

By: Senator(s) Blackwell, Butler, Turner-  
Ford, Jackson (11th), McLendon, Simmons  
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To: County Affairs

SENATE BILL NO. 2024  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-105-305, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE COUNTY BOARDS OF SUPERVISORS THE DISCRETION TO  
3 DETERMINE THE INTERVAL OF TIME FOR PROVIDING NOTICE TO FINANCIAL  
4 INSTITUTIONS OF THE OPENING OF THE BIDDING PROCESS FOR SERVING AS  
5 DEPOSITORIES OF COUNTY FUNDS; TO CLARIFY THAT THE SELECTION OF  
6 DEPOSITORIES IS TO BE BASED UPON ALL RELEVANT FACTORS; TO AMEND  
7 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT REVERSE  
8 AUCTIONS SHALL NOT BE USED FOR CERTAIN TERM CONTRACTS; TO REQUIRE  
9 THE CLERK OF THE BOARD OF SUPERVISORS TO ENTER THE RECOMMENDED  
10 YEAR-END ADJUSTING ACCOUNTING ENTRIES INTO THE COUNTY'S ACCOUNTING  
11 SYSTEM AND TO REQUIRE THE BOARD OF SUPERVISORS TO SPREAD THE  
12 REASON THAT ANY RECOMMENDED ENTRY WAS NOT ENTERED UPON ITS MINUTES  
13 IF THE CLERK OF THE BOARD OF SUPERVISORS DECLINES TO MAKE THE  
14 ENTRY; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 27-105-305, Mississippi Code of 1972, is  
17 amended as follows:

18 27-105-305. The board of supervisors at the regular December  
19 1997 meeting, and annually thereafter or, in the discretion of the  
20 board of supervisors, \* \* \* thereafter at such other interval of  
21 time as determined by the board of supervisors, but no less  
22 frequently than every four (4) years, shall give notice to all  
23 financial institutions in its county whose accounts are insured by  
24 the Federal Deposit Insurance Corporation (or any successor



thereto), by publication, that bids will be received from financial institutions at the following January meeting, or some subsequent meeting, for the privilege of keeping the county funds, or any part thereof, which notice shall refer by name to this article and it shall not be necessary to incorporate in the notice the provisions of this article; and at the January meeting, or a subsequent meeting as may be designated in the notice, as the case may be, the board of supervisors shall receive such bids or proposals as the financial institutions may make for the privilege of keeping the county funds, or any part thereof. The bids or proposals shall designate the kind of security as authorized by law which the financial institutions propose to give as security for funds, and the board shall cause the county funds and all other funds in the hands of the county treasurer to be deposited in the qualified financial institution or qualified institutions proposing the best terms, taking into consideration all material aspects of the proposal, including, but not limited to, net earnings, account costs, costs of transfer of accounts from existing depositories, banking services provided and other service considerations, and meeting the requirements provided in Section 27-105-315, having in view the safety of such funds. However, if a bank submits a bid or offer to the board of supervisors to act as a depository for the county and the bid or offer, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest, the board of



supervisors may elect to not open or consider any bids received and submit the matter to the State Treasurer. Upon receipt of the bids received from the board of supervisors, the State \* \* \* Treasurer shall open and consider the bids received, select a depository or depositories, make all decisions and take any action within the authority of the board of supervisors under this section relating to the selection of a depository or depositories, including:

- (a) The selecting and opening of accounts;
- (b) Approval of securities;
- (c) The transfer and deposit of funds between depositories; and
- (d) All other related functions.

If the board of supervisors elects to open and consider the bids or offers, it shall not open or consider any bid which, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest.

**SECTION 2.** 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



99 authority and shall be maintained on file in the primary office of  
100 the agency and recorded in the official minutes of the governing  
101 authority, as appropriate. The purchasing agent or the purchase  
102 clerk, or \* \* \* his designee, as the case may be, and not the  
103 governing authority, shall be liable for any penalties and/or  
104 damages as may be imposed by law for any act or omission of the  
105 purchasing agent or purchase clerk, or \* \* \* his designee,  
106 constituting a violation of law in accepting any bid without  
107 approval by the governing authority. The term "competitive  
108 written bid" shall mean a bid submitted on a bid form furnished by  
109 the buying agency or governing authority and signed by authorized  
110 personnel representing the vendor, or a bid submitted on a  
111 vendor's letterhead or identifiable bid form and signed by  
112 authorized personnel representing the vendor. "Competitive" shall  
113 mean that the bids are developed based upon comparable  
114 identification of the needs and are developed independently and  
115 without knowledge of other bids or prospective bids. Any bid item  
116 for construction in excess of Five Thousand Dollars (\$5,000.00)  
117 shall be broken down by components to provide detail of component  
118 description and pricing. These details shall be submitted with  
119 the written bids and become part of the bid evaluation criteria.  
120 Bids may be submitted by facsimile, electronic mail or other  
121 generally accepted method of information distribution. Bids  
122 submitted by electronic transmission shall not require the



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

(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 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 and term contracts as provided in paragraph (n) of this section. 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, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical





Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules 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 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.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a



bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet 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



298 subparagraph (v) shall not require any bidder to submit bids  
299 electronically. When construction bids are submitted  
300 electronically, the requirement for including a certificate of  
301 responsibility, or a statement that the bid enclosed does not  
302 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
303 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
304 deemed in compliance with by including same as an attachment with  
305 the electronic bid submittal.

