twenty-four
423 (24) hours of receipt by the Mississippi Development Authority and
424 the bid opening shall not occur until the submission has been
425 posted for ten (10) consecutive days. The Department of Finance
426 and Administration shall maintain information regarding contracts
427 and other expenditures from the American Recovery and Reinvestment
428 Act, on a unique internet web page accessible to the public. The
429 Department of Finance and Administration shall promulgate rules
430 regarding format, content and deadlines, unless otherwise
431 specified by law, of the posting of award notices, contract
432 execution and subsequent amendments, links to the contract
433 documents, expenditures against the awarded contracts and general
434 expenditures of funds from the American Recovery and Reinvestment
435 Act. Within one (1) working day of the contract award, the agency
436 or governing authority shall post to the designated web page
437 maintained by the Department of Finance and Administration, notice
438 of the award, including the award recipient, the contract amount,
439 and a brief summary of the contract in accordance with rules
440 promulgated by the department. Within one (1) working day of the
441 contract execution, the agency or governing authority shall post
442 to the designated web page maintained by the Department of Finance
443 and Administration a summary of the executed contract and make a
444 copy of the appropriately redacted contract documents available
445 for linking to the designated web page in accordance with the
446 rules promulgated by the department. The information provided by



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

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

466 (iii) **Filing requirement.** In all cases involving
467 governing authorities, before the notice shall be published or
468 posted, the plans or specifications for the construction or
469 equipment being sought shall be filed with the clerk of the board
470 of the governing authority. In addition to these requirements, a
471 bid file shall be established which shall indicate those vendors



472 to whom such solicitations and specifications were issued, and
473 such file shall also contain such information as is pertinent to
474 the bid.

475 (iv) **Specification restrictions.**

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

492 2. Specifications for construction projects
493 may include an allowance for commodities, equipment, furniture,
494 construction materials or systems in which prospective bidders are
495 instructed to include in their bids specified amounts for such
496 items so long as the allowance items are acquired by the vendor in



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

500 (v) **Electronic bids.** Agencies and governing
501 authorities shall provide a secure electronic interactive system
502 for the submittal of bids requiring competitive bidding that shall
503 be an additional bidding option for those bidders who choose to
504 submit their bids electronically. The Department of Finance and
505 Administration shall provide, by regulation, the standards that
506 agencies must follow when receiving electronic bids. Agencies and
507 governing authorities shall make the appropriate provisions
508 necessary to accept electronic bids from those bidders who choose
509 to submit their bids electronically for all purchases requiring
510 competitive bidding under this section. Any special condition or
511 requirement for the electronic bid submission shall be specified
512 in the advertisement for bids required by this section. Agencies
513 or governing authorities that are currently without available high
514 speed internet access shall be exempt from the requirement of this
515 subparagraph (v) until such time that high speed internet access
516 becomes available. Any county having a population of less than
517 twenty thousand (20,000) shall be exempt from the provisions of
518 this subparagraph (v). Any municipality having a population of
519 less than ten thousand (10,000) shall be exempt from the
520 provisions of this subparagraph (v). The provisions of this
521 subparagraph (v) shall not require any bidder to submit bids



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

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

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

545 (ii) **Decision procedure for Certified Purchasing**

546 **Offices.** In addition to the decision procedure set forth in



547 subparagraph (i) of this paragraph (d), Certified Purchasing
548 Offices may also use the following procedure: Purchases may be
549 made from the bidder offering the best value. In determining the
550 best value bid, freight and shipping charges shall be included.
551 Life-cycle costing, total cost bids, warranties, guaranteed
552 buy-back provisions, documented previous experience, training
553 costs and other relevant provisions, including, but not limited
554 to, a bidder having a local office and inventory located within
555 the jurisdiction of the governing authority, may be included in
556 the best value calculation. This provision shall authorize
557 Certified Purchasing Offices to utilize a Request For Proposals
558 (RFP) process when purchasing commodities. All best value
559 procedures for state agencies must be in compliance with
560 regulations established by the Department of Finance and
561 Administration. No agency or governing authority shall accept a
562 bid based on items or criteria not included in the specifications.

