

By: Representative Roberson

To: Drug Policy

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 249

1 AN ACT TO AMEND SECTION 25-9-107, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION OF LAW
3 EXCLUDING FROM THE STATE SERVICE THOSE EMPLOYEES OF THE STATE
4 DEPARTMENT OF HEALTH AND THE DEPARTMENT OF REVENUE WHOSE
5 EMPLOYMENT IS SOLELY RELATED TO THE MISSISSIPPI MEDICAL CANNABIS
6 ACT; TO AMEND SECTION 25-43-1.103, MISSISSIPPI CODE OF 1972, TO
7 EXTEND THE DATE OF THE REPEALER ON THOSE DEPARTMENTS' EXEMPTION
8 FROM THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW FOR PURPOSES
9 RELATED TO THE MISSISSIPPI MEDICAL CANNABIS ACT; TO AMEND SECTIONS
10 25-53-1 AND 25-53-5, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE
11 OF THOSE DEPARTMENTS' EXEMPTION FOR PURPOSES RELATED TO THE
12 MISSISSIPPI MEDICAL CANNABIS ACT FROM THE BID AND CONTRACT
13 REQUIREMENTS OF THE MISSISSIPPI DEPARTMENT OF INFORMATION
14 TECHNOLOGY SERVICES; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE
15 OF 1972, TO EXTEND THE DATE OF THE EXEMPTION FOR THOSE
16 DEPARTMENTS' PERSONAL AND PROFESSIONAL SERVICE CONTRACTS RELATING
17 TO THE MISSISSIPPI MEDICAL CANNABIS ACT FROM THE REQUIREMENTS OF
18 THE PUBLIC PROCUREMENT REVIEW BOARD; TO AMEND SECTION 31-7-13,
19 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON
20 THE EXEMPTION FROM STATE BID REQUIREMENTS FOR PURCHASES MADE BY
21 THOSE DEPARTMENTS IN CONNECTION WITH THEIR RESPONSIBILITIES UNDER
22 THE MISSISSIPPI MEDICAL CANNABIS ACT; TO INCLUDE SERVICES PROVIDED
23 BY THE MISSISSIPPI INDUSTRIES FOR THE BLIND IN THE EXCEPTIONS FROM
24 BIDDING REQUIREMENTS; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 25-9-107, Mississippi Code of 1972, is
27 amended as follows:



28 25-9-107. The following terms, when used in this chapter,
29 unless a different meaning is plainly required by the context,
30 shall have the following meanings:

31 (a) "Board" means the State Personnel Board created
32 under the provisions of this chapter.

33 (b) "State service" means all employees of state
34 departments, agencies and institutions as defined herein, except
35 those officers and employees excluded by this chapter.

36 (c) "Nonstate service" means the following officers and
37 employees excluded from the state service by this chapter. The
38 following are excluded from the state service:

39 (i) Members of the State Legislature, their staff
40 and other employees of the legislative branch;

41 (ii) The Governor and staff members of the
42 immediate Office of the Governor;

43 (iii) Justices and judges of the judicial branch
44 or members of appeals boards on a per diem basis;

45 (iv) The Lieutenant Governor, staff members of the
46 immediate Office of the Lieutenant Governor and officers and
47 employees directly appointed by the Lieutenant Governor;

48 (v) Officers and officials elected by popular vote
49 and persons appointed to fill vacancies in elective offices;

50 (vi) Members of boards and commissioners appointed
51 by the Governor, Lieutenant Governor or the State Legislature;



52 (vii) All academic officials, members of the
53 teaching staffs and employees of the state institutions of higher
54 learning, the Mississippi Community College Board, and community
55 and junior colleges;

56 (viii) Officers and enlisted members of the
57 National Guard of the state;

58 (ix) Prisoners, inmates, student or patient help
59 working in or about institutions;

60 (x) Contract personnel; provided that any agency
61 which employs state service employees may enter into contracts for
62 personal and professional services only if such contracts are
63 approved in compliance with the rules and regulations promulgated
64 by the Public Procurement Review Board under Section 27-104-7.
65 Before paying any warrant for such contractual services in excess
66 of Seventy-five Thousand Dollars (\$75,000.00), the Auditor of
67 Public Accounts, or the successor to those duties, shall determine
68 whether the contract involved was for personal or professional
69 services, and, if so, was approved by the Public Procurement
70 Review Board as required by law;

71 (xi) Part-time employees; * * * however, part-time
72 employees shall only be hired into authorized employment positions
73 classified by the board, shall meet minimum qualifications as set
74 by the board, and shall be paid in accordance with the Variable
75 Compensation Plan as certified by the board;



76 (xii) Persons appointed on an emergency basis for
77 the duration of the emergency; the effective date of the emergency
78 appointments shall not be earlier than the date approved by the
79 State Personnel Director, and shall be limited to thirty (30)
80 working days. Emergency appointments may be extended to sixty
81 (60) working days by the State Personnel Board;

82 (xiii) Physicians, dentists, veterinarians, nurse
83 practitioners and attorneys, while serving in their professional
84 capacities in authorized employment positions who are required by
85 statute to be licensed, registered or otherwise certified as such,
86 provided that the State Personnel Director shall verify that the
87 statutory qualifications are met prior to issuance of a payroll
88 warrant by the Auditor;

89 (xiv) Personnel who are employed and paid from
90 funds received from a federal grant program which has been
91 approved by the Legislature or the Department of Finance and
92 Administration whose length of employment has been determined to
93 be time-limited in nature. This subparagraph shall apply to
94 personnel employed under the provisions of the Comprehensive
95 Employment and Training Act of 1973, as amended, and other special
96 federal grant programs which are not a part of regular federally
97 funded programs wherein appropriations and employment positions
98 are appropriated by the Legislature. Such employees shall be paid
99 in accordance with the Variable Compensation Plan and shall meet



100 all qualifications required by federal statutes or by the
101 Mississippi Classification Plan;

102 (xv) The administrative head who is in charge of
103 any state department, agency, institution, board or commission,
104 wherein the statute specifically authorizes the Governor, board,
105 commission or other authority to appoint said administrative
106 head; * * * however, * * * the salary of such administrative head
107 shall be determined by the State Personnel Board in accordance
108 with the Variable Compensation Plan unless otherwise fixed by
109 statute;

110 (xvi) The State Personnel Board shall exclude
111 top-level positions if the incumbents determine and publicly
112 advocate substantive program policy and report directly to the
113 agency head, or the incumbents are required to maintain a direct
114 confidential working relationship with a key excluded official.

115 * * * Further, a written job classification shall be approved by
116 the board for each such position, and positions so excluded shall
117 be paid in conformity with the Variable Compensation Plan;

118 (xvii) Employees whose employment is solely in
119 connection with an agency's contract to produce, store or
120 transport goods, and whose compensation is derived therefrom;

121 (xviii) Repealed;

122 (xix) The associate director, deputy directors and
123 bureau directors within the Department of Agriculture and
124 Commerce;



125 (xx) Personnel employed by the Mississippi
126 Industries for the Blind; provided that any agency may enter into
127 contracts for the personal services of MIB employees without the
128 prior approval of the State Personnel Board or the State Personal
129 Service Contract Review Board; however, any agency contracting for
130 the personal services of an MIB employee shall provide the MIB
131 employee with not less than the entry-level compensation and
132 benefits that the agency would provide to a full-time employee of
133 the agency who performs the same services;

134 (xxi) Personnel employed by the Mississippi
135 Department of Wildlife, Fisheries and Parks and the Mississippi
136 Department of Marine Resources as law enforcement trainees
137 (cadets); such personnel shall be paid in accordance with the
138 Colonel Guy Groff State Variable Compensation Plan;

139 (xxii) Administrators and instructional employees
140 under contract or employed by the Mississippi School of the Arts
141 (MSA) established in Section 37-140-1 et seq.;

142 (xxiii) The President of the Mississippi Lottery
143 Corporation and personnel employed by the Mississippi Lottery
144 Corporation;

145 (xxiv) Employees, excluding administrative
146 employees, of the State Veterans Affairs Board who are employed at
147 a veterans home established by the State Veterans Affairs Board
148 under Section 35-1-19;



149 (xxv) Personnel employed by the Mississippi
150 Department of Health whose employment is solely in connection with
151 the department's responsibilities in implementing, administering
152 and enforcing provisions of the Mississippi Medical Cannabis Act.
153 This subparagraph shall stand repealed on June 30, * * * 2026; and

154 (xxvi) Personnel employed by the Mississippi
155 Department of Revenue whose employment is solely in connection
156 with the department's responsibilities in implementing,
157 administering and enforcing provisions of the Mississippi Medical
158 Cannabis Act. This subparagraph shall stand repealed on June
159 30, * * * 2026.

