

By: Representative McCarty

To: Education

HOUSE BILL NO. 1173

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT REVERSE AUCTIONS SHALL ONLY BE REQUIRED BY INDIVIDUAL
 3 STATE PUBLIC SCHOOLS, CHARTER SCHOOLS AND SCHOOL DISTRICTS WHEN
 4 PURCHASING PRODUCTS TYPICALLY RESOLD BY MULTIPLE VENDORS; TO ALLOW
 5 LOCAL SCHOOL BOARDS TO AUTHORIZE A PURCHASING ENTITY IN ITS
 6 JURISDICTION TO SOLICIT BIDS WITH AN ALTERNATIVE METHOD FOR
 7 PRODUCTS NOT TYPICALLY RESOLD; TO REQUIRE SUCH SCHOOLS OR
 8 DISTRICTS TO SUBMIT THE ALTERNATIVE METHOD OF COMPETITIVE OPEN
 9 PROCUREMENT TO ITS LOCAL SCHOOL BOARD FOR APPROVAL WHICH MEETS THE
 10 REQUIREMENTS OF THE OFFICE OF PURCHASING AND TRAVEL; AND FOR
 11 RELATED PURPOSES.

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

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

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

20 (a) **Bidding procedure for purchases not over \$5,000.00.**
 21 Purchases which do not involve an expenditure of more than Five
 22 Thousand Dollars (\$5,000.00), exclusive of freight or shipping



23 charges, may be made without advertising or otherwise requesting
24 competitive bids. However, nothing contained in this paragraph
25 (a) shall be construed to prohibit any agency or governing
26 authority from establishing procedures which require competitive
27 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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

72 (i) **Publication requirement.**



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

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



98 electronically in a secure system, or bids received by any other
99 method that promotes open competition and has been approved by the
100 Office of Purchasing and Travel. However, reverse auction shall
101 not be used for any public contract for design or construction of
102 public facilities, including buildings, roads and bridges and term
103 contracts as provided in paragraph (n) of this section. The
104 Public Procurement Review Board must approve any contract entered
105 into by alternative process. The provisions of this item 2 shall
106 not apply to the individual state institutions of higher learning.
107 The provisions of this item 2 shall apply to individual public
108 schools, including public charter schools and public school
109 districts only when purchasing products that are typically resold
110 by multiple vendors. For products not typically resold, a local
111 school board may authorize a purchasing entity in its jurisdiction
112 to solicit bids with a method other than reverse auction. The
113 school or district shall present to its local school board for
114 approval an alternative method that promotes open competition and
115 meets the requirements of the Office of Purchasing and Travel.

116 3. The date as published for the bid opening
117 shall not be less than seven (7) working days after the last
118 published notice; however, if the purchase involves a construction
119 project in which the estimated cost is in excess of Fifty Thousand
120 Dollars (\$50,000.00), such bids shall not be opened in less than
121 fifteen (15) working days after the last notice is published and
122 the notice for the purchase of such construction shall be



123 published once each week for two (2) consecutive weeks. However,
124 all American Recovery and Reinvestment Act projects in excess of
125 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
126 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
127 under the American Recovery and Reinvestment Act, publication
128 shall be made one (1) time and the bid opening for construction
129 projects shall not be less than ten (10) working days after the
130 date of the published notice. The notice of intention to let
131 contracts or purchase equipment shall state the time and place at
132 which bids shall be received, list the contracts to be made or
133 types of equipment or supplies to be purchased, and, if all plans
134 and/or specifications are not published, refer to the plans and/or
135 specifications on file. If there is no newspaper published in the
136 county or municipality, then such notice shall be given by posting
137 same at the courthouse, or for municipalities at the city hall,
138 and at two (2) other public places in the county or municipality,
139 and also by publication once each week for two (2) consecutive
140 weeks in some newspaper having a general circulation in the county
141 or municipality in the above-provided manner. On the same date
142 that the notice is submitted to the newspaper for publication, the
143 agency or governing authority involved shall mail written notice
144 to, or provide electronic notification to the main office of the
145 Mississippi Procurement Technical Assistance Program under the
146 Mississippi Development Authority that contains the same
147 information as that in the published notice. Submissions received



148 by the Mississippi Procurement Technical Assistance Program for
149 projects funded by the American Recovery and Reinvestment Act
150 shall be displayed on a separate and unique Internet web page
151 accessible to the public and maintained by the Mississippi
152 Development Authority for the Mississippi Procurement Technical
153 Assistance Program. Those American Recovery and Reinvestment Act
154 related submissions shall be publicly posted within twenty-four
155 (24) hours of receipt by the Mississippi Development Authority and
156 the bid opening shall not occur until the submission has been
157 posted for ten (10) consecutive days. The Department of Finance
158 and Administration shall maintain information regarding contracts
159 and other expenditures from the American Recovery and Reinvestment
160 Act, on a unique Internet web page accessible to the public. The
161 Department of Finance and Administration shall promulgate rules
162 regarding format, content and deadlines, unless otherwise
163 specified by law, of the posting of award notices, contract
164 execution and subsequent amendments, links to the contract
165 documents, expenditures against the awarded contracts and general
166 expenditures of funds from the American Recovery and Reinvestment
167 Act. Within one (1) working day of the contract award, the agency
168 or governing authority shall post to the designated web page
169 maintained by the Department of Finance and Administration, notice
170 of the award, including the award recipient, the contract amount,
171 and a brief summary of the contract in accordance with rules
172 promulgated by the department. Within one (1) working day of the



