

By: Senator(s) DeBar

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2815

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 ALLOW PUBLIC SCHOOLS, INCLUDING PUBLIC CHARTER SCHOOLS, AND PUBLIC
3 SCHOOL DISTRICTS TO SOLICIT BIDS WITH A METHOD OTHER THAN A
4 REVERSE AUCTION WHEN PURCHASING PRODUCTS THAT ARE NOT TYPICALLY
5 RESOLD; TO REQUIRE THE SCHOOLS AND DISTRICTS TO PRESENT THE
6 PROPOSED ALTERNATIVE METHOD TO THEIR LOCAL SCHOOL BOARD FOR
7 APPROVAL; TO REQUIRE THE ALTERNATIVE METHOD TO PROMOTE OPEN
8 COMPETITION AND TO MEET THE REQUIREMENTS OF THE OFFICE OF
9 PURCHASING AND TRAVEL; AND FOR RELATED PURPOSES.

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

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

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

18 (a) **Bidding procedure for purchases not over \$5,000.00.**
19 Purchases which do not involve an expenditure of more than Five
20 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
21 charges, may be made without advertising or otherwise requesting



22 competitive bids. However, nothing contained in this paragraph
23 (a) shall be construed to prohibit any agency or governing
24 authority from establishing procedures which require competitive
25 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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



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

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

70 (i) **Publication requirement.**



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

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



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

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



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



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



171 promulgated by the department. Within one (1) working day of the
172 contract execution, the agency or governing authority shall post
173 to the designated web page maintained by the Department of Finance
174 and Administration a summary of the executed contract and make a
175 copy of the appropriately redacted contract documents available
176 for linking to the designated web page in accordance with the
177 rules promulgated by the department. The information provided by
178 the agency or governing authority shall be posted to the web page
179 for the duration of the American Recovery and Reinvestment Act
180 funding or until the project is completed, whichever is longer.

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



195 to a date not less than five (5) working days after the date of
196 the addendum.

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

206 (iv) **Specification restrictions.**

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



220 all pertinent regulations of the State Board of Education,
221 including prior approval of such bid by the State Department of
222 Education.

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

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



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

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

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



270 submitted, it shall place on its minutes detailed calculations and
271 narrative summary showing that the accepted bid was determined to
272 be the lowest and best bid, including the dollar amount of the
273 accepted bid and the dollar amount of the lowest bid. No agency
274 or governing authority shall accept a bid based on items not
275 included in the specifications.

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



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

295 **Landmarks.** In addition to the decision procedure set forth in
296 subparagraph (i) of this paragraph (d), where purchase involves
297 renovation, restoration, or both, of the State Capitol Building or
298 any other historical building designated for at least five (5)
299 years as a Mississippi Landmark by the Board of Trustees of the
300 Department of Archives and History under the authority of Sections
301 39-7-7 and 39-7-11, the agency or governing authority may use the
302 following procedure: Purchases may be made from the lowest and
303 best prequalified bidder. Prequalification of bidders shall be
304 determined not less than fifteen (15) working days before the
305 first published notice of bid opening. Prequalification criteria
306 shall be limited to bidder's knowledge and experience in
307 historical restoration, preservation and renovation. In
308 determining the lowest and best bid, freight and shipping charges
309 shall be included. Life-cycle costing, total cost bids,
310 warranties, guaranteed buy-back provisions and other relevant
311 provisions may be included in the best bid calculation. All best
312 bid and prequalification procedures for state agencies must be in
313 compliance with regulations established by the Department of
314 Finance and Administration. If any governing authority accepts a
315 bid other than the lowest bid actually submitted, it shall place
316 on its minutes detailed calculations and narrative summary showing
317 that the accepted bid was determined to be the lowest and best
318 bid, including the dollar amount of the accepted bid and the



319 dollar amount of the lowest bid. No agency or governing authority
320 shall accept a bid based on items not included in the
321 specifications.

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

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

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



344 the purchase thereof. No such lease-purchase agreement shall be
345 for an annual rate of interest which is greater than the overall
346 maximum interest rate to maturity on general obligation
347 indebtedness permitted under Section 75-17-101, and the term of
348 such lease-purchase agreement shall not exceed the useful life of
349 equipment covered thereby as determined according to the upper
350 limit of the asset depreciation range (ADR) guidelines for the
351 Class Life Asset Depreciation Range System established by the
352 Internal Revenue Service pursuant to the United States Internal
353 Revenue Code and regulations thereunder as in effect on December
354 31, 1980, or comparable depreciation guidelines with respect to
355 any equipment not covered by ADR guidelines. Any lease-purchase
356 agreement entered into pursuant to this paragraph (e) may contain
357 any of the terms and conditions which a master lease-purchase
358 agreement may contain under the provisions of Section 31-7-10(5),
359 and shall contain an annual allocation dependency clause
360 substantially similar to that set forth in Section 31-7-10(8).
361 Each agency or governing authority entering into a lease-purchase
362 transaction pursuant to this paragraph (e) shall maintain with
363 respect to each such lease-purchase transaction the same
364 information as required to be maintained by the Department of
365 Finance and Administration pursuant to Section 31-7-10(13).
366 However, nothing contained in this section shall be construed to
367 permit agencies to acquire items of equipment with a total
368 acquisition cost in the aggregate of less than Ten Thousand