160 (d) "Agency" means any state board, commission,
161 committee, council, department or unit thereof created by the
162 Constitution or statutes if such board, commission, committee,
163 council, department, unit or the head thereof, is authorized to
164 appoint subordinate staff by the Constitution or statute, except a
165 legislative or judicial board, commission, committee, council,
166 department or unit thereof.

167 **SECTION 2.** Section 25-43-1.103, Mississippi Code of 1972, is
168 amended as follows:

169 25-43-1.103. (1) This chapter applies to all agencies and
170 all proceedings not expressly exempted under this chapter.

171 (2) This chapter creates only procedural rights and imposes
172 only procedural duties. They are in addition to those created and
173 imposed by other statutes.



174 (3) Specific statutory provisions which govern agency
175 proceedings and which are in conflict with any of the provisions
176 of this chapter shall continue to be applied to all proceedings of
177 any such agency to the extent of such conflict only.

178 (4) The provisions of this chapter shall not be construed to
179 amend, repeal or supersede the provisions of any other law; and,
180 to the extent that the provisions of any other law conflict or are
181 inconsistent with the provisions of this chapter, the provisions
182 of such other law shall govern and control.

183 (5) An agency may grant procedural rights to persons in
184 addition to those conferred by this chapter so long as rights
185 conferred upon other persons by any provision of law are not
186 substantially prejudiced.

187 (6) For the purposes of implementing, administering and/or
188 enforcing the provisions of rules and regulations promulgated
189 pursuant to the Mississippi Medical Cannabis Act, the Mississippi
190 State Department of Health and the Mississippi Department of
191 Revenue shall be exempted from this chapter from February 2, 2022,
192 through June 30, * * * 2026. This subsection shall stand repealed
193 on June 30, * * * 2026.

194 **SECTION 3.** Section 25-53-1, Mississippi Code of 1972, is
195 amended as follows:

196 25-53-1. The Legislature recognizes that in order for the
197 State of Mississippi to receive the maximum use and benefit from
198 information technology and services now in operation or which will



199 in the future be placed in operation, there should be full
200 cooperation and cohesive planning and effort by and between the
201 several state agencies and that it is the responsibility of the
202 Legislature to provide statutory authority therefor. The
203 Legislature, therefore, declares and determines that for these and
204 other related purposes there is hereby established an agency of
205 state government to be known as the Mississippi Department of
206 Information Technology Services (MDITS). The Legislature further
207 declares that the Mississippi Department of Information Technology
208 Services (MDITS) shall provide statewide services that facilitate
209 cost-effective information processing and telecommunication
210 solutions. State agencies shall work in full cooperation with the
211 board of MDITS to identify opportunities to minimize duplication,
212 reduce costs and improve the efficiency of providing common
213 technology services across agency boundaries. The provisions of
214 this chapter shall not apply to the Department of Human Services
215 for a period of three (3) years beginning July 1, 2017. The
216 provisions of this chapter shall not apply to the Department of
217 Child Protection Services for a period of three (3) years
218 beginning July 1, 2017. Through June 30, * * * 2024, the
219 provisions of this chapter shall not apply to the Department of
220 Health and the Department of Revenue for the purposes of
221 implementing, administering and enforcing the provisions of the
222 Mississippi Medical Cannabis Act.



223 **SECTION 4.** Section 25-53-5, Mississippi Code of 1972, is
224 amended as follows:

225 25-53-5. The authority shall have the following powers,
226 duties, and responsibilities:

227 (a) (i) The authority shall provide for the
228 development of plans for the efficient acquisition and utilization
229 of computer equipment and services by all agencies of state
230 government, and provide for their implementation. In so doing,
231 the authority may use the MDITS' staff, at the discretion of the
232 executive director of the authority, or the authority may contract
233 for the services of qualified consulting firms in the field of
234 information technology and utilize the service of such consultants
235 as may be necessary for such purposes. Pursuant to Section
236 25-53-1, the provisions of this section shall not apply to the
237 Department of Human Services for a period of three (3) years
238 beginning on July 1, 2017. Pursuant to Section 25-53-1, the
239 provisions of this section shall not apply to the Department of
240 Child Protection Services for a period of three (3) years
241 beginning July 1, 2017.

242 (ii) [Repealed]

243 (b) The authority shall immediately institute
244 procedures for carrying out the purposes of this chapter and
245 supervise the efficient execution of the powers and duties of the
246 office of executive director of the authority. In the execution
247 of its functions under this chapter, the authority shall maintain



248 as a paramount consideration the successful internal organization
249 and operation of the several agencies so that efficiency existing
250 therein shall not be adversely affected or impaired. In executing
251 its functions in relation to the institutions of higher learning
252 and junior colleges in the state, the authority shall take into
253 consideration the special needs of such institutions in relation
254 to the fields of teaching and scientific research.

255 (c) Title of whatever nature of all computer equipment
256 now vested in any agency of the State of Mississippi is hereby
257 vested in the authority, and no such equipment shall be disposed
258 of in any manner except in accordance with the direction of the
259 authority or under the provisions of such rules and regulations as
260 may hereafter be adopted by the authority in relation thereto.

261 (d) The authority shall adopt rules, regulations, and
262 procedures governing the acquisition of computer and
263 telecommunications equipment and services which shall, to the
264 fullest extent practicable, insure the maximum of competition
265 between all manufacturers of supplies or equipment or services.
266 In the writing of specifications, in the making of contracts
267 relating to the acquisition of such equipment and services, and in
268 the performance of its other duties the authority shall provide
269 for the maximum compatibility of all information systems hereafter
270 installed or utilized by all state agencies and may require the
271 use of common computer languages where necessary to accomplish the
272 purposes of this chapter. The authority may establish by



273 regulation and charge reasonable fees on a nondiscriminatory basis
274 for the furnishing to bidders of copies of bid specifications and
275 other documents issued by the authority.

276 (e) The authority shall adopt rules and regulations
277 governing the sharing with, or the sale or lease of information
278 technology services to any nonstate agency or person. Such
279 regulations shall provide that any such sharing, sale or lease
280 shall be restricted in that same shall be accomplished only where
281 such services are not readily available otherwise within the
282 state, and then only at a charge to the user not less than the
283 prevailing rate of charge for similar services by private
284 enterprise within this state.

285 (f) The authority may, in its discretion, establish a
286 special technical advisory committee or committees to study and
287 make recommendations on technology matters within the competence
288 of the authority as the authority may see fit. Persons serving on
289 the Information Resource Council, its task forces, or any such
290 technical advisory committees shall be entitled to receive their
291 actual and necessary expenses actually incurred in the performance
292 of such duties, together with mileage as provided by law for state
293 employees, provided the same has been authorized by a resolution
294 duly adopted by the authority and entered on its minutes prior to
295 the performance of such duties.

