

By: Representatives Bell (21st), Barnett,
Sanford, Stamps

To: Municipalities; County
Affairs

HOUSE BILL NO. 842

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.

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

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.**



(i) **Publication requirement.**

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

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If * * * an agency or governing authority determines that a reverse auction is not in the best interest of the * * * agency or governing authority, then with respect to an agency, that determination must be approved by the Public Procurement Review Board, and with respect to a governing authority, that determination must be approved by the governing body of the governing authority. * * * An agency shall submit a detailed explanation of why a reverse auction would not be in the best interest of the * * * agency and present an alternative process to be approved by the Public 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



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

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



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

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

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



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

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

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



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

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

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



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



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

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

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

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



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

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

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



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

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

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



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

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

Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (j).

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making



such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

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

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

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not



522 financially feasible to purchase the necessary equipment or
523 services. Any such contract for the lease of equipment or
524 services executed by the commissioners or board shall not exceed a
525 maximum of five (5) years' duration and shall include a
526 cancellation clause based on unavailability of funds. If such
527 cancellation clause is exercised, there shall be no further
528 liability on the part of the lessee. Any such contract for the
529 lease of equipment or services executed on behalf of the
530 commissioners or board that complies with the provisions of this
531 subparagraph (ii) shall be excepted from the bid requirements set
532 forth in this section.

533 (m) **Exceptions from bidding requirements.** Excepted
534 from bid requirements are:

535 (i) **Purchasing agreements approved by department.**
536 Purchasing agreements, contracts and maximum price regulations
537 executed or approved by the Department of Finance and
538 Administration.

539 (ii) **Outside equipment repairs.** Repairs to
540 equipment, when such repairs are made by repair facilities in the
541 private sector; however, engines, transmissions, rear axles and/or
542 other such components shall not be included in this exemption when
543 replaced as a complete unit instead of being repaired and the need
544 for such total component replacement is known before disassembly
545 of the component; however, invoices identifying the equipment,
546 specific repairs made, parts identified by number and name,



supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

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

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

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

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or



572 state agencies when such purchases, sales, transfers or trades are
573 made by a private treaty agreement or through means of
574 negotiation, from any federal agency or authority, another
575 governing authority or state agency of the State of Mississippi,
576 or any state agency or governing authority of another state.
577 Nothing in this section shall permit such purchases through public
578 auction except as provided for in subparagraph (v) of this
579 paragraph (m). It is the intent of this section to allow
580 governmental entities to dispose of and/or purchase commodities
581 from other governmental entities at a price that is agreed to by
582 both parties. This shall allow for purchases and/or sales at
583 prices which may be determined to be below the market value if the
584 selling entity determines that the sale at below market value is
585 in the best interest of the taxpayers of the state. Governing
586 authorities shall place the terms of the agreement and any
587 justification on the minutes, and state agencies shall obtain
588 approval from the Department of Finance and Administration, prior
589 to releasing or taking possession of the commodities.

590 (vii) **Perishable supplies or food.** Perishable
591 supplies or food purchased for use in connection with hospitals,
592 the school lunch programs, homemaking programs and for the feeding
593 of county or municipal prisoners.

594 (viii) **Single source items.** Noncompetitive items
595 available from one (1) source only. In connection with the
596 purchase of noncompetitive items only available from one (1)



597 source, a certification of the conditions and circumstances
598 requiring the purchase shall be filed by the agency with the
599 Department of Finance and Administration and by the governing
600 authority with the board of the governing authority. Upon receipt
601 of that certification the Department of Finance and Administration
602 or the board of the governing authority, as the case may be, may,
603 in writing, authorize the purchase, which authority shall be noted
604 on the minutes of the body at the next regular meeting thereafter.
605 In those situations, a governing authority is not required to
606 obtain the approval of the Department of Finance and
607 Administration. Following the purchase, the executive head of the
608 state agency, or his designees, shall file with the Department of
609 Finance and Administration, documentation of the purchase,
610 including a description of the commodity purchased, the purchase
611 price thereof and the source from whom it was purchased.

612 (ix) **Waste disposal facility construction**
613 **contracts.** Construction of incinerators and other facilities for
614 disposal of solid wastes in which products either generated
615 therein, such as steam, or recovered therefrom, such as materials
616 for recycling, are to be sold or otherwise disposed of; however,
617 in constructing such facilities, a governing authority or agency
618 shall publicly issue requests for proposals, advertised for in the
619 same manner as provided herein for seeking bids for public
620 construction projects, concerning the design, construction,
621 ownership, operation and/or maintenance of such facilities,



wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

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

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

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community and junior colleges, institutions of higher learning and state agencies or other applicable governmental



entities on a shared-savings, lease or lease-purchase basis
pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.**

Purchases of coal and/or natural gas by municipally owned electric
power generating systems that have the capacity to use both coal
and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.**