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

564 **Landmarks.** In addition to the decision procedure set forth in
565 subparagraph (i) of this paragraph (d), where purchase involves
566 renovation, restoration, or both, of the State Capitol Building or
567 any other historical building designated for at least five (5)
568 years as a Mississippi Landmark by the Board of Trustees of the
569 Department of Archives and History under the authority of Sections
570 39-7-7 and 39-7-11, the agency or governing authority may use the
571 following procedure: Purchases may be made from the lowest and



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

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

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



597 (e) **Lease-purchase authorization.** For the purposes of
598 this section, the term "equipment" shall mean equipment, furniture
599 and, if applicable, associated software and other applicable
600 direct costs associated with the acquisition. Any lease-purchase
601 of equipment which an agency is not required to lease-purchase
602 under the master lease-purchase program pursuant to Section
603 31-7-10 and any lease-purchase of equipment which a governing
604 authority elects to lease-purchase may be acquired by a
605 lease-purchase agreement under this paragraph (e). Lease-purchase
606 financing may also be obtained from the vendor or from a
607 third-party source after having solicited and obtained at least
608 two (2) written competitive bids, as defined in paragraph (b) of
609 this section, for such financing without advertising for such
610 bids. Solicitation for the bids for financing may occur before or
611 after acceptance of bids for the purchase of such equipment or,
612 where no such bids for purchase are required, at any time before
613 the purchase thereof. No such lease-purchase agreement shall be
614 for an annual rate of interest which is greater than the overall
615 maximum interest rate to maturity on general obligation
616 indebtedness permitted under Section 75-17-101, and the term of
617 such lease-purchase agreement shall not exceed the useful life of
618 equipment covered thereby as determined according to the upper
619 limit of the asset depreciation range (ADR) guidelines for the
620 Class Life Asset Depreciation Range System established by the
621 Internal Revenue Service pursuant to the United States Internal



622 Revenue Code and regulations thereunder as in effect on December
623 31, 1980, or comparable depreciation guidelines with respect to
624 any equipment not covered by ADR guidelines. Any lease-purchase
625 agreement entered into pursuant to this paragraph (e) may contain
626 any of the terms and conditions which a master lease-purchase
627 agreement may contain under the provisions of Section 31-7-10(5),
628 and shall contain an annual allocation dependency clause
629 substantially similar to that set forth in Section 31-7-10(8).
630 Each agency or governing authority entering into a lease-purchase
631 transaction pursuant to this paragraph (e) shall maintain with
632 respect to each such lease-purchase transaction the same
633 information as required to be maintained by the Department of
634 Finance and Administration pursuant to Section 31-7-10(13).
635 However, nothing contained in this section shall be construed to
636 permit agencies to acquire items of equipment with a total
637 acquisition cost in the aggregate of less than Ten Thousand
638 Dollars (\$10,000.00) by a single lease-purchase transaction. All
639 equipment, and the purchase thereof by any lessor, acquired by
640 lease-purchase under this paragraph and all lease-purchase
641 payments with respect thereto shall be exempt from all Mississippi
642 sales, use and ad valorem taxes. Interest paid on any
643 lease-purchase agreement under this section shall be exempt from
644 State of Mississippi income taxation.

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



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

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



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

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

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



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

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



722 purchase is made following the statutory requirements set forth in
723 paragraph (a), (b) or (c) of this section, and (ii) a certified
724 copy of the appropriate minutes of the board of such agency
725 requesting the emergency purchase, if applicable. Upon receipt of
726 the statement and applicable board certification, the State Fiscal
727 Officer, or his designees, may, in writing, authorize the purchase
728 or repair without having to comply with competitive bidding
729 requirements.

