

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1197
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-7-13.1, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DUAL-PHASE DESIGN-BUILD METHOD OF CONSTRUCTION
3 CONTRACTING; TO REMOVE THE REQUIREMENT FOR TWO PHASES OF
4 DESIGN-BUILD CONSTRUCTION CONTRACTING; TO PROVIDE THAT
5 DESIGN-BUILD CONSTRUCTION CONTRACTING MAY BE USED FOR RESIDENTIAL
6 BUILDINGS, RESIDENTIAL-MIXED USED DEVELOPMENTS, PARKING GARAGES
7 AND OTHER PRESCRIPTIVE TYPE FACILITIES; TO PROVIDE THAT THE
8 DESIGN-BUILD METHOD OF CONSTRUCTION CONTRACTING MAY ONLY BE USED
9 WHEN THE DEPARTMENT OF FINANCE AND ADMINISTRATION OR A GOVERNING
10 AUTHORITY HAS DETERMINED THAT USING THE DESIGN-BUILD METHOD OF
11 CONSTRUCTION CONTRACTING SATISFIES THE PUBLIC INTEREST BETTER THAN
12 TRADITIONAL DESIGN BID OR WHEN THE LEGISLATURE HAS SPECIFICALLY
13 REQUIRED OR AUTHORIZED THE USE OF THIS METHOD IN THE LEGISLATION
14 AUTHORIZING A PROJECT; TO PROVIDE THAT INSTEAD OF THE DUAL-PHASE
15 PROCEDURE FOR AWARDING A CONTRACT, FOR EACH PROPOSED DESIGN-BUILD
16 PROJECT, EITHER A FIXED FIRM PRICE OR GUARANTEED MAXIMUM PRICE
17 CONTRACT MUST BE ADOPTED; TO REVISE WHAT MUST BE INCLUDED IN THE
18 WORK STATEMENT; TO PROVIDE THAT NOTICE SHALL ALSO BE POSTED ON THE
19 MISSISSIPPI PROCUREMENT PORTAL; TO PROVIDE THAT PROPOSALS WHICH
20 INCLUDE CRITERIA OTHER THAN COST ONLY SHALL BE EVALUATED BY AN
21 EVALUATION COMMITTEE ESTABLISHED BY THE PROCURING ENTITY; TO
22 PROVIDE THE MAKEUP OF THE EVALUATION COMMITTEE AND THE SELECTION
23 CRITERIA THAT THE EVALUATION COMMITTEE SHALL CONSIDER WHEN
24 EVALUATING SUBMITTED PROPOSALS; TO PROVIDE THAT AN AGENCY OR
25 GOVERNING AUTHORITY MAY NOT AWARD A STIPULATED FEE TO AN OFFEROR
26 FOR PREPARATION COSTS TO SUBMIT A RESPONSE TO THE REQUEST FOR
27 PROPOSALS; TO AMEND SECTIONS 31-11-3, 61-3-15 AND 31-7-13,
28 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND
29 FOR RELATED PURPOSES.

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



31 **SECTION 1.** Section 31-7-13.1, Mississippi Code of 1972, is
32 amended as follows:

33 31-7-13.1. (1) The method of contracting for construction
34 described in this section shall be known as the " * * *
35 design-build method" of construction contracting. This method of
36 construction contracting may be used * * * on residential
37 buildings, residential mixed-use developments, parking garages and
38 other prescriptive type facilities. The design-build method of
39 construction contracting may only be used when the Department of
40 Finance and Administration or a governing authority has determined
41 that it satisfies the public interest better than traditional
42 design-bid or when the Legislature has specifically required or
43 authorized the use of this method in the legislation authorizing a
44 project. At a minimum, the determination must include a detailed
45 explanation of why using the * * * design-build method for a
46 particular project satisfies the public need better than the
47 traditional design-bid-build method based on the following
48 criteria:

49 (a) The project provides a savings in time or cost over
50 traditional methods; and

51 (b) The size and type of the project is suitable for
52 design-build.

53 (2) For each proposed * * * design-build project, either
54 a * * * fixed firm price or guaranteed maximum price contract must
55 be adopted. * * * Before solicitation of * * * proposals, the



56 agency or governing authority shall develop * * * a scope of work
57 statement that provides prospective offerors with sufficient
58 information regarding the requirements of the agency or governing
59 authority. The scope of work statement must include, but is not
60 limited to, the following information:

61 (a) * * * Location and nature of proposed site(s) that
62 include preliminary geotechnical information from borings as well
63 as survey drawings that show topography, adjacent buildings and
64 utilities;

65 (b) * * * Any mandatory requirements such as minimum
66 number and types of spaces, any minimum or maximum building
67 area(s) or height(s), applicable energy codes and/or efficiency
68 targets, applicable zoning regulations and any aesthetic or
69 character defining standards;

70 (c) * * * Any mandatory material and/or system
71 performance requirements and/or specifications; and

72 (d) * * * General budget parameters, schedule or
73 delivery requirements, relevant criteria for evaluation of
74 proposals, and any other information necessary to enable the
75 design-builders to submit proposals that meet the needs of the
76 agency or governing authority.

77 (3) The agency or governing authority shall cause to be
78 published once a week, for at least two (2) consecutive weeks in a
79 regular newspaper published in the county in which the project is
80 to be located, or a newspaper with statewide circulation, a notice



81 inviting proposals for the * * * design-build construction
82 project. On the same date that the notice is submitted to the
83 newspaper for publication, the agency or governing authority
84 involved shall post the notice on the Mississippi Procurement
85 Portal or mail written notice to, or provide electronic
86 notification to, the main office of the Mississippi Procurement
87 Technical Assistance Program under the Mississippi Development
88 Authority that contains the same information as that in the
89 published notice. The proposals shall not be opened in less than
90 fifteen (15) working days after the last notice is published. The
91 notice must inform potential offerors of how to obtain the scope
92 of work statement developed for the project, and the notice must
93 contain such other information to describe adequately the general
94 nature and scope of the project so as to promote full, equal and
95 open competition.

96 (4) The agency or governing authority shall accept initial
97 proposals only from entities able to provide an experienced and
98 qualified design-build team that includes, at a minimum, an
99 architectural or engineering firm licensed and registered in
100 Mississippi and a contractor properly licensed and domiciled in
101 Mississippi for the type of work required. * * *

102 (5) * * * Proposals that include criteria other than cost
103 only shall be evaluated by an evaluation committee established by
104 the procuring entity. The evaluation committee shall be composed
105 of not less than three (3) people, at least one (1) of which shall



be an architect or engineer licensed and registered in Mississippi. Selection criteria of the evaluation committee shall be limited to the following:

(a) The bidder's knowledge and experience in executing projects of similar size and complexity;

(b) The experience and qualifications of the proposed office and construction management personnel;

(c) The experience and qualifications of the subcontractors proposed;

(d) The experience and qualifications of the architect or engineer and consultants;

(e) Schedule control; and

(f) Cost factors.

