

By: Senator(s) Kirby

To: Accountability,  
Efficiency, Transparency

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2371

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 INCREASE THE THRESHOLD FOR BID REQUIREMENT UNDER THE PUBLIC  
3 PURCHASING LAW; TO CLARIFY THAT A PURCHASING ENTITY MAY, IN ITS  
4 DISCRETION, USE REVERSE AUCTION FOR TERM CONTRACT PURCHASES; AND  
5 FOR RELATED PURPOSES.

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

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

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

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

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

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



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

22 (b) **Bidding procedure for purchases over \$5,000.00 but**  
23 **not over \* \* \* \$75,000.00.** Purchases which involve an expenditure  
24 of more than Five Thousand Dollars (\$5,000.00) but not more  
25 than \* \* \* Seventy-five Thousand Dollars (\$75,000.00), exclusive  
26 of freight and shipping charges, may be made from the lowest and  
27 best bidder without publishing or posting advertisement for bids,  
28 provided at least two (2) competitive written bids have been  
29 obtained. Any state agency or community/junior college purchasing  
30 commodities or procuring construction pursuant to this paragraph  
31 (b) may authorize its purchasing agent, or his designee, to accept  
32 the lowest competitive written bid under \* \* \* Seventy-five  
33 Thousand Dollars (\$75,000.00). Any governing authority purchasing  
34 commodities pursuant to this paragraph (b) may authorize its  
35 purchasing agent, or his designee, with regard to governing  
36 authorities other than counties, or its purchase clerk, or his  
37 designee, with regard to counties, to accept the lowest and best  
38 competitive written bid. Such authorization shall be made in  
39 writing by the governing authority and shall be maintained on file  
40 in the primary office of the agency and recorded in the official  
41 minutes of the governing authority, as appropriate. The  
42 purchasing agent or the purchase clerk, or his designee, as the  
43 case may be, and not the governing authority, shall be liable for  
44 any penalties and/or damages as may be imposed by law for any act



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

65 (c) **Bidding procedure for purchases over \* \* \***  
66 **\$75,000.00.**

67 (i) **Publication requirement.**

68 1. Purchases which involve an expenditure of  
69 more than \* \* \* Seventy-five Thousand Dollars (\$75,000.00),



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

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



95 Office of Purchasing and Travel. However, reverse auction shall  
96 not be used for any public contract for design or construction of  
97 public facilities, including buildings, roads and bridges \* \* \*.  
98 The Public Procurement Review Board must approve any contract  
99 entered into by alternative process. The provisions of this item  
100 2 shall not apply to the individual state institutions of higher  
101 learning. The provisions of this item 2 requiring reverse auction  
102 as the primary method of receiving bids shall not apply to term  
103 contract purchases as provided in paragraph (n) of this section;  
104 however, a purchasing entity may, in its discretion, utilize  
105 reverse auction for such purchases.

106 3. The date as published for the bid opening  
107 shall not be less than seven (7) working days after the last  
108 published notice; however, if the purchase involves a construction  
109 project in which the estimated cost is in excess of \* \* \*  
110 Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be  
111 opened in less than fifteen (15) working days after the last  
112 notice is published and the notice for the purchase of such  
113 construction shall be published once each week for two (2)  
114 consecutive weeks. However, all American Recovery and  
115 Reinvestment Act projects in excess of Twenty-five Thousand  
116 Dollars (\$25,000.00) shall be bid. For any projects in excess of  
117 Twenty-five Thousand Dollars (\$25,000.00) under the American  
118 Recovery and Reinvestment Act, publication shall be made one (1)  
119 time and the bid opening for construction projects shall not be



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



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



170 the agency or governing authority shall be posted to the web page  
171 for the duration of the American Recovery and Reinvestment Act  
172 funding or until the project is completed, whichever is longer.

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

189           (iii) **Filing requirement.** In all cases involving  
190 governing authorities, before the notice shall be published or  
191 posted, the plans or specifications for the construction or  
192 equipment being sought shall be filed with the clerk of the board  
193 of the governing authority. In addition to these requirements, a  
194 bid file shall be established which shall indicate those vendors





195 to whom such solicitations and specifications were issued, and  
196 such file shall also contain such information as is pertinent to  
197 the bid.

198 (iv) **Specification restrictions.**

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

215 2. Specifications for construction projects  
216 may include an allowance for commodities, equipment, furniture,  
217 construction materials or systems in which prospective bidders are  
218 instructed to include in their bids specified amounts for such  
219 items so long as the allowance items are acquired by the vendor in



220 a commercially reasonable manner and approved by the  
221 agency/governing authority. Such acquisitions shall not be made  
222 to circumvent the public purchasing laws.

