

**Adopted  
AMENDMENT NO 2 PROPOSED TO**

**Senate Bill No. 2215**

**BY: Representatives White, Bell (21st)**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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

17           31-7-13. All agencies and governing authorities shall  
18 purchase their commodities and printing; contract for garbage  
19 collection or disposal; contract for solid waste collection or  
20 disposal; contract for sewage collection or disposal; contract for  
21 public construction; and contract for rentals as herein provided.

22           (a) **Bidding procedure for purchases not over \$5,000.00.**  
23 Purchases which do not involve an expenditure of more than Five  
24 Thousand Dollars (\$5,000.00), exclusive of freight or shipping



25 charges, may be made without advertising or otherwise requesting  
26 competitive bids. However, nothing contained in this paragraph  
27 (a) shall be construed to prohibit any agency or governing  
28 authority from establishing procedures which require competitive  
29 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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

74 (i) **Publication requirement.**



75                   1. Purchases which involve an expenditure of  
76 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
77 freight and shipping charges, may be made from the lowest and best  
78 bidder after advertising for competitive bids once each week for  
79 two (2) consecutive weeks in a regular newspaper published in the  
80 county or municipality in which such agency or governing authority  
81 is located. However, all American Recovery and Reinvestment Act  
82 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
83 shall be bid. All references to American Recovery and  
84 Reinvestment Act projects in this section shall not apply to  
85 programs identified in Division B of the American Recovery and  
86 Reinvestment Act.

87                   2. Reverse auctions shall be the primary  
88 method for receiving bids during the bidding process. If \* \* \* an  
89 agency or governing authority determines that a reverse auction is  
90 not in the best interest of the \* \* \* agency or governing  
91 authority, then with respect to an agency, that determination must  
92 be approved by the Public Procurement Review Board, and with  
93 respect to a governing authority, that determination must be  
94 approved by the governing body of the governing authority. \* \* \*  
95 An agency shall submit a detailed explanation of why a reverse  
96 auction would not be in the best interest of the \* \* \* agency and  
97 present an alternative process to be approved by the Public  
98 Procurement Review Board. A governing authority shall make  
99 findings in its minutes of why a reverse auction would not be in



100 the best interest of the governing authority. If as to an agency,  
101 the Public Procurement Review Board authorizes the purchasing  
102 entity to solicit bids with a method other than reverse auction,  
103 or if as to a governing authority, the governing board thereof  
104 authorizes the purchasing entity to solicit bids with a method  
105 other than reverse auction, then the purchasing entity may  
106 designate the other methods by which the bids will be received,  
107 including, but not limited to, bids sealed in an envelope, bids  
108 received electronically in a secure system, or bids received by  
109 any other method that promotes open competition and has been  
110 approved by the Office of Purchasing and Travel. However, reverse  
111 auction shall not be used for any public contract for design or  
112 construction of public facilities, including buildings, roads and  
113 bridges. As to an agency, the Public Procurement Review Board  
114 must approve any contract entered into by alternative process.  
115 The provisions of this item 2 shall not apply to the individual  
116 state institutions of higher learning.

117                   3. The date as published for the bid opening  
118 shall not be less than seven (7) working days after the last  
119 published notice; however, if the purchase involves a construction  
120 project in which the estimated cost is in excess of Fifty Thousand  
121 Dollars (\$50,000.00), such bids shall not be opened in less than  
122 fifteen (15) working days after the last notice is published and  
123 the notice for the purchase of such construction shall be  
124 published once each week for two (2) consecutive weeks. However,



125 all American Recovery and Reinvestment Act projects in excess of  
126 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
127 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
128 under the American Recovery and Reinvestment Act, publication  
129 shall be made one (1) time and the bid opening for construction  
130 projects shall not be less than ten (10) working days after the  
131 date of the published notice. The notice of intention to let  
132 contracts or purchase equipment shall state the time and place at  
133 which bids shall be received, list the contracts to be made or  
134 types of equipment or supplies to be purchased, and, if all plans  
135 and/or specifications are not published, refer to the plans and/or  
136 specifications on file. If there is no newspaper published in the  
137 county or municipality, then such notice shall be given by posting  
138 same at the courthouse, or for municipalities at the city hall,  
139 and at two (2) other public places in the county or municipality,  
140 and also by publication once each week for two (2) consecutive  
141 weeks in some newspaper having a general circulation in the county  
142 or municipality in the above-provided manner. On the same date  
143 that the notice is submitted to the newspaper for publication, the  
144 agency or governing authority involved shall mail written notice  
145 to, or provide electronic notification to the main office of the  
146 Mississippi Procurement Technical Assistance Program under the  
147 Mississippi Development Authority that contains the same  
148 information as that in the published notice. Submissions received  
149 by the Mississippi Procurement Technical Assistance Program for



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



175 to the designated web page maintained by the Department of Finance  
176 and Administration a summary of the executed contract and make a  
177 copy of the appropriately redacted contract documents available  
178 for linking to the designated web page in accordance with the  
179 rules promulgated by the department. The information provided by  
180 the agency or governing authority shall be posted to the web page  
181 for the duration of the American Recovery and Reinvestment Act  
182 funding or until the project is completed, whichever is longer.

