

**Adopted  
AMENDMENT NO 1 TO COMMITTEE AMENDMENT NO 1 PROPOSED  
TO**

**House Bill No. 108**

**BY: Senator(s) DeLano**

1           **AMEND by striking all after the enacting clause and inserting**  
2 **in lieu thereof the following:**

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

5           31-7-13. All agencies and governing authorities shall  
6 purchase their commodities and printing; contract for garbage  
7 collection or disposal; contract for solid waste collection or  
8 disposal; contract for sewage collection or disposal; contract for  
9 public construction; and contract for rentals as herein provided.

10           (a) **Bidding procedure for purchases not over \$5,000.00.**  
11 Purchases which do not involve an expenditure of more than Five  
12 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
13 charges, may be made without advertising or otherwise requesting



14 competitive bids. However, nothing contained in this paragraph  
15 (a) shall be construed to prohibit any agency or governing  
16 authority from establishing procedures which require competitive  
17 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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

62 (i) **Publication requirement.**



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

75                   2. Reverse auctions shall be the primary  
76 method for receiving bids during the bidding process. If a  
77 purchasing entity determines that a reverse auction is not in the  
78 best interest of the state, then that determination must be  
79 approved by the Public Procurement Review Board. The purchasing  
80 entity shall submit a detailed explanation of why a reverse  
81 auction would not be in the best interest of the state and present  
82 an alternative process to be approved by the Public Procurement  
83 Review Board. If the Public Procurement Review Board authorizes  
84 the purchasing entity to solicit bids with a method other than  
85 reverse auction, then the purchasing entity may designate the  
86 other methods by which the bids will be received, including, but  
87 not limited to, bids sealed in an envelope, bids received



88 electronically in a secure system, or bids received by any other  
89 method that promotes open competition and has been approved by the  
90 Office of Purchasing and Travel. However, reverse auction shall  
91 not be used for any public contract for design or construction of  
92 public facilities, including buildings, roads and bridges. The  
93 Public Procurement Review Board must approve any contract entered  
94 into by alternative process. The provisions of this item 2 shall  
95 not apply to the individual state institutions of higher learning.

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



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



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



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

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





187 (iv) **Specification restrictions.**

188 1. Specifications pertinent to such bidding  
189 shall be written so as not to exclude comparable equipment of  
190 domestic manufacture. However, if valid justification is  
191 presented, the Department of Finance and Administration or the  
192 board of a governing authority may approve a request for specific  
193 equipment necessary to perform a specific job. Further, such  
194 justification, when placed on the minutes of the board of a  
195 governing authority, may serve as authority for that governing  
196 authority to write specifications to require a specific item of  
197 equipment needed to perform a specific job. In addition to these  
198 requirements, from and after July 1, 1990, vendors of relocatable  
199 classrooms and the specifications for the purchase of such  
200 relocatable classrooms published by local school boards shall meet  
201 all pertinent regulations of the State Board of Education,  
202 including prior approval of such bid by the State Department of  
203 Education.

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



212                   (v) **Electronic bids.** Agencies and governing  
213 authorities shall provide a secure electronic interactive system  
214 for the submittal of bids requiring competitive bidding that shall  
215 be an additional bidding option for those bidders who choose to  
216 submit their bids electronically. The Department of Finance and  
217 Administration shall provide, by regulation, the standards that  
218 agencies must follow when receiving electronic bids. Agencies and  
219 governing authorities shall make the appropriate provisions  
220 necessary to accept electronic bids from those bidders who choose  
221 to submit their bids electronically for all purchases requiring  
222 competitive bidding under this section. Any special condition or  
223 requirement for the electronic bid submission shall be specified  
224 in the advertisement for bids required by this section. Agencies  
225 or governing authorities that are currently without available high  
226 speed internet access shall be exempt from the requirement of this  
227 subparagraph (v) until such time that high speed internet access  
228 becomes available. Any county having a population of less than  
229 twenty thousand (20,000) shall be exempt from the provisions of  
230 this subparagraph (v). Any municipality having a population of  
231 less than ten thousand (10,000) shall be exempt from the  
232 provisions of this subparagraph (v). The provisions of this  
233 subparagraph (v) shall not require any bidder to submit bids  
234 electronically. When construction bids are submitted  
235 electronically, the requirement for including a certificate of  
236 responsibility, or a statement that the bid enclosed does not



