

By: Representatives Criswell, Hudson,
Anthony

To: Accountability,
Efficiency, Transparency;
Universities and Colleges

HOUSE BILL NO. 609

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE PROCUREMENT OF AIRCRAFT, AIRCRAFT MAINTENANCE,
3 PARTS, EQUIPMENT AND SERVICES BY STATE INSTITUTIONS OF HIGHER
4 LEARNING WHICH OFFER UNDERGRADUATE AND GRADUATE DEGREE PROGRAMS IN
5 AVIATION SHALL BE EXEMPT FROM THE PUBLIC PURCHASING LAW
6 REQUIREMENTS; TO AUTHORIZE THE DEPARTMENT CHAIR TO ESTABLISH
7 PURCHASING PROCEDURES IN COMPLIANCE WITH THE EXEMPTION, WHICH
8 SHALL BE APPROVED BY THE IHL BOARD; AND FOR RELATED PURPOSES.

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

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

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

17 (a) **Bidding procedure for purchases not over \$5,000.00.**
18 Purchases which do not involve an expenditure of more than Five
19 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
20 charges, may be made without advertising or otherwise requesting
21 competitive bids. However, nothing contained in this paragraph



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

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



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

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

69 (i) **Publication requirement.**

70 1. Purchases which involve an expenditure of
71 more than Fifty Thousand Dollars (\$50,000.00), exclusive of



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

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



97 Office of Purchasing and Travel. However, reverse auction shall
98 not be used for any public contract for design or construction of
99 public facilities, including buildings, roads and bridges. The
100 Public Procurement Review Board must approve any contract entered
101 into by alternative process. The provisions of this item 2 shall
102 not apply to the individual state institutions of higher learning.

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



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



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

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



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

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

194 (iv) **Specification restrictions.**

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



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

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

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



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



246 deemed in compliance with by including same as an attachment with
247 the electronic bid submittal.

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

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

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



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

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

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



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

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

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



321 under the master lease-purchase program pursuant to Section
322 31-7-10 and any lease-purchase of equipment which a governing
323 authority elects to lease-purchase may be acquired by a
324 lease-purchase agreement under this paragraph (e). Lease-purchase
325 financing may also be obtained from the vendor or from a
326 third-party source after having solicited and obtained at least
327 two (2) written competitive bids, as defined in paragraph (b) of
328 this section, for such financing without advertising for such
329 bids. Solicitation for the bids for financing may occur before or
330 after acceptance of bids for the purchase of such equipment or,
331 where no such bids for purchase are required, at any time before
332 the purchase thereof. No such lease-purchase agreement shall be
333 for an annual rate of interest which is greater than the overall
334 maximum interest rate to maturity on general obligation
335 indebtedness permitted under Section 75-17-101, and the term of
336 such lease-purchase agreement shall not exceed the useful life of
337 equipment covered thereby as determined according to the upper
338 limit of the asset depreciation range (ADR) guidelines for the
339 Class Life Asset Depreciation Range System established by the
340 Internal Revenue Service pursuant to the United States Internal
341 Revenue Code and regulations thereunder as in effect on December
342 31, 1980, or comparable depreciation guidelines with respect to
343 any equipment not covered by ADR guidelines. Any lease-purchase
344 agreement entered into pursuant to this paragraph (e) may contain
345 any of the terms and conditions which a master lease-purchase



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

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



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

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

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



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

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



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

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



446 Officer, or his designees, may, in writing, authorize the purchase
447 or repair without having to comply with competitive bidding
448 requirements.

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

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

469 Purchases under the grant program established under Section
470 37-68-7 in response to COVID-19 and the directive that school



471 districts create a distance learning plan and fulfill technology
472 needs expeditiously shall be deemed an emergency purchase for
473 purposes of this paragraph (j).