Cost as an evaluation factor shall be given the highest criteria weighting and at least thirty-five percent (35%) out of the one hundred percent (100%) total weight of all the other evaluation factors.

(6) If the agency or governing authority accepts a proposal other than the * * * proposal with the lowest costs that was actually submitted, the agency or governing authority shall enter on its minutes detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value, and the agency or governing authority shall state specifically on its minutes the justification for its award.



(7) All facilities that are governed by this section shall be designed and constructed to comply with standards equal to or exceeding the minimum building code standards employed by the state as required under Section 31-11-33 in force at the time of contracting. All private contractors or private entities contracting or performing under this section must comply at all times with all applicable laws, codes and other legal requirements pertaining to the project.

(8) * * * An agency or governing authority may not award a stipulated fee * * * to an offeror for preparation costs to submit a response to the request for proposals.

(9) This section shall not authorize the awarding of construction contracts according to any contracting method that does not require the contractor to satisfactorily perform, at a minimum, both any balance of design, using an independent professional licensed in Mississippi, and construction of the project for which the contract is awarded.

(10) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(11) The provisions of this section shall not apply to procurement authorized in Section 59-5-37(3).

SECTION 2. Section 31-11-3, Mississippi Code of 1972, as amended by House Bill No. 82, 2021 Regular Session, is amended as follows:



154 31-11-3. (1) The Department of Finance and Administration,
155 for the purposes of carrying out the provisions of this chapter,
156 in addition to all other rights and powers granted by law, shall
157 have full power and authority to employ and compensate architects
158 or other employees necessary for the purpose of making
159 inspections, preparing plans and specifications, supervising the
160 erection of any buildings, and making any repairs or additions as
161 may be determined by the Department of Finance and Administration
162 to be necessary, pursuant to the rules and regulations of the
163 State Personnel Board. The department shall have entire control
164 and supervision of, and determine what, if any, buildings,
165 additions, repairs, demolitions or improvements are to be made
166 under the provisions of this chapter, subject to the regulations
167 adopted by the Public Procurement Review Board.

168 (2) The department shall have full power to erect buildings,
169 make repairs, additions or improvements, demolitions, to grant or
170 acquire easements or rights-of-way, and to buy materials, supplies
171 and equipment for any of the institutions or departments of the
172 state subject to the regulations adopted by the Public Procurement
173 Review Board. In addition to other powers conferred, the
174 department shall have full power and authority, as directed by the
175 Legislature, or when funds have been appropriated for its use for
176 these purposes, to:

177 (a) Build a state office building;



178 (b) Build suitable plants or buildings for the use and
179 housing of any state schools or institutions, including the
180 building of plants or buildings for new state schools or
181 institutions, as provided for by the Legislature;

182 (c) Provide state aid for the construction of school
183 buildings;

184 (d) Promote and develop the training of returned
185 veterans of the United States in all sorts of educational and
186 vocational learning to be supplied by the proper educational
187 institution of the State of Mississippi, and in so doing allocate
188 monies appropriated to it for these purposes to the Governor for
189 use by him in setting up, maintaining and operating an office and
190 employing a state director of on-the-job training for veterans and
191 the personnel necessary in carrying out Public Law No. 346 of the
192 United States;

193 (e) Build and equip a hospital and administration
194 building at the Mississippi State Penitentiary;

195 (f) Build and equip additional buildings and wards at
196 the Boswell Retardation Center;

197 (g) Construct a sewage disposal and treatment plant at
198 the Mississippi State Hospital, and in so doing acquire additional
199 land as may be necessary, and to exercise the right of eminent
200 domain in the acquisition of this land;



201 (h) Build and equip the Mississippi central market and
202 purchase or acquire by eminent domain, if necessary, any lands
203 needed for this purpose;

204 (i) Build and equip suitable facilities for a training
205 and employing center for the blind;

206 (j) Build and equip a gymnasium at Columbia Training
207 School;

208 (k) Approve or disapprove the expenditure of any money
209 appropriated by the Legislature when authorized by the bill making
210 the appropriation;

211 (l) Expend monies appropriated to it in paying the
212 state's part of the cost of any street paving;

213 (m) Sell and convey state lands when authorized by the
214 Legislature, cause said lands to be properly surveyed and platted,
215 execute all deeds or other legal instruments, and do any and all
216 other things required to effectively carry out the purpose and
217 intent of the Legislature. Any transaction which involves state
218 lands under the provisions of this paragraph shall be done in a
219 manner consistent with the provisions of Section 29-1-1;

220 (n) Collect and receive from educational institutions
221 of the State of Mississippi monies required to be paid by these
222 institutions to the state in carrying out any veterans'
223 educational programs;

224 (o) Purchase lands for building sites, or as additions
225 to building sites, for the erection of buildings and other



226 facilities which the department is authorized to erect, and
227 demolish and dispose of old buildings, when necessary for the
228 proper construction of new buildings. Any transaction which
229 involves state lands under the provisions of this paragraph shall
230 be done in a manner consistent with the provisions of Section
231 29-1-1;

232 (p) Obtain business property insurance with a
233 deductible of not less than One Hundred Thousand Dollars
234 (\$100,000.00) on state-owned buildings under the management and
235 control of the department; and

236 (q) In consultation with and approval by the Chairmen
237 of the Public Property Committees of the Senate and the House of
238 Representatives, enter into contracts for the purpose of providing
239 parking spaces for state employees who work in the Woolfolk
240 Building, the Carroll Gartin Justice Building or the Walter
241 Sillers Office Building.

242 (r) The department is hereby authorized to transfer up
243 to One Million Dollars (\$1,000,000.00) of available bond funds to
244 each community college requesting to be exempt from department
245 control and supervision relating to the repair, renovation and
246 improvement of existing facilities owned by the community
247 colleges, including utility infrastructure projects; heating and
248 air conditioning systems; and the replacement of furniture and
249 equipment. The community colleges shall abide by all applicable



statutes related to the purchase of the repair, renovation and improvement of such existing facilities.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of architectural alterations, pursuant to the Americans With Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.