237 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the  
238 bid envelope as indicated in Section 31-3-21(1) and (2) shall be  
239 deemed in compliance with by including same as an attachment with  
240 the electronic bid submittal.

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

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

257 (ii) **Decision procedure for Certified Purchasing**  
258 **Offices.** In addition to the decision procedure set forth in  
259 subparagraph (i) of this paragraph (d), Certified Purchasing  
260 Offices may also use the following procedure: Purchases may be  
261 made from the bidder offering the best value. In determining the



262 best value bid, freight and shipping charges shall be included.  
263 Life-cycle costing, total cost bids, warranties, guaranteed  
264 buy-back provisions, documented previous experience, training  
265 costs and other relevant provisions, including, but not limited  
266 to, a bidder having a local office and inventory located within  
267 the jurisdiction of the governing authority, may be included in  
268 the best value calculation. This provision shall authorize  
269 Certified Purchasing Offices to utilize a Request For Proposals  
270 (RFP) process when purchasing commodities. All best value  
271 procedures for state agencies must be in compliance with  
272 regulations established by the Department of Finance and  
273 Administration. No agency or governing authority shall accept a  
274 bid based on items or criteria not included in the specifications.

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

276 **Landmarks.** In addition to the decision procedure set forth in  
277 subparagraph (i) of this paragraph (d), where purchase involves  
278 renovation, restoration, or both, of the State Capitol Building or  
279 any other historical building designated for at least five (5)  
280 years as a Mississippi Landmark by the Board of Trustees of the  
281 Department of Archives and History under the authority of Sections  
282 39-7-7 and 39-7-11, the agency or governing authority may use the  
283 following procedure: Purchases may be made from the lowest and  
284 best prequalified bidder. Prequalification of bidders shall be  
285 determined not less than fifteen (15) working days before the  
286 first published notice of bid opening. Prequalification criteria



287 shall be limited to bidder's knowledge and experience in  
288 historical restoration, preservation and renovation. In  
289 determining the lowest and best bid, freight and shipping charges  
290 shall be included. Life-cycle costing, total cost bids,  
291 warranties, guaranteed buy-back provisions and other relevant  
292 provisions may be included in the best bid calculation. All best  
293 bid and prequalification procedures for state agencies must be in  
294 compliance with regulations established by the Department of  
295 Finance and Administration. If any governing authority accepts a  
296 bid other than the lowest bid actually submitted, it shall place  
297 on its minutes detailed calculations and narrative summary showing  
298 that the accepted bid was determined to be the lowest and best  
299 bid, including the dollar amount of the accepted bid and the  
300 dollar amount of the lowest bid. No agency or governing authority  
301 shall accept a bid based on items not included in the  
302 specifications.

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

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

309 (e) **Lease-purchase authorization.** For the purposes of  
310 this section, the term "equipment" shall mean equipment, furniture  
311 and, if applicable, associated software and other applicable



