

By: Representative Byrd

To: Ways and Means

HOUSE BILL NO. 1478

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE USE OF REVERSE AUCTION BY AGENCIES AND GOVERNING
3 AUTHORITIES FOR TERM CONTRACTS; AND FOR RELATED PURPOSES.

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

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

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

12 (a) **Bidding procedure for purchases not over \$5,000.00.**

13 Purchases which do not involve an expenditure of more than Five
14 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
15 charges, may be made without advertising or otherwise requesting
16 competitive bids. However, nothing contained in this paragraph

17 (a) shall be construed to prohibit any agency or governing



18 authority from establishing procedures which require competitive
19 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



or purchase clerk, or his designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

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

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best



bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. * * * Reverse auction shall not



93 be used for any public contract for design or construction of
94 public facilities, including buildings, roads and bridges * * *.
95 However, an agency or governing authority may use reverse auction
96 for term contracts as provided in paragraph (n) of this section.
97 The Public Procurement Review Board must approve any contract
98 entered into by alternative process. The provisions of this item
99 2 shall not apply to the individual state institutions of higher
100 learning.

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



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



and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.



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

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



(iv) **Specification restrictions.**

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

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



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



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

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

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

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



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

(iii) **Decision procedure for Mississippi**

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



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

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

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

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



317 direct costs associated with the acquisition. Any lease-purchase
318 of equipment which an agency is not required to lease-purchase
319 under the master lease-purchase program pursuant to Section
320 31-7-10 and any lease-purchase of equipment which a governing
321 authority elects to lease-purchase may be acquired by a
322 lease-purchase agreement under this paragraph (e). Lease-purchase
323 financing may also be obtained from the vendor or from a
324 third-party source after having solicited and obtained at least
325 two (2) written competitive bids, as defined in paragraph (b) of
326 this section, for such financing without advertising for such
327 bids. Solicitation for the bids for financing may occur before or
328 after acceptance of bids for the purchase of such equipment or,
329 where no such bids for purchase are required, at any time before
330 the purchase thereof. No such lease-purchase agreement shall be
331 for an annual rate of interest which is greater than the overall
332 maximum interest rate to maturity on general obligation
333 indebtedness permitted under Section 75-17-101, and the term of
334 such lease-purchase agreement shall not exceed the useful life of
335 equipment covered thereby as determined according to the upper
336 limit of the asset depreciation range (ADR) guidelines for the
337 Class Life Asset Depreciation Range System established by the
338 Internal Revenue Service pursuant to the United States Internal
339 Revenue Code and regulations thereunder as in effect on December
340 31, 1980, or comparable depreciation guidelines with respect to
341 any equipment not covered by ADR guidelines. Any lease-purchase



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

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



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

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



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

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



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

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



441 copy of the appropriate minutes of the board of such agency
442 requesting the emergency purchase, if applicable. Upon receipt of
443 the statement and applicable board certification, the State Fiscal
444 Officer, or his designees, may, in writing, authorize the purchase
445 or repair without having to comply with competitive bidding
446 requirements.

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

459 Total purchases made under this paragraph (j) shall only be
460 for the purpose of meeting needs created by the emergency
461 situation. Following the emergency purchase, documentation of the
462 purchase, including a description of the commodity purchased, the
463 purchase price thereof and the nature of the emergency shall be
464 filed with the Department of Finance and Administration. Any



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

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

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program



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

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

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

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (1), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this



515 subparagraph (ii) shall be excepted from the bid requirements set
516 forth in this section.

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

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

520 Purchasing agreements, contracts and maximum price regulations
521 executed or approved by the Department of Finance and
522 Administration.

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

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



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

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

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities



from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

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

(viii) **Single-source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to



590 obtain the approval of the Department of Finance and
591 Administration. Following the purchase, the executive head of the
592 state agency, or his designees, shall file with the Department of
593 Finance and Administration, documentation of the purchase,
594 including a description of the commodity purchased, the purchase
595 price thereof and the source from whom it was purchased.

596 (ix) **Waste disposal facility construction**

597 **contracts.** Construction of incinerators and other facilities for
598 disposal of solid wastes in which products either generated
599 therein, such as steam, or recovered therefrom, such as materials
600 for recycling, are to be sold or otherwise disposed of; however,
601 in constructing such facilities, a governing authority or agency
602 shall publicly issue requests for proposals, advertised for in the
603 same manner as provided herein for seeking bids for public
604 construction projects, concerning the design, construction,
605 ownership, operation and/or maintenance of such facilities,
606 wherein such requests for proposals when issued shall contain
607 terms and conditions relating to price, financial responsibility,
608 technology, environmental compatibility, legal responsibilities
609 and such other matters as are determined by the governing
610 authority or agency to be appropriate for inclusion; and after
611 responses to the request for proposals have been duly received,
612 the governing authority or agency may select the most qualified
613 proposal or proposals on the basis of price, technology and other
614 relevant factors and from such proposals, but not limited to the



terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

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

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

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

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

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items



640 as would be used for teaching, research or other information
641 distribution; however, equipment such as projectors, recorders,
642 audio or video equipment, and monitor televisions are not exempt
643 under this subparagraph.