296 (g) The authority may provide for the development and
297 require the adoption of standardized computer programs and may



298 provide for the dissemination of information to and the
299 establishment of training programs for the personnel of the
300 various information technology centers of state agencies and
301 personnel of the agencies utilizing the services thereof.

302 (h) The authority shall adopt reasonable rules and
303 regulations requiring the reporting to the authority through the
304 office of executive director of such information as may be
305 required for carrying out the purposes of this chapter and may
306 also establish such reasonable procedures to be followed in the
307 presentation of bills for payment under the terms of all contracts
308 for the acquisition of computer equipment and services now or
309 hereafter in force as may be required by the authority or by the
310 executive director in the execution of their powers and duties.

311 (i) The authority shall require such adequate
312 documentation of information technology procedures utilized by the
313 various state agencies and may require the establishment of such
314 organizational structures within state agencies relating to
315 information technology operations as may be necessary to
316 effectuate the purposes of this chapter.

317 (j) The authority may adopt such further reasonable
318 rules and regulations as may be necessary to fully implement the
319 purposes of this chapter. All rules and regulations adopted by
320 the authority shall be published and disseminated in readily
321 accessible form to all affected state agencies, and to all current
322 suppliers of computer equipment and services to the state, and to



323 all prospective suppliers requesting the same. Such rules and
324 regulations shall be kept current, be periodically revised, and
325 copies thereof shall be available at all times for inspection by
326 the public at reasonable hours in the offices of the authority.
327 Whenever possible no rule, regulation or any proposed amendment to
328 such rules and regulations shall be finally adopted or enforced
329 until copies of the proposed rules and regulations have been
330 furnished to all interested parties for their comment and
331 suggestions.

332 (k) The authority shall establish rules and regulations
333 which shall provide for the submission of all contracts proposed
334 to be executed by the executive director for computer equipment or
335 services to the authority for approval before final execution, and
336 the authority may provide that such contracts involving the
337 expenditure of less than such specified amount as may be
338 established by the authority may be finally executed by the
339 executive director without first obtaining such approval by the
340 authority.

341 (l) The authority is authorized to purchase, lease, or
342 rent computer equipment or services and to operate that equipment
343 and use those services in providing services to one or more state
344 agencies when in its opinion such operation will provide maximum
345 efficiency and economy in the functions of any such agency or
346 agencies.



347 (m) Upon the request of the governing body of a
348 political subdivision or instrumentality, the authority shall
349 assist the political subdivision or instrumentality in its
350 development of plans for the efficient acquisition and utilization
351 of computer equipment and services. An appropriate fee shall be
352 charged the political subdivision by the authority for such
353 assistance.

354 (n) The authority shall adopt rules and regulations
355 governing the protest procedures to be followed by any actual or
356 prospective bidder, offerer or contractor who is aggrieved in
357 connection with the solicitation or award of a contract for the
358 acquisition of computer equipment or services. Such rules and
359 regulations shall prescribe the manner, time and procedure for
360 making protests and may provide that a protest not timely filed
361 shall be summarily denied. The authority may require the
362 protesting party, at the time of filing the protest, to post a
363 bond, payable to the state, in an amount that the authority
364 determines sufficient to cover any expense or loss incurred by the
365 state, the authority or any state agency as a result of the
366 protest if the protest subsequently is determined by a court of
367 competent jurisdiction to have been filed without any substantial
368 basis or reasonable expectation to believe that the protest was
369 meritorious; however, in no event may the amount of the bond
370 required exceed a reasonable estimate of the total project cost.
371 The authority, in its discretion, also may prohibit any



372 prospective bidder, offerer or contractor who is a party to any
373 litigation involving any such contract with the state, the
374 authority or any agency of the state to participate in any other
375 such bid, offer or contract, or to be awarded any such contract,
376 during the pendency of the litigation.

377 (o) The authority shall make a report in writing to the
378 Legislature each year in the month of January. Such report shall
379 contain a full and detailed account of the work of the authority
380 for the preceding year as specified in Section 25-53-29(3).

381 All acquisitions of computer equipment and services involving
382 the expenditure of funds in excess of the dollar amount
383 established in Section 31-7-13(c), or rentals or leases in excess
384 of the dollar amount established in Section 31-7-13(c) for the
385 term of the contract, shall be based upon competitive and open
386 specifications, and contracts therefor shall be entered into only
387 after advertisements for bids are published in one or more daily
388 newspapers having a general circulation in the state not less than
389 fourteen (14) days prior to receiving sealed bids therefor. The
390 authority may reserve the right to reject any or all bids, and if
391 all bids are rejected, the authority may negotiate a contract
392 within the limitations of the specifications so long as the terms
393 of any such negotiated contract are equal to or better than the
394 comparable terms submitted by the lowest and best bidder, and so
395 long as the total cost to the State of Mississippi does not exceed
396 the lowest bid. If the authority accepts one (1) of such bids, it



397 shall be that which is the lowest and best. Through June
398 30, * * * 2024, the provisions of this paragraph shall not apply
399 to acquisitions of information technology equipment and services
400 made by the Mississippi Department of Health * * * and the
401 Mississippi Department of Revenue for the purposes of
402 implementing, administering * * * and enforcing the provisions of
403 the Mississippi Medical Cannabis Act.

404 (p) When applicable, the authority may procure
405 equipment, systems and related services in accordance with the law
406 or regulations, or both, which govern the Bureau of Purchasing of
407 the Office of General Services or which govern the Mississippi
408 Department of Information Technology Services procurement of
409 telecommunications equipment, software and services.

410 (q) The authority is authorized to purchase, lease, or
411 rent information technology and services for the purpose of
412 establishing pilot projects to investigate emerging technologies.
413 These acquisitions shall be limited to new technologies and shall
414 be limited to an amount set by annual appropriation of the
415 Legislature. These acquisitions shall be exempt from the
416 advertising and bidding requirement.

417 (r) All fees collected by the Mississippi Department of
418 Information Technology Services shall be deposited into the
419 Mississippi Department of Information Technology Services
420 Revolving Fund unless otherwise specified by the Legislature.



421 (s) The authority shall work closely with the council
422 to bring about effective coordination of policies, standards and
423 procedures relating to procurement of remote sensing and
424 geographic information systems (GIS) resources. In addition, the
425 authority is responsible for development, operation and
426 maintenance of a delivery system infrastructure for geographic
427 information systems data. The authority shall provide a warehouse
428 for Mississippi's geographic information systems data.

429 (t) The authority shall manage one or more State Data
430 Centers to provide information technology services on a
431 cost-sharing basis. In determining the appropriate services to be
432 provided through the State Data Center, the authority should
433 consider those services that:

- 434 (i) Result in savings to the state as a whole;
- 435 (ii) Improve and enhance the security and
436 reliability of the state's information and business systems; and
- 437 (iii) Optimize the efficient use of the state's
438 information technology assets, including, but not limited to,
439 promoting partnerships with the state institutions of higher
440 learning and community colleges to capitalize on advanced
441 information technology resources.

442 (u) The authority shall increase federal participation
443 in the cost of the State Data Center to the extent provided by law
444 and its shared technology infrastructure through providing such
445 shared services to agencies that receive federal funds. With



446 regard to state institutions of higher learning and community
447 colleges, the authority may provide shared services when mutually
448 agreeable, following a determination by both the authority and the
449 Board of Trustees of State Institutions of Higher Learning or the
450 Mississippi Community College Board, as the case may be, that the
451 sharing of services is mutually beneficial.