730 If the governing board or the executive head, or his
731 designees, of any agency determines that an emergency exists in
732 regard to the purchase of any commodities or repair contracts, so
733 that the delay incident to giving opportunity for competitive
734 bidding would threaten the health or safety of any person, or the
735 preservation or protection of property, then the provisions in
736 this section for competitive bidding shall not apply, and any
737 officer or agent of the agency having general or specific
738 authority for making the purchase or repair contract shall approve
739 the bill presented for payment, and he shall certify in writing
740 from whom the purchase was made, or with whom the repair contract
741 was made.

742 Total purchases made under this paragraph (j) shall only be
743 for the purpose of meeting needs created by the emergency
744 situation. Following the emergency purchase, documentation of the
745 purchase, including a description of the commodity purchased, the
746 purchase price thereof and the nature of the emergency shall be



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

750 Purchases under the grant program established under this act
751 in response to COVID-19 and the directive that school districts
752 create a distance learning plan and fulfill technology needs
753 expeditiously shall be deemed an emergency purchase for purposes
754 of this paragraph (j).

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

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



772 governing authority. Purchases under the grant program
773 established under this act in response to COVID-19 and the
774 directive that school districts create a distance learning plan
775 and fulfill technology needs expeditiously shall be deemed an
776 emergency purchase for purposes of this paragraph (k).

777 (1) **Hospital purchase, lease-purchase and lease**
778 **authorization.**

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

784 (ii) In addition to the authority granted in
785 subparagraph (i) of this paragraph (1), the commissioners or board
786 of trustees is authorized to enter into contracts for the lease of
787 equipment or services, or both, which it considers necessary for
788 the proper care of patients if, in its opinion, it is not
789 financially feasible to purchase the necessary equipment or
790 services. Any such contract for the lease of equipment or
791 services executed by the commissioners or board shall not exceed a
792 maximum of five (5) years' duration and shall include a
793 cancellation clause based on unavailability of funds. If such
794 cancellation clause is exercised, there shall be no further
795 liability on the part of the lessee. Any such contract for the
796 lease of equipment or services executed on behalf of the



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

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

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

806 (ii) **Outside equipment repairs.** Repairs to
807 equipment, when such repairs are made by repair facilities in the
808 private sector; however, engines, transmissions, rear axles and/or
809 other such components shall not be included in this exemption when
810 replaced as a complete unit instead of being repaired and the need
811 for such total component replacement is known before disassembly
812 of the component; however, invoices identifying the equipment,
813 specific repairs made, parts identified by number and name,
814 supplies used in such repairs, and the number of hours of labor
815 and costs therefor shall be required for the payment for such
816 repairs.

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



821 included in this exemption when the entire assembly is being
822 replaced instead of being repaired.

823 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
824 of gravel or fill dirt which are to be removed and transported by
825 the purchaser.

826 (v) **Governmental equipment auctions.** Motor
827 vehicles or other equipment purchased from a federal agency or
828 authority, another governing authority or state agency of the
829 State of Mississippi, or any governing authority or state agency
830 of another state at a public auction held for the purpose of
831 disposing of such vehicles or other equipment. Any purchase by a
832 governing authority under the exemption authorized by this
833 subparagraph (v) shall require advance authorization spread upon
834 the minutes of the governing authority to include the listing of
835 the item or items authorized to be purchased and the maximum bid
836 authorized to be paid for each item or items.

837 (vi) **Intergovernmental sales and transfers.**
838 Purchases, sales, transfers or trades by governing authorities or
839 state agencies when such purchases, sales, transfers or trades are
840 made by a private treaty agreement or through means of
841 negotiation, from any federal agency or authority, another
842 governing authority or state agency of the State of Mississippi,
843 or any state agency or governing authority of another state.
844 Nothing in this section shall permit such purchases through public
845 auction except as provided for in subparagraph (v) of this



846 paragraph (m). It is the intent of this section to allow
847 governmental entities to dispose of and/or purchase commodities
848 from other governmental entities at a price that is agreed to by
849 both parties. This shall allow for purchases and/or sales at
850 prices which may be determined to be below the market value if the
851 selling entity determines that the sale at below market value is
852 in the best interest of the taxpayers of the state. Governing
853 authorities shall place the terms of the agreement and any
854 justification on the minutes, and state agencies shall obtain
855 approval from the Department of Finance and Administration, prior
856 to releasing or taking possession of the commodities.