(4) The department shall observe the provisions of Section 31-5-23 in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority, regardless of the source of funding used to defray the costs of the construction or renovation project, for which services are to be obtained to ensure compliance with purchasing regulations and to confirm that the contracts are procured by a competitive qualification-based selection process except where such appointment is for an emergency project or for a continuation of a



previous appointment for a directly related project. The provisions of this subsection (7) shall not apply to:

(a) Any architectural or engineering contract fully paid for by self-generated funds of any of the state institutions of higher learning;

(b) Any architectural or engineering contract that is self-administered at a state institution of higher learning as provided under Section 27-104-7(2) (b) or 37-101-15(m);

(c) Community college projects that are fully funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature;

(d) Any construction or design projects of the State Military Department that are fully or partially funded from federal funds or other nonstate sources; and

(e) Any project of the State Department of Transportation.

(8) (a) The department shall have the authority to obtain annually from the state institutions of higher learning, the state community colleges and junior colleges, the Department of Mental Health, the Department of Corrections and the Department of Wildlife, Fisheries and Parks information on all renovation and repair expenditures for buildings under their operation and control, including duties, responsibilities and costs of any architect or engineer hired by any such institutions, and shall



annually report the same to the Legislative Budget Office, the Chairman of the House Public Property Committee and the Chairman of the Senate Public Property Committee before September 1.

(b) All state agencies, departments and institutions are required to cooperate with the Department of Finance and Administration in carrying out the provisions of this subsection.

(c) Expenditures shall not include those amounts expended for janitorial, landscaping or administrative support, but shall include expenditures from both state and nonstate sources.

(d) Expenditures shall not include amounts expended by the department on behalf of state agencies, departments and institutions through the Department of Finance and Administration administered contracts, but shall include amounts transferred to the Department of Finance and Administration for support of such contracts.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the * * * design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.



(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in addition to all other rights and powers granted by law, to create and maintain a list of suspended and debarred contractors and subcontractors. Consistent with this authority, the department may adopt regulations governing the suspension or debarment of contractors and subcontractors, which regulations shall be subject to the approval of the Public Procurement Review Board. A suspended or debarred contractor or subcontractor shall be disqualified from consideration for contracts with the department during the suspension or debarment period in accordance with the department's regulations.

(11) This section shall not apply to the Mississippi State Port Authority.

SECTION 3. Section 61-3-15, Mississippi Code of 1972, is amended as follows:

61-3-15. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power:

(a) To sue and be sued, to have a seal and to have perpetual succession.

(b) To purchase general liability insurance coverage, including errors and omissions insurance, for its officials and employees.



373 (c) To employ an executive director, secretary,
374 technical experts, and such other officers, agents and employees,
375 permanent and temporary, as it may require, and to determine their
376 qualifications and duties, and to establish compensation and other
377 employment benefits as may be advisable to attract and retain
378 proficient personnel.

379 (d) To execute such contracts and other instruments and
380 take such other action as may be necessary or convenient to carry
381 out the purposes of this chapter.

382 (e) To plan, establish, develop, construct, enlarge,
383 improve, maintain, equip, operate, regulate and protect airports
384 and air navigation facilities within this state and within any
385 adjoining state, including the acquisition, lease, lease-purchase,
386 construction, installation, equipment, maintenance and operation
387 of such airports or buildings, equipment and other facilities or
388 other property for the servicing of aircraft or for the comfort
389 and accommodation of air travelers or for any other purpose deemed
390 by the authority to be necessary to carry out its duties; to
391 develop, operate, manage or own and maintain intermodal facilities
392 to serve air and surface cargo and multimodal facilities to serve
393 highway and rail passenger transportation needs to ensure
394 interface and interaction between modes for cargo and passengers;
395 to construct, improve, and maintain means of ingress and egress to
396 airport properties from and over off-airport sites with approval
397 of the city or county in which the off-airport site is located; to



398 market, promote and advertise airport properties, goods and
399 services; and to directly purchase and sell supplies, goods and
400 commodities incident to the operation of its airport properties
401 without having to make purchases thereof through the municipal
402 governing authorities, and with the authority to utilize * * *
403 design-build and construction manager at-risk methods of
404 construction in accordance with Sections 31-7-13.1 and 31-7-13.2.
405 For all the previously stated purposes, an authority may, by
406 purchase, gift, devise, lease, eminent domain proceedings or
407 otherwise, acquire property, real or personal, or any interest
408 therein, including easements in airport hazards or land outside
409 the boundaries of an airport or airport site, as are necessary to
410 permit the removal, elimination, obstruction-marking or
411 obstruction-lighting of airport hazards, to prevent the
412 establishment of airport hazards or to carry out its duties.

413 (f) To acquire, by purchase, gift, devise, lease,
414 lease-purchase, eminent domain proceedings or otherwise, existing
415 airports and air navigation facilities. However, an authority
416 shall not acquire or take over any airport or air navigation
417 facility owned or controlled by another authority, a municipality
418 or public agency of this or any other state without the consent of
419 such authority, municipality or public agency.

420 (g) To establish or acquire and maintain airports in,
421 over and upon any public waters of this state, and any submerged
422 lands under such public waters, and to construct and maintain



terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(h) To establish, enact and enforce ordinances, rules, regulations and standards for public safety, aviation safety, airport operations and the preservation of good order and peace of the authority; to prevent injury to, destruction of or interference with public or private property; to protect property, health and lives and to enhance the general welfare of the authority by restricting the movements of citizens or any group thereof on the property of the authority when there is imminent danger to the public safety because of freedom of movement thereof; to regulate the entrances to property and buildings of the authority and the way of ingress and egress to and from the same; to establish fire limits and to hire firemen, including aircraft fire and rescue and similar personnel, and to establish and equip a fire department to provide fire and other emergency services on any property of the authority; to regulate, restrain or prohibit construction failing to meet standards established by the authority; to appoint and discharge police officers with jurisdiction limited to property of the airport authority and authorization to enforce the ordinances, rules and regulations of the authority, as well as the laws of the State of Mississippi, and to issue citations for infractions of all of such ordinances,



rules, regulations, standards and laws of the State of Mississippi returnable to the court of appropriate jurisdiction.

(i) To develop and operate an industrial park or parks and exercise all authority provided for under Chapter 7, Title 57, Mississippi Code of 1972.

(j) To attach, pursuant to the power and procedure set forth in Chapter 33, Title 11, Mississippi Code of 1972, the equipment of debtors of the authority.

(k) To enter into agreements with local governments pursuant to Section 17-13-1 et seq.

(l) To render emergency assistance to other airports within the United States at an aggregate cost of less than Twenty Thousand Dollars (\$20,000.00) per emergency. The assistance authorized in this paragraph must be rendered within ninety (90) days after a state of emergency has been declared by the federal government, or by the local or state government that has jurisdiction over the area where the airport needing assistance is located.