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



245 electronically. When construction bids are submitted  
246 electronically, the requirement for including a certificate of  
247 responsibility, or a statement that the bid enclosed does not  
248 exceed \* \* \* Seventy-five Thousand Dollars (\$75,000.00), on the  
249 exterior of the bid envelope as indicated in Section 31-3-21(1)  
250 and (2) shall be deemed in compliance with by including same as an  
251 attachment with the electronic bid submittal.

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

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

268 (ii) **Decision procedure for Certified Purchasing**  
269 **Offices.** In addition to the decision procedure set forth in



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

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

287 **Landmarks.** In addition to the decision procedure set forth in  
288 subparagraph (i) of this paragraph (d), where purchase involves  
289 renovation, restoration, or both, of the State Capitol Building or  
290 any other historical building designated for at least five (5)  
291 years as a Mississippi Landmark by the Board of Trustees of the  
292 Department of Archives and History under the authority of Sections  
293 39-7-7 and 39-7-11, the agency or governing authority may use the  
294 following procedure: Purchases may be made from the lowest and



295 best prequalified bidder. Prequalification of bidders shall be  
296 determined not less than fifteen (15) working days before the  
297 first published notice of bid opening. Prequalification criteria  
298 shall be limited to bidder's knowledge and experience in  
299 historical restoration, preservation and renovation. In  
300 determining the lowest and best bid, freight and shipping charges  
301 shall be included. Life-cycle costing, total cost bids,  
302 warranties, guaranteed buy-back provisions and other relevant  
303 provisions may be included in the best bid calculation. All best  
304 bid and prequalification procedures for state agencies must be in  
305 compliance with regulations established by the Department of  
306 Finance and Administration. If any governing authority accepts a  
307 bid other than the lowest bid actually submitted, it shall place  
308 on its minutes detailed calculations and narrative summary showing  
309 that the accepted bid was determined to be the lowest and best  
310 bid, including the dollar amount of the accepted bid and the  
311 dollar amount of the lowest bid. No agency or governing authority  
312 shall accept a bid based on items not included in the  
313 specifications.

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

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



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



345 Revenue Code and regulations thereunder as in effect on December  
346 31, 1980, or comparable depreciation guidelines with respect to  
347 any equipment not covered by ADR guidelines. Any lease-purchase  
348 agreement entered into pursuant to this paragraph (e) may contain  
349 any of the terms and conditions which a master lease-purchase  
350 agreement may contain under the provisions of Section 31-7-10(5),  
351 and shall contain an annual allocation dependency clause  
352 substantially similar to that set forth in Section 31-7-10(8).  
353 Each agency or governing authority entering into a lease-purchase  
354 transaction pursuant to this paragraph (e) shall maintain with  
355 respect to each such lease-purchase transaction the same  
356 information as required to be maintained by the Department of  
357 Finance and Administration pursuant to Section 31-7-10(13).  
358 However, nothing contained in this section shall be construed to  
359 permit agencies to acquire items of equipment with a total  
360 acquisition cost in the aggregate of less than Ten Thousand  
361 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
362 equipment, and the purchase thereof by any lessor, acquired by  
363 lease-purchase under this paragraph and all lease-purchase  
364 payments with respect thereto shall be exempt from all Mississippi  
365 sales, use and ad valorem taxes. Interest paid on any  
366 lease-purchase agreement under this section shall be exempt from  
367 State of Mississippi income taxation.

368 (f) **Alternate bid authorization.** When necessary to  
369 ensure ready availability of commodities for public works and the



370 timely completion of public projects, no more than two (2)  
371 alternate bids may be accepted by a governing authority for  
372 commodities. No purchases may be made through use of such  
373 alternate bids procedure unless the lowest and best bidder cannot  
374 deliver the commodities contained in his bid. In that event,  
375 purchases of such commodities may be made from one (1) of the  
376 bidders whose bid was accepted as an alternate.

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





395 governing authority may limit the number, manner or frequency of  
396 such emergency changes or modifications.