452 (v) The authority, in its discretion, may require new
453 or replacement agency business applications to be hosted at the
454 State Data Center. With regard to state institutions of higher
455 learning and community colleges, the authority and the Board of
456 Trustees of State Institutions of Higher Learning or the
457 Mississippi Community College Board, as the case may be, may agree
458 that institutions of higher learning or community colleges may
459 utilize business applications that are hosted at the State Data
460 Center, following a determination by both the authority and the
461 applicable board that the hosting of those applications is
462 mutually beneficial. In addition, the authority may establish
463 partnerships to capitalize on the advanced technology resources of
464 the Board of Trustees of State Institutions of Higher Learning or
465 the Mississippi Community College Board, following a determination
466 by both the authority and the applicable board that such a
467 partnership is mutually beneficial.

468 (w) The authority shall provide a periodic update
469 regarding reform-based information technology initiatives to the



470 Chairmen of the House and Senate Accountability, Efficiency and
471 Transparency Committees.

472 From and after July 1, 2018, the expenses of this agency
473 shall be defrayed by appropriation from the State General Fund.
474 In addition, in order to receive the maximum use and benefit from
475 information technology and services, expenses for the provision of
476 statewide shared services that facilitate cost-effective
477 information processing and telecommunication solutions shall be
478 defrayed by pass-through funding and shall be deposited into the
479 Mississippi Department of Information Technology Services
480 Revolving Fund unless otherwise specified by the Legislature.
481 These funds shall only be utilized to pay the actual costs
482 incurred by the Mississippi Department of Information Technology
483 Services for providing these shared services to state agencies.
484 Furthermore, state agencies shall work in full cooperation with
485 the Board of the Mississippi Department of Information Technology
486 Services to identify computer equipment or services to minimize
487 duplication, reduce costs, and improve the efficiency of providing
488 common technology services across agency boundaries.

489 **SECTION 5.** Section 27-104-7, Mississippi Code of 1972, is
490 amended as follows:

491 27-104-7. (1) (a) There is created the Public Procurement
492 Review Board, which shall be reconstituted on January 1, 2018, and
493 shall be composed of the following members:



494 (i) Three (3) individuals appointed by the
495 Governor with the advice and consent of the Senate;
496 (ii) Two (2) individuals appointed by the
497 Lieutenant Governor with the advice and consent of the Senate; and
498 (iii) The Executive Director of the Department of
499 Finance and Administration, serving as an ex officio and nonvoting
500 member.

501 (b) The initial terms of each appointee shall be as
502 follows:

503 (i) One (1) member appointed by the Governor to
504 serve for a term ending on June 30, 2019;

505 (ii) One (1) member appointed by the Governor to
506 serve for a term ending on June 30, 2020;

507 (iii) One (1) member appointed by the Governor to
508 serve for a term ending on June 30, 2021;

509 (iv) One (1) member appointed by the Lieutenant
510 Governor to serve for a term ending on June 30, 2019; and

511 (v) One (1) member appointed by the Lieutenant
512 Governor to serve for a term ending on June 30, 2020.

513 After the expiration of the initial terms, all appointed
514 members' terms shall be for a period of four (4) years from the
515 expiration date of the previous term, and until such time as the
516 member's successor is duly appointed and qualified.

517 (c) When appointing members to the Public Procurement
518 Review Board, the Governor and Lieutenant Governor shall take into



519 consideration persons who possess at least five (5) years of
520 management experience in general business, health care or finance
521 for an organization, corporation or other public or private
522 entity. Any person, or any employee or owner of a company, who
523 receives any grants, procurements or contracts that are subject to
524 approval under this section shall not be appointed to the Public
525 Procurement Review Board. Any person, or any employee or owner of
526 a company, who is a principal of the source providing a personal
527 or professional service shall not be appointed to the Public
528 Procurement Review Board if the principal owns or controls a
529 greater than five percent (5%) interest or has an ownership value
530 of One Million Dollars (\$1,000,000.00) in the source's business,
531 whichever is smaller. No member shall be an officer or employee
532 of the State of Mississippi while serving as a voting member on
533 the Public Procurement Review Board.

534 (d) Members of the Public Procurement Review Board
535 shall be entitled to per diem as authorized by Section 25-3-69 and
536 travel reimbursement as authorized by Section 25-3-41.

537 (e) The members of the Public Procurement Review Board
538 shall elect a chair from among the membership, and he or she shall
539 preside over the meetings of the board. The board shall annually
540 elect a vice chair, who shall serve in the absence of the chair.
541 No business shall be transacted, including adoption of rules of
542 procedure, without the presence of a quorum of the board. Three
543 (3) members shall be a quorum. No action shall be valid unless



544 approved by a majority of the members present and voting, entered
545 upon the minutes of the board and signed by the chair. Necessary
546 clerical and administrative support for the board shall be
547 provided by the Department of Finance and Administration. Minutes
548 shall be kept of the proceedings of each meeting, copies of which
549 shall be filed on a monthly basis with the chairs of the
550 Accountability, Efficiency and Transparency Committees of the
551 Senate and House of Representatives and the chairs of the
552 Appropriations Committees of the Senate and House of
553 Representatives.

554 (2) The Public Procurement Review Board shall have the
555 following powers and responsibilities:

556 (a) Approve all purchasing regulations governing the
557 purchase or lease by any agency, as defined in Section 31-7-1, of
558 commodities and equipment, except computer equipment acquired
559 pursuant to Sections 25-53-1 through 25-53-29;

560 (b) Adopt regulations governing the approval of
561 contracts let for the construction and maintenance of state
562 buildings and other state facilities as well as related contracts
563 for architectural and engineering services.

564 The provisions of this paragraph (b) shall not apply to such
565 contracts involving buildings and other facilities of state
566 institutions of higher learning which are self-administered as
567 provided under this paragraph (b) or Section 37-101-15(m);



568 (c) Adopt regulations governing any lease or rental
569 agreement by any state agency or department, including any state
570 agency financed entirely by federal funds, for space outside the
571 buildings under the jurisdiction of the Department of Finance and
572 Administration. These regulations shall require each agency
573 requesting to lease such space to provide the following
574 information that shall be published by the Department of Finance
575 and Administration on its website: the agency to lease the space;
576 the terms of the lease; the approximate square feet to be leased;
577 the use for the space; a description of a suitable space; the
578 general location desired for the leased space; the contact
579 information for a person from the agency; the deadline date for
580 the agency to have received a lease proposal; any other specific
581 terms or conditions of the agency; and any other information
582 deemed appropriate by the Division of Real Property Management of
583 the Department of Finance and Administration or the Public
584 Procurement Review Board. The information shall be provided
585 sufficiently in advance of the time the space is needed to allow
586 the Division of Real Property Management of the Department of
587 Finance and Administration to review and preapprove the lease
588 before the time for advertisement begins;

589 (d) Adopt, in its discretion, regulations to set aside
590 at least five percent (5%) of anticipated annual expenditures for
591 the purchase of commodities from minority businesses; however, all
592 such set-aside purchases shall comply with all purchasing



593 regulations promulgated by the department and shall be subject to
594 all bid requirements. Set-aside purchases for which competitive
595 bids are required shall be made from the lowest and best minority
596 business bidder; however, if no minority bid is available or if
597 the minority bid is more than two percent (2%) higher than the
598 lowest bid, then bids shall be accepted and awarded to the lowest
599 and best bidder. However, the provisions in this paragraph shall
600 not be construed to prohibit the rejection of a bid when only one
601 (1) bid is received. Such rejection shall be placed in the
602 minutes. For the purposes of this paragraph, the term "minority
603 business" means a business which is owned by a person who is a
604 citizen or lawful permanent resident of the United States and who
605 is:

606 (i) Black: having origins in any of the black
607 racial groups of Africa;