(m) To enter into joint use or similar agreements with any department or agency of the United States of America or the State of Mississippi, including any military department of the United States of America or the State of Mississippi, with respect to the use and operation of, or services provided at, any airport or other property of the authority on the terms and conditions as the authority may deem appropriate, including provisions limiting



the liability of the United States of America or the State of Mississippi for loss or damage to the authority if the authority determines that the limitation of liability is reasonable, necessary and appropriate under the circumstances.

(n) To enter into mutual aid agreements with counties and municipalities for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted; to participate in the Statewide Mutual Aid Compact (SMAC) in accordance with Section 33-15-19.

SECTION 4. Section 31-7-13, Mississippi Code of 1972, is amended as follows:

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

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



(b) **Bidding procedure for purchases over \$5,000.00 but not over \$50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars (\$50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without



521 approval by the governing authority. The term "competitive
522 written bid" shall mean a bid submitted on a bid form furnished by
523 the buying agency or governing authority and signed by authorized
524 personnel representing the vendor, or a bid submitted on a
525 vendor's letterhead or identifiable bid form and signed by
526 authorized personnel representing the vendor. "Competitive" shall
527 mean that the bids are developed based upon comparable
528 identification of the needs and are developed independently and
529 without knowledge of other bids or prospective bids. Any bid item
530 for construction in excess of Five Thousand Dollars (\$5,000.00)
531 shall be broken down by components to provide detail of component
532 description and pricing. These details shall be submitted with
533 the written bids and become part of the bid evaluation criteria.
534 Bids may be submitted by facsimile, electronic mail or other
535 generally accepted method of information distribution. Bids
536 submitted by electronic transmission shall not require the
537 signature of the vendor's representative unless required by
538 agencies or governing authorities.

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

540 (i) **Publication requirement.**

541 1. Purchases which involve an expenditure of
542 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
543 freight and shipping charges, may be made from the lowest and best
544 bidder after advertising for competitive bids once each week for
545 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 a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges. The



Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall,



596 and at two (2) other public places in the county or municipality,
597 and also by publication once each week for two (2) consecutive
598 weeks in some newspaper having a general circulation in the county
599 or municipality in the above-provided manner. On the same date
600 that the notice is submitted to the newspaper for publication, the
601 agency or governing authority involved shall mail written notice
602 to, or provide electronic notification to the main office of the
603 Mississippi Procurement Technical Assistance Program under the
604 Mississippi Development Authority that contains the same
605 information as that in the published notice. Submissions received
606 by the Mississippi Procurement Technical Assistance Program for
607 projects funded by the American Recovery and Reinvestment Act
608 shall be displayed on a separate and unique Internet web page
609 accessible to the public and maintained by the Mississippi
610 Development Authority for the Mississippi Procurement Technical
611 Assistance Program. Those American Recovery and Reinvestment Act
612 related submissions shall be publicly posted within twenty-four
613 (24) hours of receipt by the Mississippi Development Authority and
614 the bid opening shall not occur until the submission has been
615 posted for ten (10) consecutive days. The Department of Finance
616 and Administration shall maintain information regarding contracts
617 and other expenditures from the American Recovery and Reinvestment
618 Act, on a unique Internet web page accessible to the public. The
619 Department of Finance and Administration shall promulgate rules
620 regarding format, content and deadlines, unless otherwise



specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules 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



646 governing authority maintains a list of all prospective bidders
647 who are known to have received a copy of the bid documents and all
648 such prospective bidders are sent copies of all amendments. This
649 notification of amendments may be made via mail, facsimile,
650 electronic mail or other generally accepted method of information
651 distribution. No addendum to bid specifications may be issued
652 within two (2) working days of the time established for the
653 receipt of bids unless such addendum also amends the bid opening
654 to a date not less than five (5) working days after the date of
655 the addendum.

656 (iii) **Filing requirement.** In all cases involving
657 governing authorities, before the notice shall be published or
658 posted, the plans or specifications for the construction or
659 equipment being sought shall be filed with the clerk of the board
660 of the governing authority. In addition to these requirements, a
661 bid file shall be established which shall indicate those vendors
662 to whom such solicitations and specifications were issued, and
663 such file shall also contain such information as is pertinent to
664 the bid.

665 (iv) **Specification restrictions.**

666 1. Specifications pertinent to such bidding
667 shall be written so as not to exclude comparable equipment of
668 domestic manufacture. However, if valid justification is
669 presented, the Department of Finance and Administration or the
670 board of a governing authority may approve a request for specific



671 equipment necessary to perform a specific job. Further, such
672 justification, when placed on the minutes of the board of a
673 governing authority, may serve as authority for that governing
674 authority to write specifications to require a specific item of
675 equipment needed to perform a specific job. In addition to these
676 requirements, from and after July 1, 1990, vendors of relocatable
677 classrooms and the specifications for the purchase of such
678 relocatable classrooms published by local school boards shall meet
679 all pertinent regulations of the State Board of Education,
680 including prior approval of such bid by the State Department of
681 Education.

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

690 (v) **Electronic bids.** Agencies and governing
691 authorities shall provide a secure electronic interactive system
692 for the submittal of bids requiring competitive bidding that shall
693 be an additional bidding option for those bidders who choose to
694 submit their bids electronically. The Department of Finance and
695 Administration shall provide, by regulation, the standards that



696 agencies must follow when receiving electronic bids. Agencies and
697 governing authorities shall make the appropriate provisions
698 necessary to accept electronic bids from those bidders who choose
699 to submit their bids electronically for all purchases requiring
700 competitive bidding under this section. Any special condition or
701 requirement for the electronic bid submission shall be specified
702 in the advertisement for bids required by this section. Agencies
703 or governing authorities that are currently without available high
704 speed Internet access shall be exempt from the requirement of this
705 subparagraph (v) until such time that high speed Internet access
706 becomes available. Any county having a population of less than
707 twenty thousand (20,000) shall be exempt from the provisions of
708 this subparagraph (v). Any municipality having a population of
709 less than ten thousand (10,000) shall be exempt from the
710 provisions of this subparagraph (v). The provisions of this
711 subparagraph (v) shall not require any bidder to submit bids
712 electronically. When construction bids are submitted
713 electronically, the requirement for including a certificate of
714 responsibility, or a statement that the bid enclosed does not
715 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
716 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
717 deemed in compliance with by including same as an attachment with
718 the electronic bid submittal.