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





199                   (iii) **Filing requirement.** In all cases involving  
200 governing authorities, before the notice shall be published or  
201 posted, the plans or specifications for the construction or  
202 equipment being sought shall be filed with the clerk of the board  
203 of the governing authority. In addition to these requirements, a  
204 bid file shall be established which shall indicate those vendors  
205 to whom such solicitations and specifications were issued, and  
206 such file shall also contain such information as is pertinent to  
207 the bid.

208                   (iv) **Specification restrictions.**

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



223 including prior approval of such bid by the State Department of  
224 Education.

225                   2. Specifications for construction projects  
226 may include an allowance for commodities, equipment, furniture,  
227 construction materials or systems in which prospective bidders are  
228 instructed to include in their bids specified amounts for such  
229 items so long as the allowance items are acquired by the vendor in  
230 a commercially reasonable manner and approved by the  
231 agency/governing authority. Such acquisitions shall not be made  
232 to circumvent the public purchasing laws.

233                   (v) **Electronic bids.** Agencies and governing  
234 authorities shall provide a secure electronic interactive system  
235 for the submittal of bids requiring competitive bidding that shall  
236 be an additional bidding option for those bidders who choose to  
237 submit their bids electronically. The Department of Finance and  
238 Administration shall provide, by regulation, the standards that  
239 agencies must follow when receiving electronic bids. Agencies and  
240 governing authorities shall make the appropriate provisions  
241 necessary to accept electronic bids from those bidders who choose  
242 to submit their bids electronically for all purchases requiring  
243 competitive bidding under this section. Any special condition or  
244 requirement for the electronic bid submission shall be specified  
245 in the advertisement for bids required by this section. Agencies  
246 or governing authorities that are currently without available high  
247 speed Internet access shall be exempt from the requirement of this



248 subparagraph (v) until such time that high speed Internet access  
249 becomes available. Any county having a population of less than  
250 twenty thousand (20,000) shall be exempt from the provisions of  
251 this subparagraph (v). Any municipality having a population of  
252 less than ten thousand (10,000) shall be exempt from the  
253 provisions of this subparagraph (v). The provisions of this  
254 subparagraph (v) shall not require any bidder to submit bids  
255 electronically. When construction bids are submitted  
256 electronically, the requirement for including a certificate of  
257 responsibility, or a statement that the bid enclosed does not  
258 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
259 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
260 deemed in compliance with by including same as an attachment with  
261 the electronic bid submittal.

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

263 (i) **Decision procedure.** Purchases may be made  
264 from the lowest and best bidder. In determining the lowest and  
265 best bid, freight and shipping charges shall be included.  
266 Life-cycle costing, total cost bids, warranties, guaranteed  
267 buy-back provisions and other relevant provisions may be included  
268 in the best bid calculation. All best bid procedures for state  
269 agencies must be in compliance with regulations established by the  
270 Department of Finance and Administration. If any governing  
271 authority accepts a bid other than the lowest bid actually  
272 submitted, it shall place on its minutes detailed calculations and



273 narrative summary showing that the accepted bid was determined to  
274 be the lowest and best bid, including the dollar amount of the  
275 accepted bid and the dollar amount of the lowest bid. No agency  
276 or governing authority shall accept a bid based on items not  
277 included in the specifications.