608 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
609 Central or South American, or other Spanish or Portuguese culture
610 or origin regardless of race;

611 (iii) Asian-American: having origins in any of
612 the original people of the Far East, Southeast Asia, the Indian
613 subcontinent, or the Pacific Islands;

614 (iv) American Indian or Alaskan Native: having
615 origins in any of the original people of North America; or

616 (v) Female;



617 (e) In consultation with and approval by the Chairs of
618 the Senate and House Public Property Committees, approve leases,
619 for a term not to exceed eighteen (18) months, entered into by
620 state agencies for the purpose of providing parking arrangements
621 for state employees who work in the Woolfolk Building, the Carroll
622 Gartin Justice Building or the Walter Sillers Office Building;

623 (f) Promulgate rules and regulations governing the
624 solicitation and selection of contractual services personnel,
625 including personal and professional services contracts for any
626 form of consulting, policy analysis, public relations, marketing,
627 public affairs, legislative advocacy services or any other
628 contract that the board deems appropriate for oversight, with the
629 exception of:

630 (i) Any personal service contracts entered into by
631 any agency that employs only nonstate service employees as defined
632 in Section 25-9-107(c) * * *;

633 (ii) Any personal service contracts entered into
634 for computer or information technology-related services governed
635 by the Mississippi Department of Information Technology
636 Services * * *;

637 (iii) Any personal service contracts entered into
638 by the individual state institutions of higher learning * * *;

639 (iv) Any personal service contracts entered into
640 by the Mississippi Department of Transportation * * *;



641 (v) Any personal service contracts entered into by
642 the Department of Human Services through June 30, 2019, which the
643 Executive Director of the Department of Human Services determines
644 would be useful in establishing and operating the Department of
645 Child Protection Services * * *;

646 (vi) Any personal service contracts entered into
647 by the Department of Child Protection Services through June 30,
648 2019 * * *;

649 (vii) Any contracts for entertainers and/or
650 performers at the Mississippi State Fairgrounds entered into by
651 the Mississippi Fair Commission * * *;

652 (viii) Any contracts entered into by the
653 Department of Finance and Administration when procuring aircraft
654 maintenance, parts, equipment and/or services * * *;

655 (ix) Any contract entered into by the Department
656 of Public Safety for service on specialized equipment and/or
657 software required for the operation at such specialized equipment
658 for use by the Office of Forensics Laboratories * * *;

659 (x) Any personal or professional service contract
660 entered into by the Mississippi Department of Health * * * or the
661 Department of Revenue solely in connection with their respective
662 responsibilities under the Mississippi Medical Cannabis Act from
663 February 2, 2022, through June 30, * * * 2026;



664 (xi) Any contract for attorney, accountant,
665 actuary auditor, architect, engineer, anatomical pathologist, or
666 utility rate expert services * * *;

667 (xii) Any personal service contracts approved by
668 the Executive Director of the Department of Finance and
669 Administration and entered into by the Coordinator of Mental
670 Health Accessibility through June 30, 2022 * * *;

671 (xiii) Any personal or professional services
672 contract entered into by the State Department of Health in
673 carrying out its responsibilities under the ARPA Rural Water
674 Associations Infrastructure Grant Program through June 30,
675 2026 * * *; and

676 (xiv) Any personal or professional services
677 contract entered into by the Mississippi Department of
678 Environmental Quality in carrying out its responsibilities under
679 the Mississippi Municipality and County Water Infrastructure Grant
680 Program Act of 2022, through June 30, 2026.

681 Any such rules and regulations shall provide for maintaining
682 continuous internal audit covering the activities of such agency
683 affecting its revenue and expenditures as required under Section
684 7-7-3(6) (d). Any rules and regulation changes related to personal
685 and professional services contracts that the Public Procurement
686 Review Board may propose shall be submitted to the Chairs of the
687 Accountability, Efficiency and Transparency Committees of the
688 Senate and House of Representatives and the Chairs of the



689 Appropriation Committees of the Senate and House of
690 Representatives at least fifteen (15) days before the board votes
691 on the proposed changes, and those rules and regulation changes,
692 if adopted, shall be promulgated in accordance with the
693 Mississippi Administrative Procedures Act;

694 (g) Approve all personal and professional services
695 contracts involving the expenditures of funds in excess of
696 Seventy-five Thousand Dollars (\$75,000.00), except as provided in
697 paragraph (f) of this subsection (2) and in subsection (8);

698 (h) Develop mandatory standards with respect to
699 contractual services personnel that require invitations for public
700 bid, requests for proposals, record keeping and financial
701 responsibility of contractors. The Public Procurement Review
702 Board shall, unless exempted under this paragraph (h) or under
703 paragraph (i) or (o) of this subsection (2), require the agency
704 involved to submit the procurement to a competitive procurement
705 process, and may reserve the right to reject any or all resulting
706 procurements;

707 (i) Prescribe certain circumstances by which agency
708 heads may enter into contracts for personal and professional
709 services without receiving prior approval from the Public
710 Procurement Review Board. The Public Procurement Review Board may
711 establish a preapproved list of providers of various personal and
712 professional services for set prices with which state agencies may
713 contract without bidding or prior approval from the board;



714 (i) Agency requirements may be fulfilled by
715 procuring services performed incident to the state's own programs.
716 The agency head shall determine in writing whether the price
717 represents a fair market value for the services. When the
718 procurements are made from other governmental entities, the
719 private sector need not be solicited; however, these contracts
720 shall still be submitted for approval to the Public Procurement
721 Review Board.

722 (ii) Contracts between two (2) state agencies,
723 both under Public Procurement Review Board purview, shall not
724 require Public Procurement Review Board approval. However, the
725 contracts shall still be entered into the enterprise resource
726 planning system;

727 (j) Provide standards for the issuance of requests for
728 proposals, the evaluation of proposals received, consideration of
729 costs and quality of services proposed, contract negotiations, the
730 administrative monitoring of contract performance by the agency
731 and successful steps in terminating a contract;

732 (k) Present recommendations for governmental
733 privatization and to evaluate privatization proposals submitted by
734 any state agency;

735 (l) Authorize personal and professional service
736 contracts to be effective for more than one (1) year provided a
737 funding condition is included in any such multiple year contract,
738 except the State Board of Education, which shall have the



739 authority to enter into contractual agreements for student
740 assessment for a period up to ten (10) years. The State Board of
741 Education shall procure these services in accordance with the
742 Public Procurement Review Board procurement regulations;

743 (m) Request the State Auditor to conduct a performance
744 audit on any personal or professional service contract;

745 (n) Prepare an annual report to the Legislature
746 concerning the issuance of personal and professional services
747 contracts during the previous year, collecting any necessary
748 information from state agencies in making such report;

749 (o) Develop and implement the following standards and
750 procedures for the approval of any sole source contract for
751 personal and professional services regardless of the value of the
752 procurement:

753 (i) For the purposes of this paragraph (o), the
754 term "sole source" means only one (1) source is available that can
755 provide the required personal or professional service.

756 (ii) An agency that has been issued a binding,
757 valid court order mandating that a particular source or provider
758 must be used for the required service must include a copy of the
759 applicable court order in all future sole source contract reviews
760 for the particular personal or professional service referenced in
761 the court order.

762 (iii) Any agency alleging to have a sole source
763 for any personal or professional service, other than those



764 exempted under paragraph (f) of this subsection (2) and subsection
765 (8), shall publish on the procurement portal website established
766 by Sections 25-53-151 and 27-104-165, for at least fourteen (14)
767 days, the terms of the proposed contract for those services. In
768 addition, the publication shall include, but is not limited to,
769 the following information:

770 1. The personal or professional service
771 offered in the contract;

772 2. An explanation of why the personal or
773 professional service is the only one that can meet the needs of
774 the agency;

775 3. An explanation of why the source is the
776 only person or entity that can provide the required personal or
777 professional service;

778 4. An explanation of why the amount to be
779 expended for the personal or professional service is reasonable;
780 and

781 5. The efforts that the agency went through
782 to obtain the best possible price for the personal or professional
783 service.