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

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



198 (iii) **Filing requirement.** In all cases involving
199 governing authorities, before the notice shall be published or
200 posted, the plans or specifications for the construction or
201 equipment being sought shall be filed with the clerk of the board
202 of the governing authority. In addition to these requirements, a
203 bid file shall be established which shall indicate those vendors
204 to whom such solicitations and specifications were issued, and
205 such file shall also contain such information as is pertinent to
206 the bid.

207 (iv) **Specification restrictions.**

208 1. Specifications pertinent to such bidding
209 shall be written so as not to exclude comparable equipment of
210 domestic manufacture. However, if valid justification is
211 presented, the Department of Finance and Administration or the
212 board of a governing authority may approve a request for specific
213 equipment necessary to perform a specific job. Further, such
214 justification, when placed on the minutes of the board of a
215 governing authority, may serve as authority for that governing
216 authority to write specifications to require a specific item of
217 equipment needed to perform a specific job. In addition to these
218 requirements, from and after July 1, 1990, vendors of relocatable
219 classrooms and the specifications for the purchase of such
220 relocatable classrooms published by local school boards shall meet
221 all pertinent regulations of the State Board of Education,



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

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

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



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

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

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



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

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

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



297 subparagraph (i) of this paragraph (d), where purchase involves
298 renovation, restoration, or both, of the State Capitol Building or
299 any other historical building designated for at least five (5)
300 years as a Mississippi Landmark by the Board of Trustees of the
301 Department of Archives and History under the authority of Sections
302 39-7-7 and 39-7-11, the agency or governing authority may use the
303 following procedure: Purchases may be made from the lowest and
304 best prequalified bidder. Prequalification of bidders shall be
305 determined not less than fifteen (15) working days before the
306 first published notice of bid opening. Prequalification criteria
307 shall be limited to bidder's knowledge and experience in
308 historical restoration, preservation and renovation. In
309 determining the lowest and best bid, freight and shipping charges
310 shall be included. Life-cycle costing, total cost bids,
311 warranties, guaranteed buy-back provisions and other relevant
312 provisions may be included in the best bid calculation. All best
313 bid and prequalification procedures for state agencies must be in
314 compliance with regulations established by the Department of
315 Finance and Administration. If any governing authority accepts a
316 bid other than the lowest bid actually submitted, it shall place
317 on its minutes detailed calculations and narrative summary showing
318 that the accepted bid was determined to be the lowest and best
319 bid, including the dollar amount of the accepted bid and the
320 dollar amount of the lowest bid. No agency or governing authority



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

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

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

329 (e) **Lease-purchase authorization.** For the purposes of
330 this section, the term "equipment" shall mean equipment, furniture
331 and, if applicable, associated software and other applicable
332 direct costs associated with the acquisition. Any lease-purchase
333 of equipment which an agency is not required to lease-purchase
334 under the master lease-purchase program pursuant to Section
335 31-7-10 and any lease-purchase of equipment which a governing
336 authority elects to lease-purchase may be acquired by a
337 lease-purchase agreement under this paragraph (e). Lease-purchase
338 financing may also be obtained from the vendor or from a
339 third-party source after having solicited and obtained at least
340 two (2) written competitive bids, as defined in paragraph (b) of
341 this section, for such financing without advertising for such
342 bids. Solicitation for the bids for financing may occur before or
343 after acceptance of bids for the purchase of such equipment or,
344 where no such bids for purchase are required, at any time before
345 the purchase thereof. No such lease-purchase agreement shall be



346 for an annual rate of interest which is greater than the overall
347 maximum interest rate to maturity on general obligation
348 indebtedness permitted under Section 75-17-101, and the term of
349 such lease-purchase agreement shall not exceed the useful life of
350 equipment covered thereby as determined according to the upper
351 limit of the asset depreciation range (ADR) guidelines for the
352 Class Life Asset Depreciation Range System established by the
353 Internal Revenue Service pursuant to the United States Internal
354 Revenue Code and regulations thereunder as in effect on December
355 31, 1980, or comparable depreciation guidelines with respect to
356 any equipment not covered by ADR guidelines. Any lease-purchase
357 agreement entered into pursuant to this paragraph (e) may contain
358 any of the terms and conditions which a master lease-purchase
359 agreement may contain under the provisions of Section 31-7-10(5),
360 and shall contain an annual allocation dependency clause
361 substantially similar to that set forth in Section 31-7-10(8).
362 Each agency or governing authority entering into a lease-purchase
363 transaction pursuant to this paragraph (e) shall maintain with
364 respect to each such lease-purchase transaction the same
365 information as required to be maintained by the Department of
366 Finance and Administration pursuant to Section 31-7-10(13).
367 However, nothing contained in this section shall be construed to
368 permit agencies to acquire items of equipment with a total
369 acquisition cost in the aggregate of less than Ten Thousand
370 Dollars (\$10,000.00) by a single lease-purchase transaction. All