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

296 (iii) **Decision procedure for Mississippi**  
297 **Landmarks.** In addition to the decision procedure set forth in



298 subparagraph (i) of this paragraph (d), where purchase involves  
299 renovation, restoration, or both, of the State Capitol Building or  
300 any other historical building designated for at least five (5)  
301 years as a Mississippi Landmark by the Board of Trustees of the  
302 Department of Archives and History under the authority of Sections  
303 39-7-7 and 39-7-11, the agency or governing authority may use the  
304 following procedure: Purchases may be made from the lowest and  
305 best prequalified bidder. Prequalification of bidders shall be  
306 determined not less than fifteen (15) working days before the  
307 first published notice of bid opening. Prequalification criteria  
308 shall be limited to bidder's knowledge and experience in  
309 historical restoration, preservation and renovation. In  
310 determining the lowest and best bid, freight and shipping charges  
311 shall be included. Life-cycle costing, total cost bids,  
312 warranties, guaranteed buy-back provisions and other relevant  
313 provisions may be included in the best bid calculation. All best  
314 bid and prequalification procedures for state agencies must be in  
315 compliance with regulations established by the Department of  
316 Finance and Administration. If any governing authority accepts a  
317 bid other than the lowest bid actually submitted, it shall place  
318 on its minutes detailed calculations and narrative summary showing  
319 that the accepted bid was determined to be the lowest and best  
320 bid, including the dollar amount of the accepted bid and the  
321 dollar amount of the lowest bid. No agency or governing authority



322 shall accept a bid based on items not included in the  
323 specifications.

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

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

330 (e) **Lease-purchase authorization.** For the purposes of  
331 this section, the term "equipment" shall mean equipment, furniture  
332 and, if applicable, associated software and other applicable  
333 direct costs associated with the acquisition. Any lease-purchase  
334 of equipment which an agency is not required to lease-purchase  
335 under the master lease-purchase program pursuant to Section  
336 31-7-10 and any lease-purchase of equipment which a governing  
337 authority elects to lease-purchase may be acquired by a  
338 lease-purchase agreement under this paragraph (e). Lease-purchase  
339 financing may also be obtained from the vendor or from a  
340 third-party source after having solicited and obtained at least  
341 two (2) written competitive bids, as defined in paragraph (b) of  
342 this section, for such financing without advertising for such  
343 bids. Solicitation for the bids for financing may occur before or  
344 after acceptance of bids for the purchase of such equipment or,  
345 where no such bids for purchase are required, at any time before  
346 the purchase thereof. No such lease-purchase agreement shall be



347 for an annual rate of interest which is greater than the overall  
348 maximum interest rate to maturity on general obligation  
349 indebtedness permitted under Section 75-17-101, and the term of  
350 such lease-purchase agreement shall not exceed the useful life of  
351 equipment covered thereby as determined according to the upper  
352 limit of the asset depreciation range (ADR) guidelines for the  
353 Class Life Asset Depreciation Range System established by the  
354 Internal Revenue Service pursuant to the United States Internal  
355 Revenue Code and regulations thereunder as in effect on December  
356 31, 1980, or comparable depreciation guidelines with respect to  
357 any equipment not covered by ADR guidelines. Any lease-purchase  
358 agreement entered into pursuant to this paragraph (e) may contain  
359 any of the terms and conditions which a master lease-purchase  
360 agreement may contain under the provisions of Section 31-7-10(5),  
361 and shall contain an annual allocation dependency clause  
362 substantially similar to that set forth in Section 31-7-10(8).  
363 Each agency or governing authority entering into a lease-purchase  
364 transaction pursuant to this paragraph (e) shall maintain with  
365 respect to each such lease-purchase transaction the same  
366 information as required to be maintained by the Department of  
367 Finance and Administration pursuant to Section 31-7-10(13).  
368 However, nothing contained in this section shall be construed to  
369 permit agencies to acquire items of equipment with a total  
370 acquisition cost in the aggregate of less than Ten Thousand  
371 Dollars (\$10,000.00) by a single lease-purchase transaction. All



372 equipment, and the purchase thereof by any lessor, acquired by  
373 lease-purchase under this paragraph and all lease-purchase  
374 payments with respect thereto shall be exempt from all Mississippi  
375 sales, use and ad valorem taxes. Interest paid on any  
376 lease-purchase agreement under this section shall be exempt from  
377 State of Mississippi income taxation.

378 (f) **Alternate bid authorization.** When necessary to  
379 ensure ready availability of commodities for public works and the  
380 timely completion of public projects, no more than two (2)  
381 alternate bids may be accepted by a governing authority for  
382 commodities. No purchases may be made through use of such  
383 alternate bids procedure unless the lowest and best bidder cannot  
384 deliver the commodities contained in his bid. In that event,  
385 purchases of such commodities may be made from one (1) of the  
386 bidders whose bid was accepted as an alternate.

