

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 (xxxiii) **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.