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

861 (viii) **Single source items.** Noncompetitive items
862 available from one (1) source only. In connection with the
863 purchase of noncompetitive items only available from one (1)
864 source, a certification of the conditions and circumstances
865 requiring the purchase shall be filed by the agency with the
866 Department of Finance and Administration and by the governing
867 authority with the board of the governing authority. Upon receipt
868 of that certification the Department of Finance and Administration
869 or the board of the governing authority, as the case may be, may,
870 in writing, authorize the purchase, which authority shall be noted



871 on the minutes of the body at the next regular meeting thereafter.
872 In those situations, a governing authority is not required to
873 obtain the approval of the Department of Finance and
874 Administration. Following the purchase, the executive head of the
875 state agency, or his designees, shall file with the Department of
876 Finance and Administration, documentation of the purchase,
877 including a description of the commodity purchased, the purchase
878 price thereof and the source from whom it was purchased.

879 (ix) **Waste disposal facility construction**
880 **contracts.** Construction of incinerators and other facilities for
881 disposal of solid wastes in which products either generated
882 therein, such as steam, or recovered therefrom, such as materials
883 for recycling, are to be sold or otherwise disposed of; however,
884 in constructing such facilities, a governing authority or agency
885 shall publicly issue requests for proposals, advertised for in the
886 same manner as provided herein for seeking bids for public
887 construction projects, concerning the design, construction,
888 ownership, operation and/or maintenance of such facilities,
889 wherein such requests for proposals when issued shall contain
890 terms and conditions relating to price, financial responsibility,
891 technology, environmental compatibility, legal responsibilities
892 and such other matters as are determined by the governing
893 authority or agency to be appropriate for inclusion; and after
894 responses to the request for proposals have been duly received,
895 the governing authority or agency may select the most qualified



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

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

903 (xi) **Information technology products.** Purchases
904 of information technology products made by governing authorities
905 under the provisions of purchase schedules, or contracts executed
906 or approved by the Mississippi Department of Information
907 Technology Services and designated for use by governing
908 authorities.

909 (xii) **Energy efficiency services and equipment.**
910 Energy efficiency services and equipment acquired by school
911 districts, community and junior colleges, institutions of higher
912 learning and state agencies or other applicable governmental
913 entities on a shared-savings, lease or lease-purchase basis
914 pursuant to Section 31-7-14.

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

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



921 processed film, videocassette tapes, filmstrips and slides;
922 recorded audiotapes, cassettes and diskettes; and any such items
923 as would be used for teaching, research or other information
924 distribution; however, equipment such as projectors, recorders,
925 audio or video equipment, and monitor televisions are not exempt
926 under this subparagraph.

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

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

933 (xvii) **Multichannel interactive video systems.**
934 From and after July 1, 1990, contracts by Mississippi Authority
935 for Educational Television with any private educational
936 institution or private nonprofit organization whose purposes are
937 educational in regard to the construction, purchase, lease or
938 lease-purchase of facilities and equipment and the employment of
939 personnel for providing multichannel interactive video systems
940 (ITSF) in the school districts of this state.

941 (xviii) **Purchases of prison industry products by**
942 **the Department of Corrections, regional correctional facilities or**
943 **privately owned prisons.** Purchases made by the Mississippi
944 Department of Corrections, regional correctional facilities or



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

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

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

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

961 (xxii) **Garbage, solid waste and sewage contracts.**
962 Contracts for garbage collection or disposal, contracts for solid
963 waste collection or disposal and contracts for sewage collection
964 or disposal.