312 direct costs associated with the acquisition. Any lease-purchase  
313 of equipment which an agency is not required to lease-purchase  
314 under the master lease-purchase program pursuant to Section  
315 31-7-10 and any lease-purchase of equipment which a governing  
316 authority elects to lease-purchase may be acquired by a  
317 lease-purchase agreement under this paragraph (e). Lease-purchase  
318 financing may also be obtained from the vendor or from a  
319 third-party source after having solicited and obtained at least  
320 two (2) written competitive bids, as defined in paragraph (b) of  
321 this section, for such financing without advertising for such  
322 bids. Solicitation for the bids for financing may occur before or  
323 after acceptance of bids for the purchase of such equipment or,  
324 where no such bids for purchase are required, at any time before  
325 the purchase thereof. No such lease-purchase agreement shall be  
326 for an annual rate of interest which is greater than the overall  
327 maximum interest rate to maturity on general obligation  
328 indebtedness permitted under Section 75-17-101, and the term of  
329 such lease-purchase agreement shall not exceed the useful life of  
330 equipment covered thereby as determined according to the upper  
331 limit of the asset depreciation range (ADR) guidelines for the  
332 Class Life Asset Depreciation Range System established by the  
333 Internal Revenue Service pursuant to the United States Internal  
334 Revenue Code and regulations thereunder as in effect on December  
335 31, 1980, or comparable depreciation guidelines with respect to  
336 any equipment not covered by ADR guidelines. Any lease-purchase



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

357           (f) **Alternate bid authorization.** When necessary to  
358 ensure ready availability of commodities for public works and the  
359 timely completion of public projects, no more than two (2)  
360 alternate bids may be accepted by a governing authority for  
361 commodities. No purchases may be made through use of such



362 alternate bids procedure unless the lowest and best bidder cannot  
363 deliver the commodities contained in his bid. In that event,  
364 purchases of such commodities may be made from one (1) of the  
365 bidders whose bid was accepted as an alternate.

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





386           (h) **Petroleum purchase alternative.** In addition to  
387 other methods of purchasing authorized in this chapter, when any  
388 agency or governing authority shall have a need for gas, diesel  
389 fuel, oils and/or other petroleum products in excess of the amount  
390 set forth in paragraph (a) of this section, such agency or  
391 governing authority may purchase the commodity after having  
392 solicited and obtained at least two (2) competitive written bids,  
393 as defined in paragraph (b) of this section. If two (2)  
394 competitive written bids are not obtained, the entity shall comply  
395 with the procedures set forth in paragraph (c) of this section.  
396 In the event any agency or governing authority shall have  
397 advertised for bids for the purchase of gas, diesel fuel, oils and  
398 other petroleum products and coal and no acceptable bids can be  
399 obtained, such agency or governing authority is authorized and  
400 directed to enter into any negotiations necessary to secure the  
401 lowest and best contract available for the purchase of such  
402 commodities.

403           (i) **Road construction petroleum products price**  
404 **adjustment clause authorization.** Any agency or governing  
405 authority authorized to enter into contracts for the construction,  
406 maintenance, surfacing or repair of highways, roads or streets,  
407 may include in its bid proposal and contract documents a price  
408 adjustment clause with relation to the cost to the contractor,  
409 including taxes, based upon an industry-wide cost index, of  
410 petroleum products including asphalt used in the performance or



411 execution of the contract or in the production or manufacture of  
412 materials for use in such performance. Such industry-wide index  
413 shall be established and published monthly by the Mississippi  
414 Department of Transportation with a copy thereof to be mailed,  
415 upon request, to the clerks of the governing authority of each  
416 municipality and the clerks of each board of supervisors  
417 throughout the state. The price adjustment clause shall be based  
418 on the cost of such petroleum products only and shall not include  
419 any additional profit or overhead as part of the adjustment. The  
420 bid proposals or document contract shall contain the basis and  
421 methods of adjusting unit prices for the change in the cost of  
422 such petroleum products.

423 (j) **State agency emergency purchase procedure.**

424 (i) If the governing board or the executive head,  
425 or his designees, of any agency of the state shall determine that  
426 an emergency exists in regard to the purchase of any commodities  
427 or repair contracts, so that the delay incident to giving  
428 opportunity for competitive bidding would be detrimental to the  
429 interests of the state, then the head of such agency, or his  
430 designees, shall file with the Department of Finance and  
431 Administration \* \* \* 1. a statement explaining the conditions and  
432 circumstances of the emergency, which shall include a detailed  
433 description of the events leading up to the situation and the  
434 negative impact to the entity if the purchase is made following  
435 the statutory requirements set forth in paragraph (a), (b) or (c)



436 of this section, and \* \* \* 2. a certified copy of the appropriate  
437 minutes of the board of such agency requesting the emergency  
438 purchase, if applicable. Upon receipt of the statement and  
439 applicable board certification, the State Fiscal Officer, or his  
440 designees, may, in writing, authorize the purchase or repair  
441 without having to comply with competitive bidding requirements.