369 Dollars (\$10,000.00) by a single lease-purchase transaction. All
370 equipment, and the purchase thereof by any lessor, acquired by
371 lease-purchase under this paragraph and all lease-purchase
372 payments with respect thereto shall be exempt from all Mississippi
373 sales, use and ad valorem taxes. Interest paid on any
374 lease-purchase agreement under this section shall be exempt from
375 State of Mississippi income taxation.

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

385 (g) **Construction contract change authorization.** In the
386 event a determination is made by an agency or governing authority
387 after a construction contract is let that changes or modifications
388 to the original contract are necessary or would better serve the
389 purpose of the agency or the governing authority, such agency or
390 governing authority may, in its discretion, order such changes
391 pertaining to the construction that are necessary under the
392 circumstances without the necessity of further public bids;
393 provided that such change shall be made in a commercially



394 reasonable manner and shall not be made to circumvent the public
395 purchasing statutes. In addition to any other authorized person,
396 the architect or engineer hired by an agency or governing
397 authority with respect to any public construction contract shall
398 have the authority, when granted by an agency or governing
399 authority, to authorize changes or modifications to the original
400 contract without the necessity of prior approval of the agency or
401 governing authority when any such change or modification is less
402 than one percent (1%) of the total contract amount. The agency or
403 governing authority may limit the number, manner or frequency of
404 such emergency changes or modifications.

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



419 directed to enter into any negotiations necessary to secure the
420 lowest and best contract available for the purchase of such
421 commodities.

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

442 (j) **State agency emergency purchase procedure.** If the
443 governing board or the executive head, or his designees, of any



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

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



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

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

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

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

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



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

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

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

515 (ii) In addition to the authority granted in
516 subparagraph (i) of this paragraph (1), the commissioners or board
517 of trustees is authorized to enter into contracts for the lease of
518 equipment or services, or both, which it considers necessary for



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

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

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

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



544 specific repairs made, parts identified by number and name,
545 supplies used in such repairs, and the number of hours of labor
546 and costs therefor shall be required for the payment for such
547 repairs.

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

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

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



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

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



592 (viii) **Single-source items.** Noncompetitive items
593 available from one (1) source only. In connection with the
594 purchase of noncompetitive items only available from one (1)
595 source, a certification of the conditions and circumstances
596 requiring the purchase shall be filed by the agency with the
597 Department of Finance and Administration and by the governing
598 authority with the board of the governing authority. Upon receipt
599 of that certification the Department of Finance and Administration
600 or the board of the governing authority, as the case may be, may,
601 in writing, authorize the purchase, which authority shall be noted
602 on the minutes of the body at the next regular meeting thereafter.
603 In those situations, a governing authority is not required to
604 obtain the approval of the Department of Finance and
605 Administration. Following the purchase, the executive head of the
606 state agency, or his designees, shall file with the Department of
607 Finance and Administration, documentation of the purchase,
608 including a description of the commodity purchased, the purchase
609 price thereof and the source from whom it was purchased.

610 (ix) **Waste disposal facility construction**
611 **contracts.** Construction of incinerators and other facilities for
612 disposal of solid wastes in which products either generated
613 therein, such as steam, or recovered therefrom, such as materials
614 for recycling, are to be sold or otherwise disposed of; however,
615 in constructing such facilities, a governing authority or agency
616 shall publicly issue requests for proposals, advertised for in the



617 same manner as provided herein for seeking bids for public
618 construction projects, concerning the design, construction,
619 ownership, operation and/or maintenance of such facilities,
620 wherein such requests for proposals when issued shall contain
621 terms and conditions relating to price, financial responsibility,
622 technology, environmental compatibility, legal responsibilities
623 and such other matters as are determined by the governing
624 authority or agency to be appropriate for inclusion; and after
625 responses to the request for proposals have been duly received,
626 the governing authority or agency may select the most qualified
627 proposal or proposals on the basis of price, technology and other
628 relevant factors and from such proposals, but not limited to the
629 terms thereof, negotiate and enter contracts with one or more of
630 the persons or firms submitting proposals.