387 (g) **Construction contract change authorization.** In the  
388 event a determination is made by an agency or governing authority  
389 after a construction contract is let that changes or modifications  
390 to the original contract are necessary or would better serve the  
391 purpose of the agency or the governing authority, such agency or  
392 governing authority may, in its discretion, order such changes  
393 pertaining to the construction that are necessary under the  
394 circumstances without the necessity of further public bids;  
395 provided that such change shall be made in a commercially  
396 reasonable manner and shall not be made to circumvent the public





397 purchasing statutes. In addition to any other authorized person,  
398 the architect or engineer hired by an agency or governing  
399 authority with respect to any public construction contract shall  
400 have the authority, when granted by an agency or governing  
401 authority, to authorize changes or modifications to the original  
402 contract without the necessity of prior approval of the agency or  
403 governing authority when any such change or modification is less  
404 than one percent (1%) of the total contract amount. The agency or  
405 governing authority may limit the number, manner or frequency of  
406 such emergency changes or modifications.

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



422 lowest and best contract available for the purchase of such  
423 commodities.

424           (i) **Road construction petroleum products price**  
425 **adjustment clause authorization.** Any agency or governing  
426 authority authorized to enter into contracts for the construction,  
427 maintenance, surfacing or repair of highways, roads or streets,  
428 may include in its bid proposal and contract documents a price  
429 adjustment clause with relation to the cost to the contractor,  
430 including taxes, based upon an industry-wide cost index, of  
431 petroleum products including asphalt used in the performance or  
432 execution of the contract or in the production or manufacture of  
433 materials for use in such performance. Such industry-wide index  
434 shall be established and published monthly by the Mississippi  
435 Department of Transportation with a copy thereof to be mailed,  
436 upon request, to the clerks of the governing authority of each  
437 municipality and the clerks of each board of supervisors  
438 throughout the state. The price adjustment clause shall be based  
439 on the cost of such petroleum products only and shall not include  
440 any additional profit or overhead as part of the adjustment. The  
441 bid proposals or document contract shall contain the basis and  
442 methods of adjusting unit prices for the change in the cost of  
443 such petroleum products.

444           (j) **State agency emergency purchase procedure.** If the  
445 governing board or the executive head, or his designees, of any  
446 agency of the state shall determine that an emergency exists in



447 regard to the purchase of any commodities or repair contracts, so  
448 that the delay incident to giving opportunity for competitive  
449 bidding would be detrimental to the interests of the state, then  
450 the head of such agency, or his designees, shall file with the  
451 Department of Finance and Administration (i) a statement  
452 explaining the conditions and circumstances of the emergency,  
453 which shall include a detailed description of the events leading  
454 up to the situation and the negative impact to the entity if the  
455 purchase is made following the statutory requirements set forth in  
456 paragraph (a), (b) or (c) of this section, and (ii) a certified  
457 copy of the appropriate minutes of the board of such agency  
458 requesting the emergency purchase, if applicable. Upon receipt of  
459 the statement and applicable board certification, the State Fiscal  
460 Officer, or his designees, may, in writing, authorize the purchase  
461 or repair without having to comply with competitive bidding  
462 requirements.

463         If the governing board or the executive head, or his  
464 designees, of any agency determines that an emergency exists in  
465 regard to the purchase of any commodities or repair contracts, so  
466 that the delay incident to giving opportunity for competitive  
467 bidding would threaten the health or safety of any person, or the  
468 preservation or protection of property, then the provisions in  
469 this section for competitive bidding shall not apply, and any  
470 officer or agent of the agency having general or specific  
471 authority for making the purchase or repair contract shall approve



472 the bill presented for payment, and he shall certify in writing  
473 from whom the purchase was made, or with whom the repair contract  
474 was made.

475 Total purchases made under this paragraph (j) shall only be  
476 for the purpose of meeting needs created by the emergency  
477 situation. Following the emergency purchase, documentation of the  
478 purchase, including a description of the commodity purchased, the  
479 purchase price thereof and the nature of the emergency shall be  
480 filed with the Department of Finance and Administration. Any  
481 contract awarded pursuant to this paragraph (j) shall not exceed a  
482 term of one (1) year.

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

484 If the governing authority, or the governing authority acting  
485 through its designee, shall determine that an emergency exists in  
486 regard to the purchase of any commodities or repair contracts, so  
487 that the delay incident to giving opportunity for competitive  
488 bidding would be detrimental to the interest of the governing  
489 authority, then the provisions herein for competitive bidding  
490 shall not apply and any officer or agent of such governing  
491 authority having general or special authority therefor in making  
492 such purchase or repair shall approve the bill presented therefor,  
493 and he shall certify in writing thereon from whom such purchase  
494 was made, or with whom such a repair contract was made. At the  
495 board meeting next following the emergency purchase or repair  
496 contract, documentation of the purchase or repair contract,



497 including a description of the commodity purchased, the price  
498 thereof and the nature of the emergency shall be presented to the  
499 board and shall be placed on the minutes of the board of such  
500 governing authority.