Purchases by libraries or for libraries of books and periodicals;
processed film, videocassette tapes, filmstrips and slides;
recorded audiotapes, cassettes and diskettes; and any such items
as would be used for teaching, research or other information
distribution; however, equipment such as projectors, recorders,
audio or video equipment, and monitor televisions are not exempt
under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked

vehicles when such purchases are made in accordance with
purchasing regulations adopted by the Department of Finance and
Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots

printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.**

From and after July 1, 1990, contracts by Mississippi Authority
for Educational Television with any private educational
institution or private nonprofit organization whose purposes are
educational in regard to the construction, purchase, lease or



671 lease-purchase of facilities and equipment and the employment of
672 personnel for providing multichannel interactive video systems
673 (ITSF) in the school districts of this state.

674 (xviii) **Purchases of prison industry products by**
675 **the Department of Corrections, regional correctional facilities or**
676 **privately owned prisons.** Purchases made by the Mississippi
677 Department of Corrections, regional correctional facilities or
678 privately owned prisons involving any item that is manufactured,
679 processed, grown or produced from the state's prison industries.

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

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

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

694 (xxii) **Garbage, solid waste and sewage contracts.**
695 Contracts for garbage collection or disposal, contracts for solid



696 waste collection or disposal and contracts for sewage collection
697 or disposal.

698 (xxiii) **Municipal water tank maintenance**
699 **contracts.** Professional maintenance program contracts for the
700 repair or maintenance of municipal water tanks, which provide
701 professional services needed to maintain municipal water storage
702 tanks for a fixed annual fee for a duration of two (2) or more
703 years.

704 (xxiv) **Purchases of Mississippi Industries for the**
705 **Blind products.** Purchases made by state agencies or governing
706 authorities involving any item that is manufactured, processed or
707 produced by the Mississippi Industries for the Blind.

708 (xxv) **Purchases of state-adopted textbooks.**
709 Purchases of state-adopted textbooks by public school districts.

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

713 (xxvii) **Used heavy or specialized machinery or**
714 **equipment for installation of soil and water conservation**
715 **practices purchased at auction.** Used heavy or specialized
716 machinery or equipment used for the installation and
717 implementation of soil and water conservation practices or
718 measures purchased subject to the restrictions provided in
719 Sections 69-27-331 through 69-27-341. Any purchase by the State
720 Soil and Water Conservation Commission under the exemption



authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

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

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

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

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

(xxx) **School yearbooks.** Purchases of school

yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.



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

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

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

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

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

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



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

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

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

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the



change in the cost of such commodities, equipment and public construction.

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

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



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

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for



845 sewage collection or disposal, which involves an expenditure of
846 more than Fifty Thousand Dollars (\$50,000.00), a governing
847 authority or agency shall issue publicly a request for proposals
848 concerning the specifications for such services which shall be
849 advertised for in the same manner as provided in this section for
850 seeking bids for purchases which involve an expenditure of more
851 than the amount provided in paragraph (c) of this section. Any
852 request for proposals when issued shall contain terms and
853 conditions relating to price, financial responsibility,
854 technology, legal responsibilities and other relevant factors as
855 are determined by the governing authority or agency to be
856 appropriate for inclusion; all factors determined relevant by the
857 governing authority or agency or required by this paragraph (r)
858 shall be duly included in the advertisement to elicit proposals.
859 After responses to the request for proposals have been duly
860 received, the governing authority or agency shall select the most
861 qualified proposal or proposals on the basis of price, technology
862 and other relevant factors and from such proposals, but not
863 limited to the terms thereof, negotiate and enter into contracts
864 with one or more of the persons or firms submitting proposals. If
865 the governing authority or agency deems none of the proposals to
866 be qualified or otherwise acceptable, the request for proposals
867 process may be reinitiated. Notwithstanding any other provisions
868 of this paragraph, where a county with at least thirty-five
869 thousand (35,000) nor more than forty thousand (40,000)



870 population, according to the 1990 federal decennial census, owns
871 or operates a solid waste landfill, the governing authorities of
872 any other county or municipality may contract with the governing
873 authorities of the county owning or operating the landfill,
874 pursuant to a resolution duly adopted and spread upon the minutes
875 of each governing authority involved, for garbage or solid waste
876 collection or disposal services through contract negotiations.

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



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

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

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

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

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

913 (u) **Procurement of construction services by state**
914 **institutions of higher learning.** Contracts for privately financed
915 construction of auxiliary facilities on the campus of a state
916 institution of higher learning may be awarded by the Board of
917 Trustees of State Institutions of Higher Learning to the lowest
918 and best bidder, where sealed bids are solicited, or to the



919 offeror whose proposal is determined to represent the best value
920 to the citizens of the State of Mississippi, where requests for
921 proposals are solicited.

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

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

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