965 (xxiii) **Municipal water tank maintenance**
966 **contracts.** Professional maintenance program contracts for the
967 repair or maintenance of municipal water tanks, which provide
968 professional services needed to maintain municipal water storage



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

971 (xxiv) **Purchases of Mississippi Industries for the**
972 **Blind products.** Purchases made by state agencies or governing
973 authorities involving any item that is manufactured, processed or
974 produced by the Mississippi Industries for the Blind.

975 (xxv) **Purchases of state-adopted textbooks.**
976 Purchases of state-adopted textbooks by public school districts.

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

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



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

995 (xxix) **Purchases made pursuant to qualified**
996 **cooperative purchasing agreements.** Purchases made by certified
997 purchasing offices of state agencies or governing authorities
998 under cooperative purchasing agreements previously approved by the
999 Office of Purchasing and Travel and established by or for any
1000 municipality, county, parish or state government or the federal
1001 government, provided that the notification to potential
1002 contractors includes a clause that sets forth the availability of
1003 the cooperative purchasing agreement to other governmental
1004 entities. Such purchases shall only be made if the use of the
1005 cooperative purchasing agreements is determined to be in the best
1006 interest of the governmental entity.

1007 (xxx) **School yearbooks.** Purchases of school
1008 yearbooks by state agencies or governing authorities; provided,
1009 however, that state agencies and governing authorities shall use
1010 for these purchases the RFP process as set forth in the
1011 Mississippi Procurement Manual adopted by the Office of Purchasing
1012 and Travel.

1013 (xxxi) **Design-build method and dual-phase**
1014 **design-build method of contracting.** Contracts entered into under
1015 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



1016 (xxxii) **Toll roads and bridge construction**
1017 **projects.** Contracts entered into under the provisions of Section
1018 65-43-1 or 65-43-3.

1019 (xxxiii) **Certain purchases under Section 57-1-221.**
1020 Contracts entered into pursuant to the provisions of Section
1021 57-1-221.

1022 (xxxiv) **Certain transfers made pursuant to the**
1023 **provisions of Section 57-105-1(7).** Transfers of public property
1024 or facilities under Section 57-105-1(7) and construction related
1025 to such public property or facilities.

1026 (xxxv) **Certain purchases or transfers entered into**
1027 **with local electrical power associations.** Contracts or agreements
1028 entered into under the provisions of Section 55-3-33.

1029 (xxxvi) **Certain purchases by an academic medical**
1030 **center or health sciences school.** Purchases by an academic
1031 medical center or health sciences school, as defined in Section
1032 37-115-50, of commodities that are used for clinical purposes and
1033 1. intended for use in the diagnosis of disease or other
1034 conditions or in the cure, mitigation, treatment or prevention of
1035 disease, and 2. medical devices, biological, drugs and
1036 radiation-emitting devices as defined by the United States Food
1037 and Drug Administration.

1038 (xxxvii) **Certain purchases made under the Alyce G.**
1039 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



1040 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1041 Lottery Law.

1042 (n) **Term contract authorization.** All contracts for the
1043 purchase of:

1044 (i) All contracts for the purchase of commodities,
1045 equipment and public construction (including, but not limited to,
1046 repair and maintenance), may be let for periods of not more than
1047 sixty (60) months in advance, subject to applicable statutory
1048 provisions prohibiting the letting of contracts during specified
1049 periods near the end of terms of office. Term contracts for a
1050 period exceeding twenty-four (24) months shall also be subject to
1051 ratification or cancellation by governing authority boards taking
1052 office subsequent to the governing authority board entering the
1053 contract.

1054 (ii) Bid proposals and contracts may include price
1055 adjustment clauses with relation to the cost to the contractor
1056 based upon a nationally published industry-wide or nationally
1057 published and recognized cost index. The cost index used in a
1058 price adjustment clause shall be determined by the Department of
1059 Finance and Administration for the state agencies and by the
1060 governing board for governing authorities. The bid proposal and
1061 contract documents utilizing a price adjustment clause shall
1062 contain the basis and method of adjusting unit prices for the
1063 change in the cost of such commodities, equipment and public
1064 construction.