501 (1) **Hospital purchase, lease-purchase and lease**  
502 **authorization.**

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

508 (ii) In addition to the authority granted in  
509 subparagraph (i) of this paragraph (1), the commissioners or board  
510 of trustees is authorized to enter into contracts for the lease of  
511 equipment or services, or both, which it considers necessary for  
512 the proper care of patients if, in its opinion, it is not  
513 financially feasible to purchase the necessary equipment or  
514 services. Any such contract for the lease of equipment or  
515 services executed by the commissioners or board shall not exceed a  
516 maximum of five (5) years' duration and shall include a  
517 cancellation clause based on unavailability of funds. If such  
518 cancellation clause is exercised, there shall be no further  
519 liability on the part of the lessee. Any such contract for the  
520 lease of equipment or services executed on behalf of the  
521 commissioners or board that complies with the provisions of this



522 subparagraph (ii) shall be excepted from the bid requirements set  
523 forth in this section.

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

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

527 Purchasing agreements, contracts and maximum price regulations  
528 executed or approved by the Department of Finance and  
529 Administration.

530 (ii) **Outside equipment repairs.** Repairs to  
531 equipment, when such repairs are made by repair facilities in the  
532 private sector; however, engines, transmissions, rear axles and/or  
533 other such components shall not be included in this exemption when  
534 replaced as a complete unit instead of being repaired and the need  
535 for such total component replacement is known before disassembly  
536 of the component; however, invoices identifying the equipment,  
537 specific repairs made, parts identified by number and name,  
538 supplies used in such repairs, and the number of hours of labor  
539 and costs therefor shall be required for the payment for such  
540 repairs.

541 (iii) **In-house equipment repairs.** Purchases of  
542 parts for repairs to equipment, when such repairs are made by  
543 personnel of the agency or governing authority; however, entire  
544 assemblies, such as engines or transmissions, shall not be  
545 included in this exemption when the entire assembly is being  
546 replaced instead of being repaired.



547 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
548 of gravel or fill dirt which are to be removed and transported by  
549 the purchaser.

550 (v) **Governmental equipment auctions.** Motor  
551 vehicles or other equipment purchased from a federal agency or  
552 authority, another governing authority or state agency of the  
553 State of Mississippi, or any governing authority or state agency  
554 of another state at a public auction held for the purpose of  
555 disposing of such vehicles or other equipment. Any purchase by a  
556 governing authority under the exemption authorized by this  
557 subparagraph (v) shall require advance authorization spread upon  
558 the minutes of the governing authority to include the listing of  
559 the item or items authorized to be purchased and the maximum bid  
560 authorized to be paid for each item or items.

561 (vi) **Intergovernmental sales and transfers.**  
562 Purchases, sales, transfers or trades by governing authorities or  
563 state agencies when such purchases, sales, transfers or trades are  
564 made by a private treaty agreement or through means of  
565 negotiation, from any federal agency or authority, another  
566 governing authority or state agency of the State of Mississippi,  
567 or any state agency or governing authority of another state.  
568 Nothing in this section shall permit such purchases through public  
569 auction except as provided for in subparagraph (v) of this  
570 paragraph (m). It is the intent of this section to allow  
571 governmental entities to dispose of and/or purchase commodities



572 from other governmental entities at a price that is agreed to by  
573 both parties. This shall allow for purchases and/or sales at  
574 prices which may be determined to be below the market value if the  
575 selling entity determines that the sale at below market value is  
576 in the best interest of the taxpayers of the state. Governing  
577 authorities shall place the terms of the agreement and any  
578 justification on the minutes, and state agencies shall obtain  
579 approval from the Department of Finance and Administration, prior  
580 to releasing or taking possession of the commodities.

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

585 (viii) **Single source items.** Noncompetitive items  
586 available from one (1) source only. In connection with the  
587 purchase of noncompetitive items only available from one (1)  
588 source, a certification of the conditions and circumstances  
589 requiring the purchase shall be filed by the agency with the  
590 Department of Finance and Administration and by the governing  
591 authority with the board of the governing authority. Upon receipt  
592 of that certification the Department of Finance and Administration  
593 or the board of the governing authority, as the case may be, may,  
594 in writing, authorize the purchase, which authority shall be noted  
595 on the minutes of the body at the next regular meeting thereafter.  
596 In those situations, a governing authority is not required to





597 obtain the approval of the Department of Finance and  
598 Administration. Following the purchase, the executive head of the  
599 state agency, or his designees, shall file with the Department of  
600 Finance and Administration, documentation of the purchase,  
601 including a description of the commodity purchased, the purchase  
602 price thereof and the source from whom it was purchased.