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

475 If the governing authority, or the governing authority acting
476 through its designee, shall determine that an emergency exists in
477 regard to the purchase of any commodities or repair contracts, so
478 that the delay incident to giving opportunity for competitive
479 bidding would be detrimental to the interest of the governing
480 authority, then the provisions herein for competitive bidding
481 shall not apply and any officer or agent of such governing
482 authority having general or special authority therefor in making
483 such purchase or repair shall approve the bill presented therefor,
484 and he shall certify in writing thereon from whom such purchase
485 was made, or with whom such a repair contract was made. At the
486 board meeting next following the emergency purchase or repair
487 contract, documentation of the purchase or repair contract,
488 including a description of the commodity purchased, the price
489 thereof and the nature of the emergency shall be presented to the
490 board and shall be placed on the minutes of the board of such
491 governing authority. Purchases under the grant program
492 established under Section 37-68-7 in response to COVID-19 and the
493 directive that school districts create a distance learning plan
494 and fulfill technology needs expeditiously shall be deemed an
495 emergency purchase for purposes of this paragraph (k).



496 (1) **Hospital purchase, lease-purchase and lease**
497 **authorization.**

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

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

519 (m) **Exceptions from bidding requirements.** Excepted
520 from bid requirements are:



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

522 Purchasing agreements, contracts and maximum price regulations
523 executed or approved by the Department of Finance and
524 Administration.

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

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

542 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
543 of gravel or fill dirt which are to be removed and transported by
544 the purchaser.



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

556 (vi) **Intergovernmental sales and transfers.**
557 Purchases, sales, transfers or trades by governing authorities or
558 state agencies when such purchases, sales, transfers or trades are
559 made by a private treaty agreement or through means of
560 negotiation, from any federal agency or authority, another
561 governing authority or state agency of the State of Mississippi,
562 or any state agency or governing authority of another state.
563 Nothing in this section shall permit such purchases through public
564 auction except as provided for in subparagraph (v) of this
565 paragraph (m). It is the intent of this section to allow
566 governmental entities to dispose of and/or purchase commodities
567 from other governmental entities at a price that is agreed to by
568 both parties. This shall allow for purchases and/or sales at
569 prices which may be determined to be below the market value if the



570 selling entity determines that the sale at below market value is
571 in the best interest of the taxpayers of the state. Governing
572 authorities shall place the terms of the agreement and any
573 justification on the minutes, and state agencies shall obtain
574 approval from the Department of Finance and Administration, prior
575 to releasing or taking possession of the commodities.

576 (vii) **Perishable supplies or food.** Perishable
577 supplies or food purchased for use in connection with hospitals,
578 the school lunch programs, homemaking programs and for the feeding
579 of county or municipal prisoners.

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



595 Finance and Administration, documentation of the purchase,
596 including a description of the commodity purchased, the purchase
597 price thereof and the source from whom it was purchased.

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



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

622 (xi) **Information technology products.** Purchases
623 of information technology products made by governing authorities
624 under the provisions of purchase schedules, or contracts executed
625 or approved by the Mississippi Department of Information
626 Technology Services and designated for use by governing
627 authorities.

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

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

638 (xiv) **Library books and other reference materials.**
639 Purchases by libraries or for libraries of books and periodicals;
640 processed film, videocassette tapes, filmstrips and slides;
641 recorded audiotapes, cassettes and diskettes; and any such items
642 as would be used for teaching, research or other information
643 distribution; however, equipment such as projectors, recorders,



644 audio or video equipment, and monitor televisions are not exempt
645 under this subparagraph.

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

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

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

660 (xviii) **Purchases of prison industry products by**
661 **the Department of Corrections, regional correctional facilities or**
662 **privately owned prisons.** Purchases made by the Mississippi
663 Department of Corrections, regional correctional facilities or
664 privately owned prisons involving any item that is manufactured,
665 processed, grown or produced from the state's prison industries.

666 (xix) **Undercover operations equipment.** Purchases
667 of surveillance equipment or any other high-tech equipment to be
668 used by law enforcement agents in undercover operations, provided



669 that any such purchase shall be in compliance with regulations
670 established by the Department of Finance and Administration.

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

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

680 (xxii) **Garbage, solid waste and sewage contracts.**
681 Contracts for garbage collection or disposal, contracts for solid
682 waste collection or disposal and contracts for sewage collection
683 or disposal.