719 (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 subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant



770 provisions may be included in the best bid calculation. All best
771 bid and prequalification procedures for state agencies must be in
772 compliance with regulations established by the Department of
773 Finance and Administration. If any governing authority accepts a
774 bid other than the lowest bid actually submitted, it shall place
775 on its minutes detailed calculations and narrative summary showing
776 that the accepted bid was determined to be the lowest and best
777 bid, including the dollar amount of the accepted bid and the
778 dollar amount of the lowest bid. No agency or governing authority
779 shall accept a bid based on items not included in the
780 specifications.

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

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

787 (e) **Lease-purchase authorization.** For the purposes of
788 this section, the term "equipment" shall mean equipment, furniture
789 and, if applicable, associated software and other applicable
790 direct costs associated with the acquisition. Any lease-purchase
791 of equipment which an agency is not required to lease-purchase
792 under the master lease-purchase program pursuant to Section
793 31-7-10 and any lease-purchase of equipment which a governing
794 authority elects to lease-purchase may be acquired by a



795 lease-purchase agreement under this paragraph (e). Lease-purchase
796 financing may also be obtained from the vendor or from a
797 third-party source after having solicited and obtained at least
798 two (2) written competitive bids, as defined in paragraph (b) of
799 this section, for such financing without advertising for such
800 bids. Solicitation for the bids for financing may occur before or
801 after acceptance of bids for the purchase of such equipment or,
802 where no such bids for purchase are required, at any time before
803 the purchase thereof. No such lease-purchase agreement shall be
804 for an annual rate of interest which is greater than the overall
805 maximum interest rate to maturity on general obligation
806 indebtedness permitted under Section 75-17-101, and the term of
807 such lease-purchase agreement shall not exceed the useful life of
808 equipment covered thereby as determined according to the upper
809 limit of the asset depreciation range (ADR) guidelines for the
810 Class Life Asset Depreciation Range System established by the
811 Internal Revenue Service pursuant to the United States Internal
812 Revenue Code and regulations thereunder as in effect on December
813 31, 1980, or comparable depreciation guidelines with respect to
814 any equipment not covered by ADR guidelines. Any lease-purchase
815 agreement entered into pursuant to this paragraph (e) may contain
816 any of the terms and conditions which a master lease-purchase
817 agreement may contain under the provisions of Section 31-7-10(5),
818 and shall contain an annual allocation dependency clause
819 substantially similar to that set forth in Section 31-7-10(8).



820 Each agency or governing authority entering into a lease-purchase
821 transaction pursuant to this paragraph (e) shall maintain with
822 respect to each such lease-purchase transaction the same
823 information as required to be maintained by the Department of
824 Finance and Administration pursuant to Section 31-7-10(13).
825 However, nothing contained in this section shall be construed to
826 permit agencies to acquire items of equipment with a total
827 acquisition cost in the aggregate of less than Ten Thousand
828 Dollars (\$10,000.00) by a single lease-purchase transaction. All
829 equipment, and the purchase thereof by any lessor, acquired by
830 lease-purchase under this paragraph and all lease-purchase
831 payments with respect thereto shall be exempt from all Mississippi
832 sales, use and ad valorem taxes. Interest paid on any
833 lease-purchase agreement under this section shall be exempt from
834 State of Mississippi income taxation.

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



844 (g) **Construction contract change authorization.** In the
845 event a determination is made by an agency or governing authority
846 after a construction contract is let that changes or modifications
847 to the original contract are necessary or would better serve the
848 purpose of the agency or the governing authority, such agency or
849 governing authority may, in its discretion, order such changes
850 pertaining to the construction that are necessary under the
851 circumstances without the necessity of further public bids;
852 provided that such change shall be made in a commercially
853 reasonable manner and shall not be made to circumvent the public
854 purchasing statutes. In addition to any other authorized person,
855 the architect or engineer hired by an agency or governing
856 authority with respect to any public construction contract shall
857 have the authority, when granted by an agency or governing
858 authority, to authorize changes or modifications to the original
859 contract without the necessity of prior approval of the agency or
860 governing authority when any such change or modification is less
861 than one percent (1%) of the total contract amount. The agency or
862 governing authority may limit the number, manner or frequency of
863 such emergency changes or modifications.

864 (h) **Petroleum purchase alternative.** In addition to
865 other methods of purchasing authorized in this chapter, when any
866 agency or governing authority shall have a need for gas, diesel
867 fuel, oils and/or other petroleum products in excess of the amount
868 set forth in paragraph (a) of this section, such agency or



869 governing authority may purchase the commodity after having
870 solicited and obtained at least two (2) competitive written bids,
871 as defined in paragraph (b) of this section. If two (2)
872 competitive written bids are not obtained, the entity shall comply
873 with the procedures set forth in paragraph (c) of this section.
874 In the event any agency or governing authority shall have
875 advertised for bids for the purchase of gas, diesel fuel, oils and
876 other petroleum products and coal and no acceptable bids can be
877 obtained, such agency or governing authority is authorized and
878 directed to enter into any negotiations necessary to secure the
879 lowest and best contract available for the purchase of such
880 commodities.

881 (i) **Road construction petroleum products price**
882 **adjustment clause authorization.** Any agency or governing
883 authority authorized to enter into contracts for the construction,
884 maintenance, surfacing or repair of highways, roads or streets,
885 may include in its bid proposal and contract documents a price
886 adjustment clause with relation to the cost to the contractor,
887 including taxes, based upon an industry-wide cost index, of
888 petroleum products including asphalt used in the performance or
889 execution of the contract or in the production or manufacture of
890 materials for use in such performance. Such industry-wide index
891 shall be established and published monthly by the Mississippi
892 Department of Transportation with a copy thereof to be mailed,
893 upon request, to the clerks of the governing authority of each



894 municipality and the clerks of each board of supervisors
895 throughout the state. The price adjustment clause shall be based
896 on the cost of such petroleum products only and shall not include
897 any additional profit or overhead as part of the adjustment. The
898 bid proposals or document contract shall contain the basis and
899 methods of adjusting unit prices for the change in the cost of
900 such petroleum products.

901 (j) **State agency emergency purchase procedure.** If the
902 governing board or the executive head, or his designees, of any
903 agency of the state shall determine that an emergency exists in
904 regard to the purchase of any commodities or repair contracts, so
905 that the delay incident to giving opportunity for competitive
906 bidding would be detrimental to the interests of the state, then
907 the head of such agency, or his designees, shall file with the
908 Department of Finance and Administration (i) a statement
909 explaining the conditions and circumstances of the emergency,
910 which shall include a detailed description of the events leading
911 up to the situation and the negative impact to the entity if the
912 purchase is made following the statutory requirements set forth in
913 paragraph (a), (b) or (c) of this section, and (ii) a certified
914 copy of the appropriate minutes of the board of such agency
915 requesting the emergency purchase, if applicable. Upon receipt of
916 the statement and applicable board certification, the State Fiscal
917 Officer, or his designees, may, in writing, authorize the purchase



918 or repair without having to comply with competitive bidding
919 requirements.