1065 (o) **Purchase law violation prohibition and vendor**
1066 **penalty.** No contract or purchase as herein authorized shall be
1067 made for the purpose of circumventing the provisions of this
1068 section requiring competitive bids, nor shall it be lawful for any
1069 person or concern to submit individual invoices for amounts within
1070 those authorized for a contract or purchase where the actual value
1071 of the contract or commodity purchased exceeds the authorized
1072 amount and the invoices therefor are split so as to appear to be
1073 authorized as purchases for which competitive bids are not
1074 required. Submission of such invoices shall constitute a
1075 misdemeanor punishable by a fine of not less than Five Hundred
1076 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1077 or by imprisonment for thirty (30) days in the county jail, or
1078 both such fine and imprisonment. In addition, the claim or claims
1079 submitted shall be forfeited.

1080 (p) **Electrical utility petroleum-based equipment**
1081 **purchase procedure.** When in response to a proper advertisement
1082 therefor, no bid firm as to price is submitted to an electric
1083 utility for power transformers, distribution transformers, power
1084 breakers, reclosers or other articles containing a petroleum
1085 product, the electric utility may accept the lowest and best bid
1086 therefor although the price is not firm.

1087 (q) **Fuel management system bidding procedure.** Any
1088 governing authority or agency of the state shall, before
1089 contracting for the services and products of a fuel management or



1090 fuel access system, enter into negotiations with not fewer than
1091 two (2) sellers of fuel management or fuel access systems for
1092 competitive written bids to provide the services and products for
1093 the systems. In the event that the governing authority or agency
1094 cannot locate two (2) sellers of such systems or cannot obtain
1095 bids from two (2) sellers of such systems, it shall show proof
1096 that it made a diligent, good-faith effort to locate and negotiate
1097 with two (2) sellers of such systems. Such proof shall include,
1098 but not be limited to, publications of a request for proposals and
1099 letters soliciting negotiations and bids. For purposes of this
1100 paragraph (q), a fuel management or fuel access system is an
1101 automated system of acquiring fuel for vehicles as well as
1102 management reports detailing fuel use by vehicles and drivers, and
1103 the term "competitive written bid" shall have the meaning as
1104 defined in paragraph (b) of this section. Governing authorities
1105 and agencies shall be exempt from this process when contracting
1106 for the services and products of fuel management or fuel access
1107 systems under the terms of a state contract established by the
1108 Office of Purchasing and Travel.

1109 (r) **Solid waste contract proposal procedure.** Before
1110 entering into any contract for garbage collection or disposal,
1111 contract for solid waste collection or disposal or contract for
1112 sewage collection or disposal, which involves an expenditure of
1113 more than Fifty Thousand Dollars (\$50,000.00), a governing
1114 authority or agency shall issue publicly a request for proposals



1115 concerning the specifications for such services which shall be
1116 advertised for in the same manner as provided in this section for
1117 seeking bids for purchases which involve an expenditure of more
1118 than the amount provided in paragraph (c) of this section. Any
1119 request for proposals when issued shall contain terms and
1120 conditions relating to price, financial responsibility,
1121 technology, legal responsibilities and other relevant factors as
1122 are determined by the governing authority or agency to be
1123 appropriate for inclusion; all factors determined relevant by the
1124 governing authority or agency or required by this paragraph (r)
1125 shall be duly included in the advertisement to elicit proposals.
1126 After responses to the request for proposals have been duly
1127 received, the governing authority or agency shall select the most
1128 qualified proposal or proposals on the basis of price, technology
1129 and other relevant factors and from such proposals, but not
1130 limited to the terms thereof, negotiate and enter into contracts
1131 with one or more of the persons or firms submitting proposals. If
1132 the governing authority or agency deems none of the proposals to
1133 be qualified or otherwise acceptable, the request for proposals
1134 process may be reinitiated. Notwithstanding any other provisions
1135 of this paragraph, where a county with at least thirty-five
1136 thousand (35,000) nor more than forty thousand (40,000)
1137 population, according to the 1990 federal decennial census, owns
1138 or operates a solid waste landfill, the governing authorities of
1139 any other county or municipality may contract with the governing



1140 authorities of the county owning or operating the landfill,
1141 pursuant to a resolution duly adopted and spread upon the minutes
1142 of each governing authority involved, for garbage or solid waste
1143 collection or disposal services through contract negotiations.