684 (xxiii) **Municipal water tank maintenance**
685 **contracts.** Professional maintenance program contracts for the
686 repair or maintenance of municipal water tanks, which provide
687 professional services needed to maintain municipal water storage
688 tanks for a fixed annual fee for a duration of two (2) or more
689 years.

690 (xxiv) **Purchases of Mississippi Industries for the**
691 **Blind products.** Purchases made by state agencies or governing
692 authorities involving any item that is manufactured, processed or
693 produced by the Mississippi Industries for the Blind.



694 (xxv) **Purchases of state-adopted textbooks.**
695 Purchases of state-adopted textbooks by public school districts.

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

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

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

714 (xxix) **Purchases made pursuant to qualified**
715 **cooperative purchasing agreements.** Purchases made by certified
716 purchasing offices of state agencies or governing authorities
717 under cooperative purchasing agreements previously approved by the
718 Office of Purchasing and Travel and established by or for any



719 municipality, county, parish or state government or the federal
720 government, provided that the notification to potential
721 contractors includes a clause that sets forth the availability of
722 the cooperative purchasing agreement to other governmental
723 entities. Such purchases shall only be made if the use of the
724 cooperative purchasing agreements is determined to be in the best
725 interest of the governmental entity.

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

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

735 (xxxii) **Toll roads and bridge construction**
736 **projects.** Contracts entered into under the provisions of Section
737 65-43-1 or 65-43-3.

738 (xxxiii) **Certain purchases under Section 57-1-221.**
739 Contracts entered into pursuant to the provisions of Section
740 57-1-221.

741 (xxxiv) **Certain transfers made pursuant to the**
742 **provisions of Section 57-105-1(7).** Transfers of public property



743 or facilities under Section 57-105-1(7) and construction related
744 to such public property or facilities.

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

748 (xxxvi) **Certain purchases by an academic medical**
749 **center or health sciences school.** Purchases by an academic
750 medical center or health sciences school, as defined in Section
751 37-115-50, of commodities that are used for clinical purposes and
752 1. intended for use in the diagnosis of disease or other
753 conditions or in the cure, mitigation, treatment or prevention of
754 disease, and 2. medical devices, biological, drugs and
755 radiation-emitting devices as defined by the United States Food
756 and Drug Administration.

757 (xxxvii) **Certain purchases made under the Alyce G.**
758 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
759 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
760 Lottery Law.

761 (xxxviii) **Aircraft and aircraft simulation devices**
762 **for academic instructional purposes.** Purchases of aircraft and
763 aircraft simulation devices, any parts or equipment relating
764 thereto, by any state institution of higher learning which offers
765 undergraduate and graduate degree programs in aviation, or the
766 Board of Trustees of State Institutions of Higher Learning, acting
767 on behalf of any state institution of higher learning which offers



768 undergraduate and graduate degree programs in aviation, for
769 purposes of academic instruction. The university's chair of the
770 Department of Commercial Aviation shall be authorized to develop
771 purchasing procedures which shall be in compliance with the
772 exemption created in this subparagraph, which shall be subject to
773 approval by the IHL board before its implementation.

774 (n) **Term contract authorization.** All contracts for the
775 purchase of:

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

786 (ii) Bid proposals and contracts may include price
787 adjustment clauses with relation to the cost to the contractor
788 based upon a nationally published industry-wide or nationally
789 published and recognized cost index. The cost index used in a
790 price adjustment clause shall be determined by the Department of
791 Finance and Administration for the state agencies and by the
792 governing board for governing authorities. The bid proposal and



793 contract documents utilizing a price adjustment clause shall
794 contain the basis and method of adjusting unit prices for the
795 change in the cost of such commodities, equipment and public
796 construction.