920 If the governing board or the executive head, or his
921 designees, of any agency determines that an emergency exists in
922 regard to the purchase of any commodities or repair contracts, so
923 that the delay incident to giving opportunity for competitive
924 bidding would threaten the health or safety of any person, or the
925 preservation or protection of property, then the provisions in
926 this section for competitive bidding shall not apply, and any
927 officer or agent of the agency having general or specific
928 authority for making the purchase or repair contract shall approve
929 the bill presented for payment, and he shall certify in writing
930 from whom the purchase was made, or with whom the repair contract
931 was made.

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

940 Purchases under the grant program established under Section
941 37-68-7 in response to COVID-19 and the directive that school
942 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 financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

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



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

993 Purchasing agreements, contracts and maximum price regulations
994 executed or approved by the Department of Finance and
995 Administration.

996 (ii) **Outside equipment repairs.** Repairs to
997 equipment, when such repairs are made by repair facilities in the
998 private sector; however, engines, transmissions, rear axles and/or
999 other such components shall not be included in this exemption when
1000 replaced as a complete unit instead of being repaired and the need
1001 for such total component replacement is known before disassembly
1002 of the component; however, invoices identifying the equipment,
1003 specific repairs made, parts identified by number and name,
1004 supplies used in such repairs, and the number of hours of labor
1005 and costs therefor shall be required for the payment for such
1006 repairs.

1007 (iii) **In-house equipment repairs.** Purchases of
1008 parts for repairs to equipment, when such repairs are made by
1009 personnel of the agency or governing authority; however, entire
1010 assemblies, such as engines or transmissions, shall not be
1011 included in this exemption when the entire assembly is being
1012 replaced instead of being repaired.

1013 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1014 of gravel or fill dirt which are to be removed and transported by
1015 the purchaser.



1016 (v) **Governmental equipment auctions.** Motor
1017 vehicles or other equipment purchased from a federal agency or
1018 authority, another governing authority or state agency of the
1019 State of Mississippi, or any governing authority or state agency
1020 of another state at a public auction held for the purpose of
1021 disposing of such vehicles or other equipment. Any purchase by a
1022 governing authority under the exemption authorized by this
1023 subparagraph (v) shall require advance authorization spread upon
1024 the minutes of the governing authority to include the listing of
1025 the item or items authorized to be purchased and the maximum bid
1026 authorized to be paid for each item or items.

1027 (vi) **Intergovernmental sales and transfers.**
1028 Purchases, sales, transfers or trades by governing authorities or
1029 state agencies when such purchases, sales, transfers or trades are
1030 made by a private treaty agreement or through means of
1031 negotiation, from any federal agency or authority, another
1032 governing authority or state agency of the State of Mississippi,
1033 or any state agency or governing authority of another state.
1034 Nothing in this section shall permit such purchases through public
1035 auction except as provided for in subparagraph (v) of this
1036 paragraph (m). It is the intent of this section to allow
1037 governmental entities to dispose of and/or purchase commodities
1038 from other governmental entities at a price that is agreed to by
1039 both parties. This shall allow for purchases and/or sales at
1040 prices which may be determined to be below the market value if the



1041 selling entity determines that the sale at below market value is
1042 in the best interest of the taxpayers of the state. Governing
1043 authorities shall place the terms of the agreement and any
1044 justification on the minutes, and state agencies shall obtain
1045 approval from the Department of Finance and Administration, prior
1046 to releasing or taking possession of the commodities.

1047 (vii) **Perishable supplies or food.** Perishable
1048 supplies or food purchased for use in connection with hospitals,
1049 the school lunch programs, homemaking programs and for the feeding
1050 of county or municipal prisoners.

1051 (viii) **Single source items.** Noncompetitive items
1052 available from one (1) source only. In connection with the
1053 purchase of noncompetitive items only available from one (1)
1054 source, a certification of the conditions and circumstances
1055 requiring the purchase shall be filed by the agency with the
1056 Department of Finance and Administration and by the governing
1057 authority with the board of the governing authority. Upon receipt
1058 of that certification the Department of Finance and Administration
1059 or the board of the governing authority, as the case may be, may,
1060 in writing, authorize the purchase, which authority shall be noted
1061 on the minutes of the body at the next regular meeting thereafter.
1062 In those situations, a governing authority is not required to
1063 obtain the approval of the Department of Finance and
1064 Administration. Following the purchase, the executive head of the
1065 state agency, or his designees, shall file with the Department of



1066 Finance and Administration, documentation of the purchase,
1067 including a description of the commodity purchased, the purchase
1068 price thereof and the source from whom it was purchased.

1069 (ix) **Waste disposal facility construction**
1070 **contracts.** Construction of incinerators and other facilities for
1071 disposal of solid wastes in which products either generated
1072 therein, such as steam, or recovered therefrom, such as materials
1073 for recycling, are to be sold or otherwise disposed of; however,
1074 in constructing such facilities, a governing authority or agency
1075 shall publicly issue requests for proposals, advertised for in the
1076 same manner as provided herein for seeking bids for public
1077 construction projects, concerning the design, construction,
1078 ownership, operation and/or maintenance of such facilities,
1079 wherein such requests for proposals when issued shall contain
1080 terms and conditions relating to price, financial responsibility,
1081 technology, environmental compatibility, legal responsibilities
1082 and such other matters as are determined by the governing
1083 authority or agency to be appropriate for inclusion; and after
1084 responses to the request for proposals have been duly received,
1085 the governing authority or agency may select the most qualified
1086 proposal or proposals on the basis of price, technology and other
1087 relevant factors and from such proposals, but not limited to the
1088 terms thereof, negotiate and enter contracts with one or more of
1089 the persons or firms submitting proposals.



1090 (x) **Hospital group purchase contracts.** Supplies,
1091 commodities and equipment purchased by hospitals through group
1092 purchase programs pursuant to Section 31-7-38.

1093 (xi) **Information technology products.** Purchases
1094 of information technology products made by governing authorities
1095 under the provisions of purchase schedules, or contracts executed
1096 or approved by the Mississippi Department of Information
1097 Technology Services and designated for use by governing
1098 authorities.

