

By: Senator(s) Tate

To: Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2804

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY UNDER THE PUBLIC PURCHASING LAW THAT REVERSE AUCTION SHALL  
3 NOT BE USED FOR TERM CONTRACTS FOR ROAD MAINTENANCE COMMODITIES;  
4 AND FOR RELATED PURPOSES.

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

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

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

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

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

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



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

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



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

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

65 (i) **Publication requirement.**

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



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

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



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

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



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



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

167 (ii) **Bidding process amendment procedure.** If all  
168 plans and/or specifications are published in the notification,



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

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

192                   (iv) **Specification restrictions.**





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

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



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



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

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

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

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



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

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

281 **Landmarks.** In addition to the decision procedure set forth in  
282 subparagraph (i) of this paragraph (d), where purchase involves  
283 renovation, restoration, or both, of the State Capitol Building or  
284 any other historical building designated for at least five (5)  
285 years as a Mississippi Landmark by the Board of Trustees of the  
286 Department of Archives and History under the authority of Sections  
287 39-7-7 and 39-7-11, the agency or governing authority may use the  
288 following procedure: Purchases may be made from the lowest and  
289 best prequalified bidder. Prequalification of bidders shall be  
290 determined not less than fifteen (15) working days before the  
291 first published notice of bid opening. Prequalification criteria



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

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

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



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



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

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



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

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





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

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



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

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



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

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

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



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

467 Purchases under the grant program established under Section  
468 37-68-7 in response to COVID-19 and the directive that school  
469 districts create a distance learning plan and fulfill technology  
470 needs expeditiously shall be deemed an emergency purchase for  
471 purposes of this paragraph (j).

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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





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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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





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

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

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



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

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



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



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

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

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

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



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

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

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

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



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

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

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