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

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

640 (xii) **Energy efficiency services and equipment.**
641 Energy efficiency services and equipment acquired by school



642 districts, community and junior colleges, institutions of higher
643 learning and state agencies or other applicable governmental
644 entities on a shared-savings, lease or lease-purchase basis
645 pursuant to Section 31-7-14.

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

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

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

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

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

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

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

665 From and after July 1, 1990, contracts by Mississippi Authority
666 for Educational Television with any private educational



667 institution or private nonprofit organization whose purposes are
668 educational in regard to the construction, purchase, lease or
669 lease-purchase of facilities and equipment and the employment of
670 personnel for providing multichannel interactive video systems
671 (ITSF) in the school districts of this state.

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

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

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

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



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

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

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

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

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

711 (xxvii) **Used heavy or specialized machinery or**
712 **equipment for installation of soil and water conservation**
713 **practices purchased at auction.** Used heavy or specialized
714 machinery or equipment used for the installation and
715 implementation of soil and water conservation practices or
716 measures purchased subject to the restrictions provided in



717 Sections 69-27-331 through 69-27-341. Any purchase by the State
718 Soil and Water Conservation Commission under the exemption
719 authorized by this subparagraph shall require advance
720 authorization spread upon the minutes of the commission to include
721 the listing of the item or items authorized to be purchased and
722 the maximum bid authorized to be paid for each item or items.

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

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

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

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

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

739 yearbooks by state agencies or governing authorities; provided,
740 however, that state agencies and governing authorities shall use
741 for these purchases the RFP process as set forth in the



742 Mississippi Procurement Manual adopted by the Office of Purchasing
743 and Travel.

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

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

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

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

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

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



767 radiation-emitting devices as defined by the United States Food
768 and Drug Administration.

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

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

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

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



792 contract documents utilizing a price adjustment clause shall
793 contain the basis and method of adjusting unit prices for the
794 change in the cost of such commodities, equipment and public
795 construction.

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

811 (p) **Electrical utility petroleum-based equipment**
812 **purchase procedure.** When in response to a proper advertisement
813 therefor, no bid firm as to price is submitted to an electric
814 utility for power transformers, distribution transformers, power
815 breakers, reclosers or other articles containing a petroleum



816 product, the electric utility may accept the lowest and best bid
817 therefor although the price is not firm.

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



840 (r) **Solid waste contract proposal procedure.** Before
841 entering into any contract for garbage collection or disposal,
842 contract for solid waste collection or disposal or contract for
843 sewage collection or disposal, which involves an expenditure of
844 more than Fifty Thousand Dollars (\$50,000.00), a governing
845 authority or agency shall issue publicly a request for proposals
846 concerning the specifications for such services which shall be
847 advertised for in the same manner as provided in this section for
848 seeking bids for purchases which involve an expenditure of more
849 than the amount provided in paragraph (c) of this section. Any
850 request for proposals when issued shall contain terms and
851 conditions relating to price, financial responsibility,
852 technology, legal responsibilities and other relevant factors as
853 are determined by the governing authority or agency to be
854 appropriate for inclusion; all factors determined relevant by the
855 governing authority or agency or required by this paragraph (r)
856 shall be duly included in the advertisement to elicit proposals.
857 After responses to the request for proposals have been duly
858 received, the governing authority or agency shall select the most
859 qualified proposal or proposals on the basis of price, technology
860 and other relevant factors and from such proposals, but not
861 limited to the terms thereof, negotiate and enter into contracts
862 with one or more of the persons or firms submitting proposals. If
863 the governing authority or agency deems none of the proposals to
864 be qualified or otherwise acceptable, the request for proposals



865 process may be reinitiated. Notwithstanding any other provisions
866 of this paragraph, where a county with at least thirty-five
867 thousand (35,000) nor more than forty thousand (40,000)
868 population, according to the 1990 federal decennial census, owns
869 or operates a solid waste landfill, the governing authorities of
870 any other county or municipality may contract with the governing
871 authorities of the county owning or operating the landfill,
872 pursuant to a resolution duly adopted and spread upon the minutes
873 of each governing authority involved, for garbage or solid waste
874 collection or disposal services through contract negotiations.

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



890 Black, Hispanic or Native American, according to the following
891 definitions:

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

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

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

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

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

911 (u) **Procurement of construction services by state**
912 **institutions of higher learning.** Contracts for privately financed
913 construction of auxiliary facilities on the campus of a state
914 institution of higher learning may be awarded by the Board of



915 Trustees of State Institutions of Higher Learning to the lowest
916 and best bidder, where sealed bids are solicited, or to the
917 offeror whose proposal is determined to represent the best value
918 to the citizens of the State of Mississippi, where requests for
919 proposals are solicited.

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

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

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