784 (iv) If any person or entity objects and proposes
785 that the personal or professional service published under
786 subparagraph (iii) of this paragraph (o) is not a sole source
787 service and can be provided by another person or entity, then the
788 objecting person or entity shall notify the Public Procurement



789 Review Board and the agency that published the proposed sole
790 source contract with a detailed explanation of why the personal or
791 professional service is not a sole source service.

792 (v) 1. If the agency determines after review that
793 the personal or professional service in the proposed sole source
794 contract can be provided by another person or entity, then the
795 agency must withdraw the sole source contract publication from the
796 procurement portal website and submit the procurement of the
797 personal or professional service to an advertised competitive bid
798 or selection process.

799 2. If the agency determines after review that
800 there is only one (1) source for the required personal or
801 professional service, then the agency may appeal to the Public
802 Procurement Review Board. The agency has the burden of proving
803 that the personal or professional service is only provided by one
804 (1) source.

805 3. If the Public Procurement Review Board has
806 any reasonable doubt as to whether the personal or professional
807 service can only be provided by one (1) source, then the agency
808 must submit the procurement of the personal or professional
809 service to an advertised competitive bid or selection process. No
810 action taken by the Public Procurement Review Board in this appeal
811 process shall be valid unless approved by a majority of the
812 members of the Public Procurement Review Board present and voting.



813 (vi) The Public Procurement Review Board shall
814 prepare and submit a quarterly report to the House of
815 Representatives and Senate Accountability, Efficiency and
816 Transparency Committees that details the sole source contracts
817 presented to the Public Procurement Review Board and the reasons
818 that the Public Procurement Review Board approved or rejected each
819 contract. These quarterly reports shall also include the
820 documentation and memoranda required in subsection (4) of this
821 section. An agency that submitted a sole source contract shall be
822 prepared to explain the sole source contract to each committee by
823 December 15 of each year upon request by the committee;

824 (p) Assess any fines and administrative penalties
825 provided for in Sections 31-7-401 through 31-7-423.

826 (3) All submissions shall be made sufficiently in advance of
827 each monthly meeting of the Public Procurement Review Board as
828 prescribed by the Public Procurement Review Board. If the Public
829 Procurement Review Board rejects any contract submitted for review
830 or approval, the Public Procurement Review Board shall clearly set
831 out the reasons for its action, including, but not limited to, the
832 policy that the agency has violated in its submitted contract and
833 any corrective actions that the agency may take to amend the
834 contract to comply with the rules and regulations of the Public
835 Procurement Review Board.

836 (4) All sole source contracts for personal and professional
837 services awarded by state agencies, other than those exempted



838 under Section 27-104-7(2) (f) and (8), whether approved by an
839 agency head or the Public Procurement Review Board, shall contain
840 in the procurement file a written determination for the approval,
841 using a request form furnished by the Public Procurement Review
842 Board. The written determination shall document the basis for the
843 determination, including any market analysis conducted in order to
844 ensure that the service required was practicably available from
845 only one (1) source. A memorandum shall accompany the request
846 form and address the following four (4) points:

847 (a) Explanation of why this service is the only service
848 that can meet the needs of the purchasing agency;

849 (b) Explanation of why this vendor is the only
850 practicably available source from which to obtain this service;

851 (c) Explanation of why the price is considered
852 reasonable; and

853 (d) Description of the efforts that were made to
854 conduct a noncompetitive negotiation to get the best possible
855 price for the taxpayers.

856 (5) In conjunction with the State Personnel Board, the
857 Public Procurement Review Board shall develop and promulgate rules
858 and regulations to define the allowable legal relationship between
859 contract employees and the contracting departments, agencies and
860 institutions of state government under the jurisdiction of the
861 State Personnel Board, in compliance with the applicable rules and
862 regulations of the federal Internal Revenue Service (IRS) for



863 federal employment tax purposes. Under these regulations, the
864 usual common law rules are applicable to determine and require
865 that such worker is an independent contractor and not an employee,
866 requiring evidence of lawful behavioral control, lawful financial
867 control and lawful relationship of the parties. Any state
868 department, agency or institution shall only be authorized to
869 contract for personnel services in compliance with those
870 regulations.

871 (6) No member of the Public Procurement Review Board shall
872 use his or her official authority or influence to coerce, by
873 threat of discharge from employment, or otherwise, the purchase of
874 commodities, the contracting for personal or professional
875 services, or the contracting for public construction under this
876 chapter.

877 (7) Notwithstanding any other laws or rules to the contrary,
878 the provisions of subsection (2) of this section shall not be
879 applicable to the Mississippi State Port Authority at Gulfport.

880 (8) Nothing in this section shall impair or limit the
881 authority of the Board of Trustees of the Public Employees'
882 Retirement System to enter into any personal or professional
883 services contracts directly related to their constitutional
884 obligation to manage the trust funds, including, but not limited
885 to, actuarial, custodial banks, cash management, investment
886 consultant and investment management contracts.



887 (9) Notwithstanding the exemption of personal and
888 professional services contracts entered into by the Department of
889 Human Services and personal and professional services contracts
890 entered into by the Department of Child Protection Services from
891 the provisions of this section under subsection (2)(f), before the
892 Department of Human Services or the Department of Child Protection
893 Services may enter into a personal or professional service
894 contract, the department(s) shall give notice of the proposed
895 personal or professional service contract to the Public
896 Procurement Review Board for any recommendations by the board.
897 Upon receipt of the notice, the board shall post the notice on its
898 website and on the procurement portal website established by
899 Sections 25-53-151 and 27-104-165. If the board does not respond
900 to the department(s) within seven (7) calendar days after
901 receiving the notice, the department(s) may enter the proposed
902 personal or professional service contract. If the board responds
903 to the department(s) within seven (7) calendar days, then the
904 board has seven (7) calendar days from the date of its initial
905 response to provide any additional recommendations. After the end
906 of the second seven-day period, the department(s) may enter the
907 proposed personal or professional service contract. The board is
908 not authorized to disapprove any proposed personal or professional
909 services contracts. This subsection shall stand repealed on July
910 1, 2022.



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

913 31-7-13. All agencies and governing authorities shall
914 purchase their commodities and printing; contract for garbage
915 collection or disposal; contract for solid waste collection or
916 disposal; contract for sewage collection or disposal; contract for
917 public construction; and contract for rentals as herein provided.