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

604 **contracts.** Construction of incinerators and other facilities for  
605 disposal of solid wastes in which products either generated  
606 therein, such as steam, or recovered therefrom, such as materials  
607 for recycling, are to be sold or otherwise disposed of; however,  
608 in constructing such facilities, a governing authority or agency  
609 shall publicly issue requests for proposals, advertised for in the  
610 same manner as provided herein for seeking bids for public  
611 construction projects, concerning the design, construction,  
612 ownership, operation and/or maintenance of such facilities,  
613 wherein such requests for proposals when issued shall contain  
614 terms and conditions relating to price, financial responsibility,  
615 technology, environmental compatibility, legal responsibilities  
616 and such other matters as are determined by the governing  
617 authority or agency to be appropriate for inclusion; and after  
618 responses to the request for proposals have been duly received,  
619 the governing authority or agency may select the most qualified  
620 proposal or proposals on the basis of price, technology and other  
621 relevant factors and from such proposals, but not limited to the



622 terms thereof, negotiate and enter contracts with one or more of  
623 the persons or firms submitting proposals.

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

627           (xi) **Information technology products.** Purchases  
628 of information technology products made by governing authorities  
629 under the provisions of purchase schedules, or contracts executed  
630 or approved by the Mississippi Department of Information  
631 Technology Services and designated for use by governing  
632 authorities.

633           (xii) **Energy efficiency services and equipment.**  
634 Energy efficiency services and equipment acquired by school  
635 districts, community and junior colleges, institutions of higher  
636 learning and state agencies or other applicable governmental  
637 entities on a shared-savings, lease or lease-purchase basis  
638 pursuant to Section 31-7-14.

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

643           (xiv) **Library books and other reference materials.**  
644 Purchases by libraries or for libraries of books and periodicals;  
645 processed film, videocassette tapes, filmstrips and slides;  
646 recorded audiotapes, cassettes and diskettes; and any such items



647 as would be used for teaching, research or other information  
648 distribution; however, equipment such as projectors, recorders,  
649 audio or video equipment, and monitor televisions are not exempt  
650 under this subparagraph.

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

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

657 (xvii) **Multichannel interactive video systems.**  
658 From and after July 1, 1990, contracts by Mississippi Authority  
659 for Educational Television with any private educational  
660 institution or private nonprofit organization whose purposes are  
661 educational in regard to the construction, purchase, lease or  
662 lease-purchase of facilities and equipment and the employment of  
663 personnel for providing multichannel interactive video systems  
664 (ITSF) in the school districts of this state.

665 (xviii) **Purchases of prison industry products by**  
666 **the Department of Corrections, regional correctional facilities or**  
667 **privately owned prisons.** Purchases made by the Mississippi  
668 Department of Corrections, regional correctional facilities or  
669 privately owned prisons involving any item that is manufactured,  
670 processed, grown or produced from the state's prison industries.



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

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

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

685                   (xxii)   **Garbage, solid waste and sewage contracts.**  
686 Contracts for garbage collection or disposal, contracts for solid  
687 waste collection or disposal and contracts for sewage collection  
688 or disposal.

689                   (xxiii)   **Municipal water tank maintenance**  
690 **contracts.** Professional maintenance program contracts for the  
691 repair or maintenance of municipal water tanks, which provide  
692 professional services needed to maintain municipal water storage  
693 tanks for a fixed annual fee for a duration of two (2) or more  
694 years.



695 (xxiv) **Purchases of Mississippi Industries for the**  
696 **Blind products.** Purchases made by state agencies or governing  
697 authorities involving any item that is manufactured, processed or  
698 produced by the Mississippi Industries for the Blind.

699 (xxv) **Purchases of state-adopted textbooks.**  
700 Purchases of state-adopted textbooks by public school districts.

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

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

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



719                   (xxix)   **Purchases made pursuant to qualified**  
720 **cooperative purchasing agreements.** Purchases made by certified  
721 purchasing offices of state agencies or governing authorities  
722 under cooperative purchasing agreements previously approved by the  
723 Office of Purchasing and Travel and established by or for any  
724 municipality, county, parish or state government or the federal  
725 government, provided that the notification to potential  
726 contractors includes a clause that sets forth the availability of  
727 the cooperative purchasing agreement to other governmental  
728 entities. Such purchases shall only be made if the use of the  
729 cooperative purchasing agreements is determined to be in the best  
730 interest of the governmental entity.