1099 (xii) **Energy efficiency services and equipment.**
1100 Energy efficiency services and equipment acquired by school
1101 districts, community and junior colleges, institutions of higher
1102 learning and state agencies or other applicable governmental
1103 entities on a shared-savings, lease or lease-purchase basis
1104 pursuant to Section 31-7-14.

1105 (xiii) **Municipal electrical utility system fuel.**
1106 Purchases of coal and/or natural gas by municipally owned electric
1107 power generating systems that have the capacity to use both coal
1108 and natural gas for the generation of electric power.

1109 (xiv) **Library books and other reference materials.**
1110 Purchases by libraries or for libraries of books and periodicals;
1111 processed film, videocassette tapes, filmstrips and slides;
1112 recorded audiotapes, cassettes and diskettes; and any such items
1113 as would be used for teaching, research or other information
1114 distribution; however, equipment such as projectors, recorders,



1115 audio or video equipment, and monitor televisions are not exempt
1116 under this subparagraph.

1117 (xv) **Unmarked vehicles.** Purchases of unmarked
1118 vehicles when such purchases are made in accordance with
1119 purchasing regulations adopted by the Department of Finance and
1120 Administration pursuant to Section 31-7-9(2).

1121 (xvi) **Election ballots.** Purchases of ballots
1122 printed pursuant to Section 23-15-351.

1123 (xvii) **Multichannel interactive video systems.**
1124 From and after July 1, 1990, contracts by Mississippi Authority
1125 for Educational Television with any private educational
1126 institution or private nonprofit organization whose purposes are
1127 educational in regard to the construction, purchase, lease or
1128 lease-purchase of facilities and equipment and the employment of
1129 personnel for providing multichannel interactive video systems
1130 (ITSF) in the school districts of this state.

1131 (xviii) **Purchases of prison industry products by**
1132 **the Department of Corrections, regional correctional facilities or**
1133 **privately owned prisons.** Purchases made by the Mississippi
1134 Department of Corrections, regional correctional facilities or
1135 privately owned prisons involving any item that is manufactured,
1136 processed, grown or produced from the state's prison industries.

1137 (xix) **Undercover operations equipment.** Purchases
1138 of surveillance equipment or any other high-tech equipment to be
1139 used by law enforcement agents in undercover operations, provided



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

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

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

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

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

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



1165 (xxv) **Purchases of state-adopted textbooks.**
1166 Purchases of state-adopted textbooks by public school districts.

1167 (xxvi) **Certain purchases under the Mississippi**
1168 **Major Economic Impact Act.** Contracts entered into pursuant to the
1169 provisions of Section 57-75-9(2), (3) and (4).

1170 (xxvii) **Used heavy or specialized machinery or**
1171 **equipment for installation of soil and water conservation**
1172 **practices purchased at auction.** Used heavy or specialized
1173 machinery or equipment used for the installation and
1174 implementation of soil and water conservation practices or
1175 measures purchased subject to the restrictions provided in
1176 Sections 69-27-331 through 69-27-341. Any purchase by the State
1177 Soil and Water Conservation Commission under the exemption
1178 authorized by this subparagraph shall require advance
1179 authorization spread upon the minutes of the commission to include
1180 the listing of the item or items authorized to be purchased and
1181 the maximum bid authorized to be paid for each item or items.

1182 (xxviii) **Hospital lease of equipment or services.**
1183 Leases by hospitals of equipment or services if the leases are in
1184 compliance with paragraph (1)(ii).

1185 (xxix) **Purchases made pursuant to qualified**
1186 **cooperative purchasing agreements.** Purchases made by certified
1187 purchasing offices of state agencies or governing authorities
1188 under cooperative purchasing agreements previously approved by the
1189 Office of Purchasing and Travel and established by or for any



1190 municipality, county, parish or state government or the federal
1191 government, provided that the notification to potential
1192 contractors includes a clause that sets forth the availability of
1193 the cooperative purchasing agreement to other governmental
1194 entities. Such purchases shall only be made if the use of the
1195 cooperative purchasing agreements is determined to be in the best
1196 interest of the governmental entity.

1197 (xxx) **School yearbooks.** Purchases of school
1198 yearbooks by state agencies or governing authorities; provided,
1199 however, that state agencies and governing authorities shall use
1200 for these purchases the RFP process as set forth in the
1201 Mississippi Procurement Manual adopted by the Office of Purchasing
1202 and Travel.

1203 (xxxii) **Design-build method and * * * design-build**
1204 **method of contracting.** Contracts entered into under the
1205 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1206 (xxxiii) **Toll roads and bridge construction**
1207 **projects.** Contracts entered into under the provisions of Section
1208 65-43-1 or 65-43-3.

1209 (xxxiiii) **Certain purchases under Section 57-1-221.**
1210 Contracts entered into pursuant to the provisions of Section
1211 57-1-221.

1212 (xxxiv) **Certain transfers made pursuant to the**
1213 **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



1239 periods near the end of terms of office. Term contracts for a
1240 period exceeding twenty-four (24) months shall also be subject to
1241 ratification or cancellation by governing authority boards taking
1242 office subsequent to the governing authority board entering the
1243 contract.

1244 (ii) Bid proposals and contracts may include price
1245 adjustment clauses with relation to the cost to the contractor
1246 based upon a nationally published industry-wide or nationally
1247 published and recognized cost index. The cost index used in a
1248 price adjustment clause shall be determined by the Department of
1249 Finance and Administration for the state agencies and by the
1250 governing board for governing authorities. The bid proposal and
1251 contract documents utilizing a price adjustment clause shall
1252 contain the basis and method of adjusting unit prices for the
1253 change in the cost of such commodities, equipment and public
1254 construction.

1255 (o) **Purchase law violation prohibition and vendor**
1256 **penalty.** No contract or purchase as herein authorized shall be
1257 made for the purpose of circumventing the provisions of this
1258 section requiring competitive bids, nor shall it be lawful for any
1259 person or concern to submit individual invoices for amounts within
1260 those authorized for a contract or purchase where the actual value
1261 of the contract or commodity purchased exceeds the authorized
1262 amount and the invoices therefor are split so as to appear to be
1263 authorized as purchases for which competitive bids are not



1264 required. Submission of such invoices shall constitute a
1265 misdemeanor punishable by a fine of not less than Five Hundred
1266 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1267 or by imprisonment for thirty (30) days in the county jail, or
1268 both such fine and imprisonment. In addition, the claim or claims
1269 submitted shall be forfeited.