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

919 Purchases which do not involve an expenditure of more than Five
920 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
921 charges, may be made without advertising or otherwise requesting
922 competitive bids. However, nothing contained in this paragraph
923 (a) shall be construed to prohibit any agency or governing
924 authority from establishing procedures which require competitive
925 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

926 (b) **Bidding procedure for purchases over \$5,000.00 but
927 not over \$75,000.00.** Purchases which involve an expenditure of

928 more than Five Thousand Dollars (\$5,000.00) but not more than
929 Seventy-five Thousand Dollars (\$75,000.00), exclusive of freight
930 and shipping charges, may be made from the lowest and best bidder
931 without publishing or posting advertisement for bids, provided at
932 least two (2) competitive written bids have been obtained. Any
933 state agency or community or junior college purchasing commodities
934 or procuring construction pursuant to this paragraph (b) may
935 authorize its purchasing agent, or his designee, to accept the



936 lowest competitive written bid under Seventy-five Thousand Dollars
937 (\$75,000.00). Any governing authority purchasing commodities
938 pursuant to this paragraph (b) may authorize its purchasing agent,
939 or his designee, with regard to governing authorities other than
940 counties, or its purchase clerk, or his designee, with regard to
941 counties, to accept the lowest and best competitive written bid.
942 Such authorization shall be made in writing by the governing
943 authority and shall be maintained on file in the primary office of
944 the agency and recorded in the official minutes of the governing
945 authority, as appropriate. The purchasing agent or the purchase
946 clerk, or his designee, as the case may be, and not the governing
947 authority, shall be liable for any penalties and/or damages as may
948 be imposed by law for any act or omission of the purchasing agent
949 or purchase clerk, or his designee, constituting a violation of
950 law in accepting any bid without approval by the governing
951 authority. The term "competitive written bid" shall mean a bid
952 submitted on a bid form furnished by the buying agency or
953 governing authority and signed by authorized personnel
954 representing the vendor, or a bid submitted on a vendor's
955 letterhead or identifiable bid form and signed by authorized
956 personnel representing the vendor. "Competitive" shall mean that
957 the bids are developed based upon comparable identification of the
958 needs and are developed independently and without knowledge of
959 other bids or prospective bids. Any bid item for construction in
960 excess of Five Thousand Dollars (\$5,000.00) shall be broken down



961 by components to provide detail of component description and
962 pricing. These details shall be submitted with the written bids
963 and become part of the bid evaluation criteria. Bids may be
964 submitted by facsimile, electronic mail or other generally
965 accepted method of information distribution. Bids submitted by
966 electronic transmission shall not require the signature of the
967 vendor's representative unless required by agencies or governing
968 authorities.

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

970 (i) **Publication requirement.**

971 1. Purchases which involve an expenditure of
972 more than Seventy-five Thousand Dollars (\$75,000.00), exclusive of
973 freight and shipping charges, may be made from the lowest and best
974 bidder after advertising for competitive bids once each week for
975 two (2) consecutive weeks in a regular newspaper published in the
976 county or municipality in which such agency or governing authority
977 is located. However, all American Recovery and Reinvestment Act
978 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
979 shall be bid. All references to American Recovery and
980 Reinvestment Act projects in this section shall not apply to
981 programs identified in Division B of the American Recovery and
982 Reinvestment Act.

983 2. Reverse auctions shall be the primary
984 method for receiving bids during the bidding process. If a
985 purchasing entity determines that a reverse auction is not in the



986 best interest of the state, then that determination must be
987 approved by the Public Procurement Review Board. The purchasing
988 entity shall submit a detailed explanation of why a reverse
989 auction would not be in the best interest of the state and present
990 an alternative process to be approved by the Public Procurement
991 Review Board. If the Public Procurement Review Board authorizes
992 the purchasing entity to solicit bids with a method other than
993 reverse auction, then the purchasing entity may designate the
994 other methods by which the bids will be received, including, but
995 not limited to, bids sealed in an envelope, bids received
996 electronically in a secure system, or bids received by any other
997 method that promotes open competition and has been approved by the
998 Office of Purchasing and Travel. However, reverse auction shall
999 not be used for any public contract for design, construction,
1000 improvement, repair or remodeling of any public facilities,
1001 including the purchase of materials, supplies, equipment or goods
1002 for same and including buildings, roads and bridges. The Public
1003 Procurement Review Board must approve any contract entered into by
1004 alternative process. The provisions of this item 2 shall not
1005 apply to the individual state institutions of higher learning.
1006 The provisions of this item 2 requiring reverse auction as the
1007 primary method of receiving bids shall not apply to term contract
1008 purchases as provided in paragraph (n) of this section; however, a
1009 purchasing entity may, in its discretion, utilize reverse auction
1010 for such purchases. The provisions of this item 2 shall not apply



1011 to individual public schools, including public charter schools and
1012 public school districts, only when purchasing copyrighted
1013 educational supplemental materials and software as a service
1014 product. For such purchases, a local school board may authorize a
1015 purchasing entity in its jurisdiction to use a Request for
1016 Qualifications which promotes open competition and meets the
1017 requirements of the Office of Purchasing and Travel.

1018 3. The date as published for the bid opening
1019 shall not be less than seven (7) working days after the last
1020 published notice; however, if the purchase involves a construction
1021 project in which the estimated cost is in excess of Seventy-five
1022 Thousand Dollars (\$75,000.00), such bids shall not be opened in
1023 less than fifteen (15) working days after the last notice is
1024 published and the notice for the purchase of such construction
1025 shall be published once each week for two (2) consecutive weeks.
1026 However, all American Recovery and Reinvestment Act projects in
1027 excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
1028 For any projects in excess of Twenty-five Thousand Dollars
1029 (\$25,000.00) under the American Recovery and Reinvestment Act,
1030 publication shall be made one (1) time and the bid opening for
1031 construction projects shall not be less than ten (10) working days
1032 after the date of the published notice. The notice of intention
1033 to let contracts or purchase equipment shall state the time and
1034 place at which bids shall be received, list the contracts to be
1035 made or types of equipment or supplies to be purchased, and, if



1036 all plans and/or specifications are not published, refer to the
1037 plans and/or specifications on file. If there is no newspaper
1038 published in the county or municipality, then such notice shall be
1039 given by posting same at the courthouse, or for municipalities at
1040 the city hall, and at two (2) other public places in the county or
1041 municipality, and also by publication once each week for two (2)
1042 consecutive weeks in some newspaper having a general circulation
1043 in the county or municipality in the above-provided manner. On
1044 the same date that the notice is submitted to the newspaper for
1045 publication, the agency or governing authority involved shall mail
1046 written notice to, or provide electronic notification to the main
1047 office of the Mississippi Procurement Technical Assistance Program
1048 under the Mississippi Development Authority that contains the same
1049 information as that in the published notice. Submissions received
1050 by the Mississippi Procurement Technical Assistance Program for
1051 projects funded by the American Recovery and Reinvestment Act
1052 shall be displayed on a separate and unique Internet web page
1053 accessible to the public and maintained by the Mississippi
1054 Development Authority for the Mississippi Procurement Technical
1055 Assistance Program. Those American Recovery and Reinvestment Act
1056 related submissions shall be publicly posted within twenty-four
1057 (24) hours of receipt by the Mississippi Development Authority and
1058 the bid opening shall not occur until the submission has been
1059 posted for ten (10) consecutive days. The Department of Finance
1060 and Administration shall maintain information regarding contracts



1061 and other expenditures from the American Recovery and Reinvestment
1062 Act, on a unique Internet web page accessible to the public. The
1063 Department of Finance and Administration shall promulgate rules
1064 regarding format, content and deadlines, unless otherwise
1065 specified by law, of the posting of award notices, contract
1066 execution and subsequent amendments, links to the contract
1067 documents, expenditures against the awarded contracts and general
1068 expenditures of funds from the American Recovery and Reinvestment
1069 Act. Within one (1) working day of the contract award, the agency
1070 or governing authority shall post to the designated web page
1071 maintained by the Department of Finance and Administration, notice
1072 of the award, including the award recipient, the contract amount,
1073 and a brief summary of the contract in accordance with rules
1074 promulgated by the department. Within one (1) working day of the
1075 contract execution, the agency or governing authority shall post
1076 to the designated web page maintained by the Department of Finance
1077 and Administration a summary of the executed contract and make a
1078 copy of the appropriately redacted contract documents available
1079 for linking to the designated web page in accordance with the
1080 rules promulgated by the department. The information provided by
1081 the agency or governing authority shall be posted to the web page
1082 for the duration of the American Recovery and Reinvestment Act
1083 funding or until the project is completed, whichever is longer.