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

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

740                   (xxxii)   **Toll roads and bridge construction**  
741 **projects.** Contracts entered into under the provisions of Section  
742 65-43-1 or 65-43-3.



743                            (xxxiii)    **Certain purchases under Section 57-1-221.**  
744    Contracts entered into pursuant to the provisions of Section  
745    57-1-221.

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

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

753                            (xxxvi)    **Certain purchases by an academic medical**  
754    **center or health sciences school.**    Purchases by an academic  
755    medical center or health sciences school, as defined in Section  
756    37-115-50, of commodities that are used for clinical purposes and  
757    1. intended for use in the diagnosis of disease or other  
758    conditions or in the cure, mitigation, treatment or prevention of  
759    disease, and 2. medical devices, biological, drugs and  
760    radiation-emitting devices as defined by the United States Food  
761    and Drug Administration.

762                            (xxxvii)    **Certain purchases made under the Alyce G.**  
763    **Clarke Mississippi Lottery Law.**    Contracts made by the Mississippi  
764    Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
765    Lottery Law.

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



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

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

789 (o) **Purchase law violation prohibition and vendor**  
790 **penalty.** No contract or purchase as herein authorized shall be  
791 made for the purpose of circumventing the provisions of this  
792 section requiring competitive bids, nor shall it be lawful for any





793 person or concern to submit individual invoices for amounts within  
794 those authorized for a contract or purchase where the actual value  
795 of the contract or commodity purchased exceeds the authorized  
796 amount and the invoices therefor are split so as to appear to be  
797 authorized as purchases for which competitive bids are not  
798 required. Submission of such invoices shall constitute a  
799 misdemeanor punishable by a fine of not less than Five Hundred  
800 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
801 or by imprisonment for thirty (30) days in the county jail, or  
802 both such fine and imprisonment. In addition, the claim or claims  
803 submitted shall be forfeited.

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

811 (q) **Fuel management system bidding procedure.** Any  
812 governing authority or agency of the state shall, before  
813 contracting for the services and products of a fuel management or  
814 fuel access system, enter into negotiations with not fewer than  
815 two (2) sellers of fuel management or fuel access systems for  
816 competitive written bids to provide the services and products for  
817 the systems. In the event that the governing authority or agency



818 cannot locate two (2) sellers of such systems or cannot obtain  
819 bids from two (2) sellers of such systems, it shall show proof  
820 that it made a diligent, good-faith effort to locate and negotiate  
821 with two (2) sellers of such systems. Such proof shall include,  
822 but not be limited to, publications of a request for proposals and  
823 letters soliciting negotiations and bids. For purposes of this  
824 paragraph (q), a fuel management or fuel access system is an  
825 automated system of acquiring fuel for vehicles as well as  
826 management reports detailing fuel use by vehicles and drivers, and  
827 the term "competitive written bid" shall have the meaning as  
828 defined in paragraph (b) of this section. Governing authorities  
829 and agencies shall be exempt from this process when contracting  
830 for the services and products of fuel management or fuel access  
831 systems under the terms of a state contract established by the  
832 Office of Purchasing and Travel.

833           (r) **Solid waste contract proposal procedure.** Before  
834 entering into any contract for garbage collection or disposal,  
835 contract for solid waste collection or disposal or contract for  
836 sewage collection or disposal, which involves an expenditure of  
837 more than Fifty Thousand Dollars (\$50,000.00), a governing  
838 authority or agency shall issue publicly a request for proposals  
839 concerning the specifications for such services which shall be  
840 advertised for in the same manner as provided in this section for  
841 seeking bids for purchases which involve an expenditure of more  
842 than the amount provided in paragraph (c) of this section. Any



843 request for proposals when issued shall contain terms and  
844 conditions relating to price, financial responsibility,  
845 technology, legal responsibilities and other relevant factors as  
846 are determined by the governing authority or agency to be  
847 appropriate for inclusion; all factors determined relevant by the  
848 governing authority or agency or required by this paragraph (r)  
849 shall be duly included in the advertisement to elicit proposals.  
850 After responses to the request for proposals have been duly  
851 received, the governing authority or agency shall select the most  
852 qualified proposal or proposals on the basis of price, technology  
853 and other relevant factors and from such proposals, but not  
854 limited to the terms thereof, negotiate and enter into contracts  
855 with one or more of the persons or firms submitting proposals. If  
856 the governing authority or agency deems none of the proposals to  
857 be qualified or otherwise acceptable, the request for proposals  
858 process may be reinitiated. Notwithstanding any other provisions  
859 of this paragraph, where a county with at least thirty-five  
860 thousand (35,000) nor more than forty thousand (40,000)  
861 population, according to the 1990 federal decennial census, owns  
862 or operates a solid waste landfill, the governing authorities of  
863 any other county or municipality may contract with the governing  
864 authorities of the county owning or operating the landfill,  
865 pursuant to a resolution duly adopted and spread upon the minutes  
866 of each governing authority involved, for garbage or solid waste  
867 collection or disposal services through contract negotiations.