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

307 (i) **Decision procedure.** Purchases may be made  
308 from the lowest and best bidder. In determining the lowest and  
309 best bid, freight and shipping charges shall be included.  
310 Life-cycle costing, total cost bids, warranties, guaranteed  
311 buy-back provisions and other relevant provisions may be included  
312 in the best bid calculation. All best bid procedures for state  
313 agencies must be in compliance with regulations established by the  
314 Department of Finance and Administration. If any governing  
315 authority accepts a bid other than the lowest bid actually  
316 submitted, it shall place on its minutes detailed calculations and  
317 narrative summary showing that the accepted bid was determined to  
318 be the lowest and best bid, including the dollar amount of the  
319 accepted bid and the dollar amount of the lowest bid. No agency  
320 or governing authority shall accept a bid based on items not  
321 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



347 39-7-7 and 39-7-11, the agency or governing authority may use the  
348 following procedure: Purchases may be made from the lowest and  
349 best prequalified bidder. Prequalification of bidders shall be  
350 determined not less than fifteen (15) working days before the  
351 first published notice of bid opening. Prequalification criteria  
352 shall be limited to bidder's knowledge and experience in  
353 historical restoration, preservation and renovation. In  
354 determining the lowest and best bid, freight and shipping charges  
355 shall be included. Life-cycle costing, total cost bids,  
356 warranties, guaranteed buy-back provisions and other relevant  
357 provisions may be included in the best bid calculation. All best  
358 bid and prequalification procedures for state agencies must be in  
359 compliance with regulations established by the Department of  
360 Finance and Administration. If any governing authority accepts a  
361 bid other than the lowest bid actually submitted, it shall place  
362 on its minutes detailed calculations and narrative summary showing  
363 that the accepted bid was determined to be the lowest and best  
364 bid, including the dollar amount of the accepted bid and the  
365 dollar amount of the lowest bid. No agency or governing authority  
366 shall accept a bid based on items not included in the  
367 specifications.

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

369 If the lowest and best bid is not more than ten percent (10%)  
370 above the amount of funds allocated for a public construction or  
371 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 for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the





397 Class Life Asset Depreciation Range System established by the  
398 Internal Revenue Service pursuant to the United States Internal  
399 Revenue Code and regulations thereunder as in effect on December  
400 31, 1980, or comparable depreciation guidelines with respect to  
401 any equipment not covered by ADR guidelines. Any lease-purchase  
402 agreement entered into pursuant to this paragraph (e) may contain  
403 any of the terms and conditions which a master lease-purchase  
404 agreement may contain under the provisions of Section 31-7-10(5),  
405 and shall contain an annual allocation dependency clause  
406 substantially similar to that set forth in Section 31-7-10(8).  
407 Each agency or governing authority entering into a lease-purchase  
408 transaction pursuant to this paragraph (e) shall maintain with  
409 respect to each such lease-purchase transaction the same  
410 information as required to be maintained by the Department of  
411 Finance and Administration pursuant to Section 31-7-10(13).  
412 However, nothing contained in this section shall be construed to  
413 permit agencies to acquire items of equipment with a total  
414 acquisition cost in the aggregate of less than Ten Thousand  
415 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
416 equipment, and the purchase thereof by any lessor, acquired by  
417 lease-purchase under this paragraph and all lease-purchase  
418 payments with respect thereto shall be exempt from all Mississippi  
419 sales, use and ad valorem taxes. Interest paid on any  
420 lease-purchase agreement under this section shall be exempt from  
421 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 purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or



governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and 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 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 interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency,



497 which shall include a detailed description of the events leading  
498 up to the situation and the negative impact to the entity if the  
499 purchase is made following the statutory requirements set forth in  
500 paragraph (a), (b) or (c) of this section, and (ii) a certified  
501 copy of the appropriate minutes of the board of such agency  
502 requesting the emergency purchase, if applicable. Upon receipt of  
503 the statement and applicable board certification, the State Fiscal  
504 Officer, or his designees, may, in writing, authorize the purchase  
505 or repair without having to comply with competitive bidding  
506 requirements.