1270 (p) **Electrical utility petroleum-based equipment**
1271 **purchase procedure.** When in response to a proper advertisement
1272 therefor, no bid firm as to price is submitted to an electric
1273 utility for power transformers, distribution transformers, power
1274 breakers, reclosers or other articles containing a petroleum
1275 product, the electric utility may accept the lowest and best bid
1276 therefor although the price is not firm.

1277 (q) **Fuel management system bidding procedure.** Any
1278 governing authority or agency of the state shall, before
1279 contracting for the services and products of a fuel management or
1280 fuel access system, enter into negotiations with not fewer than
1281 two (2) sellers of fuel management or fuel access systems for
1282 competitive written bids to provide the services and products for
1283 the systems. In the event that the governing authority or agency
1284 cannot locate two (2) sellers of such systems or cannot obtain
1285 bids from two (2) sellers of such systems, it shall show proof
1286 that it made a diligent, good-faith effort to locate and negotiate
1287 with two (2) sellers of such systems. Such proof shall include,
1288 but not be limited to, publications of a request for proposals and



1289 letters soliciting negotiations and bids. For purposes of this
1290 paragraph (q), a fuel management or fuel access system is an
1291 automated system of acquiring fuel for vehicles as well as
1292 management reports detailing fuel use by vehicles and drivers, and
1293 the term "competitive written bid" shall have the meaning as
1294 defined in paragraph (b) of this section. Governing authorities
1295 and agencies shall be exempt from this process when contracting
1296 for the services and products of fuel management or fuel access
1297 systems under the terms of a state contract established by the
1298 Office of Purchasing and Travel.

1299 (r) **Solid waste contract proposal procedure.** Before
1300 entering into any contract for garbage collection or disposal,
1301 contract for solid waste collection or disposal or contract for
1302 sewage collection or disposal, which involves an expenditure of
1303 more than Fifty Thousand Dollars (\$50,000.00), a governing
1304 authority or agency shall issue publicly a request for proposals
1305 concerning the specifications for such services which shall be
1306 advertised for in the same manner as provided in this section for
1307 seeking bids for purchases which involve an expenditure of more
1308 than the amount provided in paragraph (c) of this section. Any
1309 request for proposals when issued shall contain terms and
1310 conditions relating to price, financial responsibility,
1311 technology, legal responsibilities and other relevant factors as
1312 are determined by the governing authority or agency to be
1313 appropriate for inclusion; all factors determined relevant by the



1314 governing authority or agency or required by this paragraph (r)
1315 shall be duly included in the advertisement to elicit proposals.
1316 After responses to the request for proposals have been duly
1317 received, the governing authority or agency shall select the most
1318 qualified proposal or proposals on the basis of price, technology
1319 and other relevant factors and from such proposals, but not
1320 limited to the terms thereof, negotiate and enter into contracts
1321 with one or more of the persons or firms submitting proposals. If
1322 the governing authority or agency deems none of the proposals to
1323 be qualified or otherwise acceptable, the request for proposals
1324 process may be reinitiated. Notwithstanding any other provisions
1325 of this paragraph, where a county with at least thirty-five
1326 thousand (35,000) nor more than forty thousand (40,000)
1327 population, according to the 1990 federal decennial census, owns
1328 or operates a solid waste landfill, the governing authorities of
1329 any other county or municipality may contract with the governing
1330 authorities of the county owning or operating the landfill,
1331 pursuant to a resolution duly adopted and spread upon the minutes
1332 of each governing authority involved, for garbage or solid waste
1333 collection or disposal services through contract negotiations.

1334 (s) **Minority set-aside authorization.** Notwithstanding
1335 any provision of this section to the contrary, any agency or
1336 governing authority, by order placed on its minutes, may, in its
1337 discretion, set aside not more than twenty percent (20%) of its
1338 anticipated annual expenditures for the purchase of commodities



1339 from minority businesses; however, all such set-aside purchases
1340 shall comply with all purchasing regulations promulgated by the
1341 Department of Finance and Administration and shall be subject to
1342 bid requirements under this section. Set-aside purchases for
1343 which competitive bids are required shall be made from the lowest
1344 and best minority business bidder. For the purposes of this
1345 paragraph, the term "minority business" means a business which is
1346 owned by a majority of persons who are United States citizens or
1347 permanent resident aliens (as defined by the Immigration and
1348 Naturalization Service) of the United States, and who are Asian,
1349 Black, Hispanic or Native American, according to the following
1350 definitions:

1351 (i) "Asian" means persons having origins in any of
1352 the original people of the Far East, Southeast Asia, the Indian
1353 subcontinent, or the Pacific Islands.

1354 (ii) "Black" means persons having origins in any
1355 black racial group of Africa.

1356 (iii) "Hispanic" means persons of Spanish or
1357 Portuguese culture with origins in Mexico, South or Central
1358 America, or the Caribbean Islands, regardless of race.

1359 (iv) "Native American" means persons having
1360 origins in any of the original people of North America, including
1361 American Indians, Eskimos and Aleuts.

1362 (t) **Construction punch list restriction.** The
1363 architect, engineer or other representative designated by the



1364 agency or governing authority that is contracting for public
1365 construction or renovation may prepare and submit to the
1366 contractor only one (1) preliminary punch list of items that do
1367 not meet the contract requirements at the time of substantial
1368 completion and one (1) final list immediately before final
1369 completion and final payment.

1370 (u) **Procurement of construction services by state**
1371 **institutions of higher learning.** Contracts for privately financed
1372 construction of auxiliary facilities on the campus of a state
1373 institution of higher learning may be awarded by the Board of
1374 Trustees of State Institutions of Higher Learning to the lowest
1375 and best bidder, where sealed bids are solicited, or to the
1376 offeror whose proposal is determined to represent the best value
1377 to the citizens of the State of Mississippi, where requests for
1378 proposals are solicited.

1379 (v) **Insurability of bidders for public construction or**
1380 **other public contracts.** In any solicitation for bids to perform
1381 public construction or other public contracts to which this
1382 section applies, including, but not limited to, contracts for
1383 repair and maintenance, for which the contract will require
1384 insurance coverage in an amount of not less than One Million
1385 Dollars (\$1,000,000.00), bidders shall be permitted to either
1386 submit proof of current insurance coverage in the specified amount
1387 or demonstrate ability to obtain the required coverage amount of
1388 insurance if the contract is awarded to the bidder. Proof of



1389 insurance coverage shall be submitted within five (5) business
1390 days from bid acceptance.

1391 (w) **Purchase authorization clarification.** Nothing in
1392 this section shall be construed as authorizing any purchase not
1393 authorized by law.

1394 **SECTION 5.** This act shall take effect and be in force from
1395 and after July 1, 2021.