868                   (s) **Minority set-aside authorization.** Notwithstanding  
869 any provision of this section to the contrary, any agency or  
870 governing authority, by order placed on its minutes, may, in its  
871 discretion, set aside not more than twenty percent (20%) of its  
872 anticipated annual expenditures for the purchase of commodities  
873 from minority businesses; however, all such set-aside purchases  
874 shall comply with all purchasing regulations promulgated by the  
875 Department of Finance and Administration and shall be subject to  
876 bid requirements under this section. Set-aside purchases for  
877 which competitive bids are required shall be made from the lowest  
878 and best minority business bidder. For the purposes of this  
879 paragraph, the term "minority business" means a business which is  
880 owned by a majority of persons who are United States citizens or  
881 permanent resident aliens (as defined by the Immigration and  
882 Naturalization Service) of the United States, and who are Asian,  
883 Black, Hispanic or Native American, according to the following  
884 definitions:

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

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

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



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

896 (t) **Construction punch list restriction.** The  
897 architect, engineer or other representative designated by the  
898 agency or governing authority that is contracting for public  
899 construction or renovation may prepare and submit to the  
900 contractor only one (1) preliminary punch list of items that do  
901 not meet the contract requirements at the time of substantial  
902 completion and one (1) final list immediately before final  
903 completion and final payment.

904 (u) **Procurement of construction services by state**  
905 **institutions of higher learning.** Contracts for privately financed  
906 construction of auxiliary facilities on the campus of a state  
907 institution of higher learning may be awarded by the Board of  
908 Trustees of State Institutions of Higher Learning to the lowest  
909 and best bidder, where sealed bids are solicited, or to the  
910 offeror whose proposal is determined to represent the best value  
911 to the citizens of the State of Mississippi, where requests for  
912 proposals are solicited.

913 (v) **Insurability of bidders for public construction or**  
914 **other public contracts.** In any solicitation for bids to perform  
915 public construction or other public contracts to which this  
916 section applies including, but not limited to, contracts for  
917 repair and maintenance, for which the contract will require



918 insurance coverage in an amount of not less than One Million  
919 Dollars (\$1,000,000.00), bidders shall be permitted to either  
920 submit proof of current insurance coverage in the specified amount  
921 or demonstrate ability to obtain the required coverage amount of  
922 insurance if the contract is awarded to the bidder. Proof of  
923 insurance coverage shall be submitted within five (5) business  
924 days from bid acceptance.

925 (w) **Purchase authorization clarification.** Nothing in  
926 this section shall be construed as authorizing any purchase not  
927 authorized by law.

928 **SECTION 2.** This act shall take effect and be in force from  
929 and after July 1, 2020.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE REVERSE AUCTION METHOD FOR RECEIVING BIDS TO  
3 DIFFERENTIATE BETWEEN AGENCIES AND GOVERNING AUTHORITIES; TO  
4 PROVIDE THAT IF AN AGENCY DETERMINES THAT A REVERSE AUCTION IS NOT  
5 IN THE BEST INTEREST OF THE AGENCY, THEN THAT DETERMINATION MUST  
6 BE APPROVED BY THE PUBLIC PROCUREMENT REVIEW BOARD; TO PROVIDE  
7 THAT IF A GOVERNING AUTHORITY DETERMINES THAT A REVERSE AUCTION IS  
8 NOT IN THE BEST INTEREST OF THE GOVERNING AUTHORITY, THEN THAT  
9 DETERMINATION MUST BE APPROVED BY THE GOVERNING BOARD OF THE  
10 GOVERNING AUTHORITY; TO PROVIDE THAT THE AGENCY AND GOVERNING  
11 AUTHORITY MUST SUBMIT AN EXPLANATION AS TO WHY A REVERSE AUCTION  
12 IS NOT IN THE BEST INTEREST OF THE AGENCY OR GOVERNING AUTHORITY;  
13 AND FOR RELATED PURPOSES.