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

454 (iii) Total purchases made under this paragraph  
455 (j) shall only be for the purpose of meeting needs created by the  
456 emergency situation. Following the emergency purchase,  
457 documentation of the purchase, including a description of the  
458 commodity purchased, the purchase price thereof and the nature of  
459 the emergency shall be filed with the Department of Finance and



460 Administration. Any contract awarded pursuant to this paragraph  
461 (j) shall not exceed a term of one (1) year.

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

467 (v) Purchases by the State Board of Health for  
468 marijuana seed-to-sale software systems, registry software  
469 systems, software systems for licensing, and any other systems  
470 required by the State Board of Health for COVID-19 response shall  
471 be deemed an emergency purchase for purposes of this paragraph  
472 (j). This subparagraph (v) shall stand repealed on July 1, 2022.

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

474 If the governing authority, or the governing authority acting  
475 through its designee, shall determine that an emergency exists in  
476 regard to the purchase of any commodities or repair contracts, so  
477 that the delay incident to giving opportunity for competitive  
478 bidding would be detrimental to the interest of the governing  
479 authority, then the provisions herein for competitive bidding  
480 shall not apply and any officer or agent of such governing  
481 authority having general or special authority therefor in making  
482 such purchase or repair shall approve the bill presented therefor,  
483 and he shall certify in writing thereon from whom such purchase  
484 was made, or with whom such a repair contract was made. At the



485 board meeting next following the emergency purchase or repair  
486 contract, documentation of the purchase or repair contract,  
487 including a description of the commodity purchased, the price  
488 thereof and the nature of the emergency shall be presented to the  
489 board and shall be placed on the minutes of the board of such  
490 governing authority. Purchases under the grant program  
491 established under Section 37-68-7 in response to COVID-19 and the  
492 directive that school districts create a distance learning plan  
493 and fulfill technology needs expeditiously shall be deemed an  
494 emergency purchase for purposes of this paragraph (k).

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

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

502 (ii) In addition to the authority granted in  
503 subparagraph (i) of this paragraph (1), the commissioners or board  
504 of trustees is authorized to enter into contracts for the lease of  
505 equipment or services, or both, which it considers necessary for  
506 the proper care of patients if, in its opinion, it is not  
507 financially feasible to purchase the necessary equipment or  
508 services. Any such contract for the lease of equipment or  
509 services executed by the commissioners or board shall not exceed a



510 maximum of five (5) years' duration and shall include a  
511 cancellation clause based on unavailability of funds. If such  
512 cancellation clause is exercised, there shall be no further  
513 liability on the part of the lessee. Any such contract for the  
514 lease of equipment or services executed on behalf of the  
515 commissioners or board that complies with the provisions of this  
516 subparagraph (ii) shall be excepted from the bid requirements set  
517 forth in this section.

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

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

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



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

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

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

555                   (vi) **Intergovernmental sales and transfers.**  
556 Purchases, sales, transfers or trades by governing authorities or  
557 state agencies when such purchases, sales, transfers or trades are  
558 made by a private treaty agreement or through means of  
559 negotiation, from any federal agency or authority, another



560 governing authority or state agency of the State of Mississippi,  
561 or any state agency or governing authority of another state.  
562 Nothing in this section shall permit such purchases through public  
563 auction except as provided for in subparagraph (v) of this  
564 paragraph (m). It is the intent of this section to allow  
565 governmental entities to dispose of and/or purchase commodities  
566 from other governmental entities at a price that is agreed to by  
567 both parties. This shall allow for purchases and/or sales at  
568 prices which may be determined to be below the market value if the  
569 selling entity determines that the sale at below market value is  
570 in the best interest of the taxpayers of the state. Governing  
571 authorities shall place the terms of the agreement and any  
572 justification on the minutes, and state agencies shall obtain  
573 approval from the Department of Finance and Administration, prior  
574 to releasing or taking possession of the commodities.