797 (o) **Purchase law violation prohibition and vendor**
798 **penalty.** No contract or purchase as herein authorized shall be
799 made for the purpose of circumventing the provisions of this
800 section requiring competitive bids, nor shall it be lawful for any
801 person or concern to submit individual invoices for amounts within
802 those authorized for a contract or purchase where the actual value
803 of the contract or commodity purchased exceeds the authorized
804 amount and the invoices therefor are split so as to appear to be
805 authorized as purchases for which competitive bids are not
806 required. Submission of such invoices shall constitute a
807 misdemeanor punishable by a fine of not less than Five Hundred
808 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
809 or by imprisonment for thirty (30) days in the county jail, or
810 both such fine and imprisonment. In addition, the claim or claims
811 submitted shall be forfeited.

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



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

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



841 (r) **Solid waste contract proposal procedure.** Before
842 entering into any contract for garbage collection or disposal,
843 contract for solid waste collection or disposal or contract for
844 sewage collection or disposal, which involves an expenditure of
845 more than Fifty Thousand Dollars (\$50,000.00), a governing
846 authority or agency shall issue publicly a request for proposals
847 concerning the specifications for such services which shall be
848 advertised for in the same manner as provided in this section for
849 seeking bids for purchases which involve an expenditure of more
850 than the amount provided in paragraph (c) of this section. Any
851 request for proposals when issued shall contain terms and
852 conditions relating to price, financial responsibility,
853 technology, legal responsibilities and other relevant factors as
854 are determined by the governing authority or agency to be
855 appropriate for inclusion; all factors determined relevant by the
856 governing authority or agency or required by this paragraph (r)
857 shall be duly included in the advertisement to elicit proposals.
858 After responses to the request for proposals have been duly
859 received, the governing authority or agency shall select the most
860 qualified proposal or proposals on the basis of price, technology
861 and other relevant factors and from such proposals, but not
862 limited to the terms thereof, negotiate and enter into contracts
863 with one or more of the persons or firms submitting proposals. If
864 the governing authority or agency deems none of the proposals to
865 be qualified or otherwise acceptable, the request for proposals



866 process may be reinitiated. Notwithstanding any other provisions
867 of this paragraph, where a county with at least thirty-five
868 thousand (35,000) nor more than forty thousand (40,000)
869 population, according to the 1990 federal decennial census, owns
870 or operates a solid waste landfill, the governing authorities of
871 any other county or municipality may contract with the governing
872 authorities of the county owning or operating the landfill,
873 pursuant to a resolution duly adopted and spread upon the minutes
874 of each governing authority involved, for garbage or solid waste
875 collection or disposal services through contract negotiations.

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



891 Black, Hispanic or Native American, according to the following
892 definitions:

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

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

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

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

904 (t) **Construction punch list restriction.** The
905 architect, engineer or other representative designated by the
906 agency or governing authority that is contracting for public
907 construction or renovation may prepare and submit to the
908 contractor only one (1) preliminary punch list of items that do
909 not meet the contract requirements at the time of substantial
910 completion and one (1) final list immediately before final
911 completion and final payment.

912 (u) **Procurement of construction services by state**
913 **institutions of higher learning.** Contracts for privately financed
914 construction of auxiliary facilities on the campus of a state
915 institution of higher learning may be awarded by the Board of



916 Trustees of State Institutions of Higher Learning to the lowest
917 and best bidder, where sealed bids are solicited, or to the
918 offeror whose proposal is determined to represent the best value
919 to the citizens of the State of Mississippi, where requests for
920 proposals are solicited.

921 (v) **Insurability of bidders for public construction or**
922 **other public contracts.** In any solicitation for bids to perform
923 public construction or other public contracts to which this
924 section applies, including, but not limited to, contracts for
925 repair and maintenance, for which the contract will require
926 insurance coverage in an amount of not less than One Million
927 Dollars (\$1,000,000.00), bidders shall be permitted to either
928 submit proof of current insurance coverage in the specified amount
929 or demonstrate ability to obtain the required coverage amount of
930 insurance if the contract is awarded to the bidder. Proof of
931 insurance coverage shall be submitted within five (5) business
932 days from bid acceptance.

933 (w) **Purchase authorization clarification.** Nothing in
934 this section shall be construed as authorizing any purchase not
935 authorized by law.

936 **SECTION 2.** This act shall take effect and be in force from
937 and after July 1, 2021.