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

414           (i) **Road construction petroleum products price**  
415 **adjustment clause authorization.** Any agency or governing  
416 authority authorized to enter into contracts for the construction,  
417 maintenance, surfacing or repair of highways, roads or streets,  
418 may include in its bid proposal and contract documents a price  
419 adjustment clause with relation to the cost to the contractor,



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

434 (j) **State agency emergency purchase procedure.** If the  
435 governing board or the executive head, or his designees, of any  
436 agency of the state shall determine that an emergency exists in  
437 regard to the purchase of any commodities or repair contracts, so  
438 that the delay incident to giving opportunity for competitive  
439 bidding would be detrimental to the interests of the state, then  
440 the head of such agency, or his designees, shall file with the  
441 Department of Finance and Administration (i) a statement  
442 explaining the conditions and circumstances of the emergency,  
443 which shall include a detailed description of the events leading  
444 up to the situation and the negative impact to the entity if the



445 purchase is made following the statutory requirements set forth in  
446 paragraph (a), (b) or (c) of this section, and (ii) a certified  
447 copy of the appropriate minutes of the board of such agency  
448 requesting the emergency purchase, if applicable. Upon receipt of  
449 the statement and applicable board certification, the State Fiscal  
450 Officer, or his designees, may, in writing, authorize the purchase  
451 or repair without having to comply with competitive bidding  
452 requirements.

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

465         Total purchases made under this paragraph (j) shall only be  
466 for the purpose of meeting needs created by the emergency  
467 situation. Following the emergency purchase, documentation of the  
468 purchase, including a description of the commodity purchased, the  
469 purchase price thereof and the nature of the emergency shall be



470 filed with the Department of Finance and Administration. Any  
471 contract awarded pursuant to this paragraph (j) shall not exceed a  
472 term of one (1) year.

473 Purchases under the grant program established under Section  
474 37-68-7 in response to COVID-19 and the directive that school  
475 districts create a distance learning plan and fulfill technology  
476 needs expeditiously shall be deemed an emergency purchase for  
477 purposes of this paragraph (j).

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

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



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

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

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

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



520 commissioners or board that complies with the provisions of this  
521 subparagraph (ii) shall be excepted from the bid requirements set  
522 forth in this section.

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

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

526 Purchasing agreements, contracts and maximum price regulations  
527 executed or approved by the Department of Finance and  
528 Administration.

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

540 (iii) **In-house equipment repairs.** Purchases of  
541 parts for repairs to equipment, when such repairs are made by  
542 personnel of the agency or governing authority; however, entire  
543 assemblies, such as engines or transmissions, shall not be



544 included in this exemption when the entire assembly is being  
545 replaced instead of being repaired.

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

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

560 (vi) **Intergovernmental sales and transfers.**  
561 Purchases, sales, transfers or trades by governing authorities or  
562 state agencies when such purchases, sales, transfers or trades are  
563 made by a private treaty agreement or through means of  
564 negotiation, from any federal agency or authority, another  
565 governing authority or state agency of the State of Mississippi,  
566 or any state agency or governing authority of another state.  
567 Nothing in this section shall permit such purchases through public  
568 auction except as provided for in subparagraph (v) of this



569 paragraph (m). It is the intent of this section to allow  
570 governmental entities to dispose of and/or purchase commodities  
571 from other governmental entities at a price that is agreed to by  
572 both parties. This shall allow for purchases and/or sales at  
573 prices which may be determined to be below the market value if the  
574 selling entity determines that the sale at below market value is  
575 in the best interest of the taxpayers of the state. Governing  
576 authorities shall place the terms of the agreement and any  
577 justification on the minutes, and state agencies shall obtain  
578 approval from the Department of Finance and Administration, prior  
579 to releasing or taking possession of the commodities.

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

584 (viii) **Single-source items.** Noncompetitive items  
585 available from one (1) source only. In connection with the  
586 purchase of noncompetitive items only available from one (1)  
587 source, a certification of the conditions and circumstances  
588 requiring the purchase shall be filed by the agency with the  
589 Department of Finance and Administration and by the governing  
590 authority with the board of the governing authority. Upon receipt  
591 of that certification the Department of Finance and Administration  
592 or the board of the governing authority, as the case may be, may,  
593 in writing, authorize the purchase, which authority shall be noted





594 on the minutes of the body at the next regular meeting thereafter.  
595 In those situations, a governing authority is not required to  
596 obtain the approval of the Department of Finance and  
597 Administration. Following the purchase, the executive head of the  
598 state agency, or his designees, shall file with the Department of  
599 Finance and Administration, documentation of the purchase,  
600 including a description of the commodity purchased, the purchase  
601 price thereof and the source from whom it was purchased.