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

579                   (viii) **Single source items.** Noncompetitive items  
580 available from one (1) source only. In connection with the  
581 purchase of noncompetitive items only available from one (1)  
582 source, a certification of the conditions and circumstances  
583 requiring the purchase shall be filed by the agency with the  
584 Department of Finance and Administration and by the governing





585 authority with the board of the governing authority. Upon receipt  
586 of that certification the Department of Finance and Administration  
587 or the board of the governing authority, as the case may be, may,  
588 in writing, authorize the purchase, which authority shall be noted  
589 on the minutes of the body at the next regular meeting thereafter.  
590 In those situations, a governing authority is not required to  
591 obtain the approval of the Department of Finance and  
592 Administration. Following the purchase, the executive head of the  
593 state agency, or his designees, shall file with the Department of  
594 Finance and Administration, documentation of the purchase,  
595 including a description of the commodity purchased, the purchase  
596 price thereof and the source from whom it was purchased.

597                   (ix) **Waste disposal facility construction**  
598 **contracts.** Construction of incinerators and other facilities for  
599 disposal of solid wastes in which products either generated  
600 therein, such as steam, or recovered therefrom, such as materials  
601 for recycling, are to be sold or otherwise disposed of; however,  
602 in constructing such facilities, a governing authority or agency  
603 shall publicly issue requests for proposals, advertised for in the  
604 same manner as provided herein for seeking bids for public  
605 construction projects, concerning the design, construction,  
606 ownership, operation and/or maintenance of such facilities,  
607 wherein such requests for proposals when issued shall contain  
608 terms and conditions relating to price, financial responsibility,  
609 technology, environmental compatibility, legal responsibilities



610 and such other matters as are determined by the governing  
611 authority or agency to be appropriate for inclusion; and after  
612 responses to the request for proposals have been duly received,  
613 the governing authority or agency may select the most qualified  
614 proposal or proposals on the basis of price, technology and other  
615 relevant factors and from such proposals, but not limited to the  
616 terms thereof, negotiate and enter contracts with one or more of  
617 the persons or firms submitting proposals.

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

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

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

633                   (xiii) **Municipal electrical utility system fuel.**  
634 Purchases of coal and/or natural gas by municipally owned electric



635 power generating systems that have the capacity to use both coal  
636 and natural gas for the generation of electric power.

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



708 the listing of the item or items authorized to be purchased and  
709 the maximum bid authorized to be paid for each item or items.

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

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

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



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

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

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

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

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

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



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

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

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

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





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

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

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



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

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



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



855 population, according to the 1990 federal decennial census, owns  
856 or operates a solid waste landfill, the governing authorities of  
857 any other county or municipality may contract with the governing  
858 authorities of the county owning or operating the landfill,  
859 pursuant to a resolution duly adopted and spread upon the minutes  
860 of each governing authority involved, for garbage or solid waste  
861 collection or disposal services through contract negotiations.

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



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

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

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

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

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

898 (u) **Procurement of construction services by state**  
899 **institutions of higher learning.** Contracts for privately financed  
900 construction of auxiliary facilities on the campus of a state  
901 institution of higher learning may be awarded by the Board of  
902 Trustees of State Institutions of Higher Learning to the lowest  
903 and best bidder, where sealed bids are solicited, or to the



904 offeror whose proposal is determined to represent the best value  
905 to the citizens of the State of Mississippi, where requests for  
906 proposals are solicited.

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

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

922           **SECTION \*.** This act shall take effect and be in force from  
923 and after its passage.

924           **FURTHER, AMEND the title to conform.**