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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



736 (xxxiii) **Certain purchases under Section 57-1-221.**

737 Contracts entered into pursuant to the provisions of Section
738 57-1-221.

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

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

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

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

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



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

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

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any



786 person or concern to submit individual invoices for amounts within
787 those authorized for a contract or purchase where the actual value
788 of the contract or commodity purchased exceeds the authorized
789 amount and the invoices therefor are split so as to appear to be
790 authorized as purchases for which competitive bids are not
791 required. Submission of such invoices shall constitute a
792 misdemeanor punishable by a fine of not less than Five Hundred
793 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
794 or by imprisonment for thirty (30) days in the county jail, or
795 both such fine and imprisonment. In addition, the claim or claims
796 submitted shall be forfeited.

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

804 (q) **Fuel management system bidding procedure.** Any
805 governing authority or agency of the state shall, before
806 contracting for the services and products of a fuel management or
807 fuel access system, enter into negotiations with not fewer than
808 two (2) sellers of fuel management or fuel access systems for
809 competitive written bids to provide the services and products for
810 the systems. In the event that the governing authority or agency



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

826 (r) **Solid waste contract proposal procedure.** Before
827 entering into any contract for garbage collection or disposal,
828 contract for solid waste collection or disposal or contract for
829 sewage collection or disposal, which involves an expenditure of
830 more than Fifty Thousand Dollars (\$50,000.00), a governing
831 authority or agency shall issue publicly a request for proposals
832 concerning the specifications for such services which shall be
833 advertised for in the same manner as provided in this section for
834 seeking bids for purchases which involve an expenditure of more
835 than the amount provided in paragraph (c) of this section. Any



836 request for proposals when issued shall contain terms and
837 conditions relating to price, financial responsibility,
838 technology, legal responsibilities and other relevant factors as
839 are determined by the governing authority or agency to be
840 appropriate for inclusion; all factors determined relevant by the
841 governing authority or agency or required by this paragraph (r)
842 shall be duly included in the advertisement to elicit proposals.
843 After responses to the request for proposals have been duly
844 received, the governing authority or agency shall select the most
845 qualified proposal or proposals on the basis of price, technology
846 and other relevant factors and from such proposals, but not
847 limited to the terms thereof, negotiate and enter into contracts
848 with one or more of the persons or firms submitting proposals. If
849 the governing authority or agency deems none of the proposals to
850 be qualified or otherwise acceptable, the request for proposals
851 process may be reinitiated. Notwithstanding any other provisions
852 of this paragraph, where a county with at least thirty-five
853 thousand (35,000) nor more than forty thousand (40,000)
854 population, according to the 1990 federal decennial census, owns
855 or operates a solid waste landfill, the governing authorities of
856 any other county or municipality may contract with the governing
857 authorities of the county owning or operating the landfill,
858 pursuant to a resolution duly adopted and spread upon the minutes
859 of each governing authority involved, for garbage or solid waste
860 collection or disposal services through contract negotiations.



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

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

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

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



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

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

897 (u) **Procurement of construction services by state**
898 **institutions of higher learning.** Contracts for privately financed
899 construction of auxiliary facilities on the campus of a state
900 institution of higher learning may be awarded by the Board of
901 Trustees of State Institutions of Higher Learning to the lowest
902 and best bidder, where sealed bids are solicited, or to the
903 offeror whose proposal is determined to represent the best value
904 to the citizens of the State of Mississippi, where requests for
905 proposals are solicited.

906 (v) **Insurability of bidders for public construction or**
907 **other public contracts.** In any solicitation for bids to perform
908 public construction or other public contracts to which this
909 section applies, including, but not limited to, contracts for
910 repair and maintenance, for which the contract will require



911 insurance coverage in an amount of not less than One Million
912 Dollars (\$1,000,000.00), bidders shall be permitted to either
913 submit proof of current insurance coverage in the specified amount
914 or demonstrate ability to obtain the required coverage amount of
915 insurance if the contract is awarded to the bidder. Proof of
916 insurance coverage shall be submitted within five (5) business
917 days from bid acceptance.

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

921 **SECTION 2.** This act shall take effect and be in force from
922 and after July 1, 2022.