507       If the governing board or the executive head, or his  
508 designees, of any agency determines that an emergency exists in  
509 regard to the purchase of any commodities or repair contracts, so  
510 that the delay incident to giving opportunity for competitive  
511 bidding would threaten the health or safety of any person, or the  
512 preservation or protection of property, then the provisions in  
513 this section for competitive bidding shall not apply, and any  
514 officer or agent of the agency having general or specific  
515 authority for making the purchase or repair contract shall approve  
516 the bill presented for payment, and he shall certify in writing  
517 from whom the purchase was made, or with whom the repair contract  
518 was made.

519       Total purchases made under this paragraph (j) shall only be  
520 for the purpose of meeting needs created by the emergency  
521 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 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:

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

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, 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 state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public



622 auction except as provided for in subparagraph (v) of this  
623 paragraph (m). It is the intent of this section to allow  
624 governmental entities to dispose of and/or purchase commodities  
625 from other governmental entities at a price that is agreed to by  
626 both parties. This shall allow for purchases and/or sales at  
627 prices which may be determined to be below the market value if the  
628 selling entity determines that the sale at below market value is  
629 in the best interest of the taxpayers of the state. Governing  
630 authorities shall place the terms of the agreement and any  
631 justification on the minutes, and state agencies shall obtain  
632 approval from the Department of Finance and Administration, prior  
633 to releasing or taking possession of the commodities.

634 (vii) **Perishable supplies or food.** Perishable  
635 supplies or food purchased for use in connection with hospitals,  
636 the school lunch programs, homemaking programs and for the feeding  
637 of county or municipal prisoners.

638 (viii) **Single source items.** Noncompetitive items  
639 available from one (1) source only. In connection with the  
640 purchase of noncompetitive items only available from one (1)  
641 source, a certification of the conditions and circumstances  
642 requiring the purchase shall be filed by the agency with the  
643 Department of Finance and Administration and by the governing  
644 authority with the board of the governing authority. Upon receipt  
645 of that certification the Department of Finance and Administration  
646 or the board of the governing authority, as the case may be, may,



647 in writing, authorize the purchase, which authority shall be noted  
648 on the minutes of the body at the next regular meeting thereafter.  
649 In those situations, a governing authority is not required to  
650 obtain the approval of the Department of Finance and  
651 Administration. Following the purchase, the executive head of the  
652 state agency, or his designees, shall file with the Department of  
653 Finance and Administration, documentation of the purchase,  
654 including a description of the commodity purchased, the purchase  
655 price thereof and the source from whom it was purchased.

656 (ix) **Waste disposal facility construction**  
657 **contracts.** Construction of incinerators and other facilities for  
658 disposal of solid wastes in which products either generated  
659 therein, such as steam, or recovered therefrom, such as materials  
660 for recycling, are to be sold or otherwise disposed of; however,  
661 in constructing such facilities, a governing authority or agency  
662 shall publicly issue requests for proposals, advertised for in the  
663 same manner as provided herein for seeking bids for public  
664 construction projects, concerning the design, construction,  
665 ownership, operation and/or maintenance of such facilities,  
666 wherein such requests for proposals when issued shall contain  
667 terms and conditions relating to price, financial responsibility,  
668 technology, environmental compatibility, legal responsibilities  
669 and such other matters as are determined by the governing  
670 authority or agency to be appropriate for inclusion; and after  
671 responses to the request for proposals have been duly received,



672 the governing authority or agency may select the most qualified  
673 proposal or proposals on the basis of price, technology and other  
674 relevant factors and from such proposals, but not limited to the  
675 terms thereof, negotiate and enter contracts with one or more of  
676 the persons or firms submitting proposals.

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

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

686                   (xii) **Energy efficiency services and equipment.**  
687 Energy efficiency services and equipment acquired by school  
688 districts, community and junior colleges, institutions of higher  
689 learning and state agencies or other applicable governmental  
690 entities on a shared-savings, lease or lease-purchase basis  
691 pursuant to Section 31-7-14.

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



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

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

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

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

710 (xvii) **Multichannel interactive video systems.**  
711 From and after July 1, 1990, contracts by Mississippi Authority  
712 for Educational Television with any private educational  
713 institution or private nonprofit organization whose purposes are  
714 educational in regard to the construction, purchase, lease or  
715 lease-purchase of facilities and equipment and the employment of  
716 personnel for providing multichannel interactive video systems  
717 (ITSF) in the school districts of this state.

718 (xviii) **Purchases of prison industry products by**  
719 **the Department of Corrections, regional correctional facilities or**  
720 **privately owned prisons.** Purchases made by the Mississippi



Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be 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.

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

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

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State 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.



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

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

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

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

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

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

790 (xxxi) **Design-build method and dual-phase**

791 **design-build method of contracting.** Contracts entered into under  
792 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.