1144 (s) **Minority set-aside authorization.** Notwithstanding
1145 any provision of this section to the contrary, any agency or
1146 governing authority, by order placed on its minutes, may, in its
1147 discretion, set aside not more than twenty percent (20%) of its
1148 anticipated annual expenditures for the purchase of commodities
1149 from minority businesses; however, all such set-aside purchases
1150 shall comply with all purchasing regulations promulgated by the
1151 Department of Finance and Administration and shall be subject to
1152 bid requirements under this section. Set-aside purchases for
1153 which competitive bids are required shall be made from the lowest
1154 and best minority business bidder. For the purposes of this
1155 paragraph, the term "minority business" means a business which is
1156 owned by a majority of persons who are United States citizens or
1157 permanent resident aliens (as defined by the Immigration and
1158 Naturalization Service) of the United States, and who are Asian,
1159 Black, Hispanic or Native American, according to the following
1160 definitions:

1161 (i) "Asian" means persons having origins in any of
1162 the original people of the Far East, Southeast Asia, the Indian
1163 subcontinent, or the Pacific Islands.



1164 (ii) "Black" means persons having origins in any
1165 black racial group of Africa.

1166 (iii) "Hispanic" means persons of Spanish or
1167 Portuguese culture with origins in Mexico, South or Central
1168 America, or the Caribbean Islands, regardless of race.

1169 (iv) "Native American" means persons having
1170 origins in any of the original people of North America, including
1171 American Indians, Eskimos and Aleuts.

1172 (t) **Construction punch list restriction.** The
1173 architect, engineer or other representative designated by the
1174 agency or governing authority that is contracting for public
1175 construction or renovation may prepare and submit to the
1176 contractor only one (1) preliminary punch list of items that do
1177 not meet the contract requirements at the time of substantial
1178 completion and one (1) final list immediately before final
1179 completion and final payment.

1180 (u) **Procurement of construction services by state**
1181 **institutions of higher learning.** Contracts for privately financed
1182 construction of auxiliary facilities on the campus of a state
1183 institution of higher learning may be awarded by the Board of
1184 Trustees of State Institutions of Higher Learning to the lowest
1185 and best bidder, where sealed bids are solicited, or to the
1186 offeror whose proposal is determined to represent the best value
1187 to the citizens of the State of Mississippi, where requests for
1188 proposals are solicited.



1189 (v) **Insurability of bidders for public construction or**
1190 **other public contracts.** In any solicitation for bids to perform
1191 public construction or other public contracts to which this
1192 section applies, including, but not limited to, contracts for
1193 repair and maintenance, for which the contract will require
1194 insurance coverage in an amount of not less than One Million
1195 Dollars (\$1,000,000.00), bidders shall be permitted to either
1196 submit proof of current insurance coverage in the specified amount
1197 or demonstrate ability to obtain the required coverage amount of
1198 insurance if the contract is awarded to the bidder. Proof of
1199 insurance coverage shall be submitted within five (5) business
1200 days from bid acceptance.

1201 (w) **Purchase authorization clarification.** Nothing in
1202 this section shall be construed as authorizing any purchase not
1203 authorized by law.

1204 **SECTION 11.** If any section, paragraph, sentence, clause,
1205 phrase, or any part of this act is declared to be in conflict with
1206 federal law, or if for any reason is declared to be invalid or of
1207 no effect, the remaining sections, paragraphs, sentences, clauses,
1208 phrases or parts thereof shall be in no matter affected thereby
1209 but shall remain in full force and effect.

1210 **SECTION 12.** This act shall take effect and be in force from
1211 and after its passage.