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

603 **contracts.** Construction of incinerators and other facilities for  
604 disposal of solid wastes in which products either generated  
605 therein, such as steam, or recovered therefrom, such as materials  
606 for recycling, are to be sold or otherwise disposed of; however,  
607 in constructing such facilities, a governing authority or agency  
608 shall publicly issue requests for proposals, advertised for in the  
609 same manner as provided herein for seeking bids for public  
610 construction projects, concerning the design, construction,  
611 ownership, operation and/or maintenance of such facilities,  
612 wherein such requests for proposals when issued shall contain  
613 terms and conditions relating to price, financial responsibility,  
614 technology, environmental compatibility, legal responsibilities  
615 and such other matters as are determined by the governing  
616 authority or agency to be appropriate for inclusion; and after  
617 responses to the request for proposals have been duly received,  
618 the governing authority or agency may select the most qualified



619 proposal or proposals on the basis of price, technology and other  
620 relevant factors and from such proposals, but not limited to the  
621 terms thereof, negotiate and enter contracts with one or more of  
622 the persons or firms submitting proposals.

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

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

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

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

642                   (xiv) **Library books and other reference materials.**  
643 Purchases by libraries or for libraries of books and periodicals;



644 processed film, videocassette tapes, filmstrips and slides;  
645 recorded audiotapes, cassettes and diskettes; and any such items  
646 as would be used for teaching, research or other information  
647 distribution; however, equipment such as projectors, recorders,  
648 audio or video equipment, and monitor televisions are not exempt  
649 under this subparagraph.

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

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

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

664 (xviii) **Purchases of prison industry products by**  
665 **the Department of Corrections, regional correctional facilities or**  
666 **privately owned prisons.** Purchases made by the Mississippi  
667 Department of Corrections, regional correctional facilities or



668 privately owned prisons involving any item that is manufactured,  
669 processed, grown or produced from the state's prison industries.

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

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

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

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

688 (xxiii) **Municipal water tank maintenance**  
689 **contracts.** Professional maintenance program contracts for the  
690 repair or maintenance of municipal water tanks, which provide  
691 professional services needed to maintain municipal water storage



692 tanks for a fixed annual fee for a duration of two (2) or more  
693 years.

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

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

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

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



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

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

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

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



739 (xxxii) **Toll roads and bridge construction**  
740 **projects.** Contracts entered into under the provisions of Section  
741 65-43-1 or 65-43-3.

742 (xxxiii) **Certain purchases under Section 57-1-221.**  
743 Contracts entered into pursuant to the provisions of Section  
744 57-1-221.

745 (xxxiv) **Certain transfers made pursuant to the**  
746 **provisions of Section 57-105-1(7).** Transfers of public property  
747 or facilities under Section 57-105-1(7) and construction related  
748 to such public property or facilities.

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

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

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



763 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi  
764 Lottery Law.

765 (n) **Term contract authorization.** All contracts for the  
766 purchase of:

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

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





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

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

810                   (q)   **Fuel management system bidding procedure.** Any  
811 governing authority or agency of the state shall, before  
812 contracting for the services and products of a fuel management or



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

832 (r) **Solid waste contract proposal procedure.** Before  
833 entering into any contract for garbage collection or disposal,  
834 contract for solid waste collection or disposal or contract for  
835 sewage collection or disposal, which involves an expenditure of  
836 more than \* \* \* Seventy-five Thousand Dollars (\$75,000.00), a  
837 governing authority or agency shall issue publicly a request for



838 proposals concerning the specifications for such services which  
839 shall be advertised for in the same manner as provided in this  
840 section for seeking bids for purchases which involve an  
841 expenditure of more than the amount provided in paragraph (c) of  
842 this section. Any request for proposals when issued shall contain  
843 terms and conditions relating to price, financial responsibility,  
844 technology, legal responsibilities and other relevant factors as  
845 are determined by the governing authority or agency to be  
846 appropriate for inclusion; all factors determined relevant by the  
847 governing authority or agency or required by this paragraph (r)  
848 shall be duly included in the advertisement to elicit proposals.  
849 After responses to the request for proposals have been duly  
850 received, the governing authority or agency shall select the most  
851 qualified proposal or proposals on the basis of price, technology  
852 and other relevant factors and from such proposals, but not  
853 limited to the terms thereof, negotiate and enter into contracts  
854 with one or more of the persons or firms submitting proposals. If  
855 the governing authority or agency deems none of the proposals to  
856 be qualified or otherwise acceptable, the request for proposals  
857 process may be reinitiated. Notwithstanding any other provisions  
858 of this paragraph, where a county with at least thirty-five  
859 thousand (35,000) nor more than forty thousand (40,000)  
860 population, according to the 1990 federal decennial census, owns  
861 or operates a solid waste landfill, the governing authorities of  
862 any other county or municipality may contract with the governing



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

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

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



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

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

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

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

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



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

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

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