793 (xxxiii) **Toll roads and bridge construction**  
794 **projects.** Contracts entered into under the provisions of Section  
795 65-43-1 or 65-43-3.

796 (xxxiii) **Certain purchases under Section 57-1-221.**  
797 Contracts entered into pursuant to the provisions of Section  
798 57-1-221.

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

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

806 (xxxvi) **Certain purchases by an academic medical**  
807 **center or health sciences school.** Purchases by an academic  
808 medical center or health sciences school, as defined in Section  
809 37-115-50, of commodities that are used for clinical purposes and  
810 1. intended for use in the diagnosis of disease or other  
811 conditions or in the cure, mitigation, treatment or prevention of  
812 disease, and 2. medical devices, biological, drugs and  
813 radiation-emitting devices as defined by the United States Food  
814 and Drug Administration.

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



817 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
818 Lottery Law.

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

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

831 (ii) Bid proposals and contracts may include price  
832 adjustment clauses with relation to the cost to the contractor  
833 based upon a nationally published industry-wide or nationally  
834 published and recognized cost index. The cost index used in a  
835 price adjustment clause shall be determined by the Department of  
836 Finance and Administration for the state agencies and by the  
837 governing board for governing authorities. The bid proposal and  
838 contract documents utilizing a price adjustment clause shall  
839 contain the basis and method of adjusting unit prices for the  
840 change in the cost of such commodities, equipment and public  
841 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



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

886 (r) **Solid waste contract proposal procedure.** Before  
887 entering into any contract for garbage collection or disposal,  
888 contract for solid waste collection or disposal or contract for  
889 sewage collection or disposal, which involves an expenditure of  
890 more than Fifty Thousand Dollars (\$50,000.00), a governing  
891 authority or agency shall issue publicly a request for proposals



892 concerning the specifications for such services which shall be  
893 advertised for in the same manner as provided in this section for  
894 seeking bids for purchases which involve an expenditure of more  
895 than the amount provided in paragraph (c) of this section. Any  
896 request for proposals when issued shall contain terms and  
897 conditions relating to price, financial responsibility,  
898 technology, legal responsibilities and other relevant factors as  
899 are determined by the governing authority or agency to be  
900 appropriate for inclusion; all factors determined relevant by the  
901 governing authority or agency or required by this paragraph (r)  
902 shall be duly included in the advertisement to elicit proposals.  
903 After responses to the request for proposals have been duly  
904 received, the governing authority or agency shall select the most  
905 qualified proposal or proposals on the basis of price, technology  
906 and other relevant factors and from such proposals, but not  
907 limited to the terms thereof, negotiate and enter into contracts  
908 with one or more of the persons or firms submitting proposals. If  
909 the governing authority or agency deems none of the proposals to  
910 be qualified or otherwise acceptable, the request for proposals  
911 process may be reinitiated. Notwithstanding any other provisions  
912 of this paragraph, where a county with at least thirty-five  
913 thousand (35,000) nor more than forty thousand (40,000)  
914 population, according to the 1990 federal decennial census, owns  
915 or operates a solid waste landfill, the governing authorities of  
916 any other county or municipality may contract with the governing



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

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

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



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

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

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

949                   (t) **Construction punch list restriction.** The  
950 architect, engineer or other representative designated by the  
951 agency or governing authority that is contracting for public  
952 construction or renovation may prepare and submit to the  
953 contractor only one (1) preliminary punch list of items that do  
954 not meet the contract requirements at the time of substantial  
955 completion and one (1) final list immediately before final  
956 completion and final payment.

957                   (u) **Procurement of construction services by state**  
958 **institutions of higher learning.** Contracts for privately financed  
959 construction of auxiliary facilities on the campus of a state  
960 institution of higher learning may be awarded by the Board of  
961 Trustees of State Institutions of Higher Learning to the lowest  
962 and best bidder, where sealed bids are solicited, or to the  
963 offeror whose proposal is determined to represent the best value  
964 to the citizens of the State of Mississippi, where requests for  
965 proposals are solicited.



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

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

**SECTION 3.** In order for the county's financial records to fairly represent the financial condition of the county as of the date of the external audit, the clerk of the board of supervisors or, where applicable, the county administrator shall record into the county's accounting system the year-end adjusting accounting entries recommended by the county's external independent financial auditors selected by the Office of the State Auditor. If the clerk of the board of supervisors or, where applicable, the county administrator declines to make any year-end adjusting accounting entries recommended by the external financial auditors, the board





991 of supervisors shall spread upon the board's minutes the reasons  
992 why the recommended year-end accounting entries were not entered  
993 into the county's accounting system and the impact that not  
994 including the recommended year-end accounting entries in the  
995 county's financial records will have regarding the fair  
996 representation of the financial condition of the county.

997       **SECTION 4.** This act shall take effect and be in force from  
998 and after July 1, 2021.