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

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

386 (g) **Construction contract change authorization.** In the
387 event a determination is made by an agency or governing authority
388 after a construction contract is let that changes or modifications
389 to the original contract are necessary or would better serve the
390 purpose of the agency or the governing authority, such agency or
391 governing authority may, in its discretion, order such changes
392 pertaining to the construction that are necessary under the
393 circumstances without the necessity of further public bids;
394 provided that such change shall be made in a commercially
395 reasonable manner and shall not be made to circumvent the public



396 purchasing statutes. In addition to any other authorized person,
397 the architect or engineer hired by an agency or governing
398 authority with respect to any public construction contract shall
399 have the authority, when granted by an agency or governing
400 authority, to authorize changes or modifications to the original
401 contract without the necessity of prior approval of the agency or
402 governing authority when any such change or modification is less
403 than one percent (1%) of the total contract amount. The agency or
404 governing authority may limit the number, manner or frequency of
405 such emergency changes or modifications.

406 (h) **Petroleum purchase alternative.** In addition to
407 other methods of purchasing authorized in this chapter, when any
408 agency or governing authority shall have a need for gas, diesel
409 fuel, oils and/or other petroleum products in excess of the amount
410 set forth in paragraph (a) of this section, such agency or
411 governing authority may purchase the commodity after having
412 solicited and obtained at least two (2) competitive written bids,
413 as defined in paragraph (b) of this section. If two (2)
414 competitive written bids are not obtained, the entity shall comply
415 with the procedures set forth in paragraph (c) of this section.
416 In the event any agency or governing authority shall have
417 advertised for bids for the purchase of gas, diesel fuel, oils and
418 other petroleum products and coal and no acceptable bids can be
419 obtained, such agency or governing authority is authorized and
420 directed to enter into any negotiations necessary to secure the



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

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

443 (j) **State agency emergency purchase procedure.** If the
444 governing board or the executive head, or his designees, of any
445 agency of the state shall determine that an emergency exists in



446 regard to the purchase of any commodities or repair contracts, so
447 that the delay incident to giving opportunity for competitive
448 bidding would be detrimental to the interests of the state, then
449 the head of such agency, or his designees, shall file with the
450 Department of Finance and Administration (i) a statement
451 explaining the conditions and circumstances of the emergency,
452 which shall include a detailed description of the events leading
453 up to the situation and the negative impact to the entity if the
454 purchase is made following the statutory requirements set forth in
455 paragraph (a), (b) or (c) of this section, and (ii) a certified
456 copy of the appropriate minutes of the board of such agency
457 requesting the emergency purchase, if applicable. Upon receipt of
458 the statement and applicable board certification, the State Fiscal
459 Officer, or his designees, may, in writing, authorize the purchase
460 or repair without having to comply with competitive bidding
461 requirements.

462 If the governing board or the executive head, or his
463 designees, of any agency determines that an emergency exists in
464 regard to the purchase of any commodities or repair contracts, so
465 that the delay incident to giving opportunity for competitive
466 bidding would threaten the health or safety of any person, or the
467 preservation or protection of property, then the provisions in
468 this section for competitive bidding shall not apply, and any
469 officer or agent of the agency having general or specific
470 authority for making the purchase or repair contract shall approve



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

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

482 Purchases under the grant program established under Section
483 37-68-7 in response to COVID-19 and the directive that school
484 districts create a distance learning plan and fulfill technology
485 needs expeditiously shall be deemed an emergency purchase for
486 purposes of this paragraph (j).

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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



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

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



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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



745 (xxxii) **Design-build method of contracting and**
746 **certain other contracts.** Contracts entered into under the
747 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

748 (xxxiii) **Toll roads and bridge construction**
749 **projects.** Contracts entered into under the provisions of Section
750 65-43-1 or 65-43-3.

751 (xxxiiii) **Certain purchases under Section 57-1-221.**
752 Contracts entered into pursuant to the provisions of Section
753 57-1-221.

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

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

761 (xxxvii) **Certain purchases by an academic medical**
762 **center or health sciences school.** Purchases by an academic
763 medical center or health sciences school, as defined in Section
764 37-115-50, of commodities that are used for clinical purposes and
765 1. intended for use in the diagnosis of disease or other
766 conditions or in the cure, mitigation, treatment or prevention of
767 disease, and 2. medical devices, biological, drugs and
768 radiation-emitting devices as defined by the United States Food
769 and Drug Administration.



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

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

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

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



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

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

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



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

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



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



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

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



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

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

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

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

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

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



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

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

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

936 **SECTION 2.** This act shall take effect and be in force from
937 and after its passage.