1084 (ii) **Bidding process amendment procedure.** If all
1085 plans and/or specifications are published in the notification,



1086 then the plans and/or specifications may not be amended. If all
1087 plans and/or specifications are not published in the notification,
1088 then amendments to the plans/specifications, bid opening date, bid
1089 opening time and place may be made, provided that the agency or
1090 governing authority maintains a list of all prospective bidders
1091 who are known to have received a copy of the bid documents and all
1092 such prospective bidders are sent copies of all amendments. This
1093 notification of amendments may be made via mail, facsimile,
1094 electronic mail or other generally accepted method of information
1095 distribution. No addendum to bid specifications may be issued
1096 within two (2) working days of the time established for the
1097 receipt of bids unless such addendum also amends the bid opening
1098 to a date not less than five (5) working days after the date of
1099 the addendum.

1100 (iii) **Filing requirement.** In all cases involving
1101 governing authorities, before the notice shall be published or
1102 posted, the plans or specifications for the construction or
1103 equipment being sought shall be filed with the clerk of the board
1104 of the governing authority. In addition to these requirements, a
1105 bid file shall be established which shall indicate those vendors
1106 to whom such solicitations and specifications were issued, and
1107 such file shall also contain such information as is pertinent to
1108 the bid.

1109 (iv) **Specification restrictions.**



1110 1. Specifications pertinent to such bidding
1111 shall be written so as not to exclude comparable equipment of
1112 domestic manufacture. However, if valid justification is
1113 presented, the Department of Finance and Administration or the
1114 board of a governing authority may approve a request for specific
1115 equipment necessary to perform a specific job. Further, such
1116 justification, when placed on the minutes of the board of a
1117 governing authority, may serve as authority for that governing
1118 authority to write specifications to require a specific item of
1119 equipment needed to perform a specific job. In addition to these
1120 requirements, from and after July 1, 1990, vendors of relocatable
1121 classrooms and the specifications for the purchase of such
1122 relocatable classrooms published by local school boards shall meet
1123 all pertinent regulations of the State Board of Education,
1124 including prior approval of such bid by the State Department of
1125 Education.

1126 2. Specifications for construction projects
1127 may include an allowance for commodities, equipment, furniture,
1128 construction materials or systems in which prospective bidders are
1129 instructed to include in their bids specified amounts for such
1130 items so long as the allowance items are acquired by the vendor in
1131 a commercially reasonable manner and approved by the
1132 agency/governing authority. Such acquisitions shall not be made
1133 to circumvent the public purchasing laws.



1134 (v) **Electronic bids.** Agencies and governing
1135 authorities shall provide a secure electronic interactive system
1136 for the submittal of bids requiring competitive bidding that shall
1137 be an additional bidding option for those bidders who choose to
1138 submit their bids electronically. The Department of Finance and
1139 Administration shall provide, by regulation, the standards that
1140 agencies must follow when receiving electronic bids. Agencies and
1141 governing authorities shall make the appropriate provisions
1142 necessary to accept electronic bids from those bidders who choose
1143 to submit their bids electronically for all purchases requiring
1144 competitive bidding under this section. Any special condition or
1145 requirement for the electronic bid submission shall be specified
1146 in the advertisement for bids required by this section. Agencies
1147 or governing authorities that are currently without available high
1148 speed Internet access shall be exempt from the requirement of this
1149 subparagraph (v) until such time that high speed Internet access
1150 becomes available. Any county having a population of less than
1151 twenty thousand (20,000) shall be exempt from the provisions of
1152 this subparagraph (v). Any municipality having a population of
1153 less than ten thousand (10,000) shall be exempt from the
1154 provisions of this subparagraph (v). The provisions of this
1155 subparagraph (v) shall not require any bidder to submit bids
1156 electronically. When construction bids are submitted
1157 electronically, the requirement for including a certificate of
1158 responsibility, or a statement that the bid enclosed does not



1159 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
1160 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
1161 deemed in compliance with by including same as an attachment with
1162 the electronic bid submittal.

1163 (d) **Lowest and best bid decision procedure.**

1164 (i) **Decision procedure.** Purchases may be made
1165 from the lowest and best bidder. In determining the lowest and
1166 best bid, freight and shipping charges shall be included.
1167 Life-cycle costing, total cost bids, warranties, guaranteed
1168 buy-back provisions and other relevant provisions may be included
1169 in the best bid calculation. All best bid procedures for state
1170 agencies must be in compliance with regulations established by the
1171 Department of Finance and Administration. If any governing
1172 authority accepts a bid other than the lowest bid actually
1173 submitted, it shall place on its minutes detailed calculations and
1174 narrative summary showing that the accepted bid was determined to
1175 be the lowest and best bid, including the dollar amount of the
1176 accepted bid and the dollar amount of the lowest bid. No agency
1177 or governing authority shall accept a bid based on items not
1178 included in the specifications.

1179 (ii) **Decision procedure for Certified Purchasing**
1180 **Offices.** In addition to the decision procedure set forth in
1181 subparagraph (i) of this paragraph (d), Certified Purchasing
1182 Offices may also use the following procedure: Purchases may be
1183 made from the bidder offering the best value. In determining the



1184 best value bid, freight and shipping charges shall be included.
1185 Life-cycle costing, total cost bids, warranties, guaranteed
1186 buy-back provisions, documented previous experience, training
1187 costs and other relevant provisions, including, but not limited
1188 to, a bidder having a local office and inventory located within
1189 the jurisdiction of the governing authority, may be included in
1190 the best value calculation. This provision shall authorize
1191 Certified Purchasing Offices to utilize a Request For Proposals
1192 (RFP) process when purchasing commodities. All best value
1193 procedures for state agencies must be in compliance with
1194 regulations established by the Department of Finance and
1195 Administration. No agency or governing authority shall accept a
1196 bid based on items or criteria not included in the specifications.

1197 (iii) **Decision procedure for Mississippi**

1198 **Landmarks.** In addition to the decision procedure set forth in
1199 subparagraph (i) of this paragraph (d), where purchase involves
1200 renovation, restoration, or both, of the State Capitol Building or
1201 any other historical building designated for at least five (5)
1202 years as a Mississippi Landmark by the Board of Trustees of the
1203 Department of Archives and History under the authority of Sections
1204 39-7-7 and 39-7-11, the agency or governing authority may use the
1205 following procedure: Purchases may be made from the lowest and
1206 best prequalified bidder. Prequalification of bidders shall be
1207 determined not less than fifteen (15) working days before the
1208 first published notice of bid opening. Prequalification criteria



1209 shall be limited to bidder's knowledge and experience in
1210 historical restoration, preservation and renovation. In
1211 determining the lowest and best bid, freight and shipping charges
1212 shall be included. Life-cycle costing, total cost bids,
1213 warranties, guaranteed buy-back provisions and other relevant
1214 provisions may be included in the best bid calculation. All best
1215 bid and prequalification procedures for state agencies must be in
1216 compliance with regulations established by the Department of
1217 Finance and Administration. If any governing authority accepts a
1218 bid other than the lowest bid actually submitted, it shall place
1219 on its minutes detailed calculations and narrative summary showing
1220 that the accepted bid was determined to be the lowest and best
1221 bid, including the dollar amount of the accepted bid and the
1222 dollar amount of the lowest bid. No agency or governing authority
1223 shall accept a bid based on items not included in the
1224 specifications.

1225 (iv) **Construction project negotiations authority.**

1226 If the lowest and best bid is not more than ten percent (10%)
1227 above the amount of funds allocated for a public construction or
1228 renovation project, then the agency or governing authority shall
1229 be permitted to negotiate with the lowest bidder in order to enter
1230 into a contract for an amount not to exceed the funds allocated.

1231 (e) **Lease-purchase authorization.** For the purposes of
1232 this section, the term "equipment" shall mean equipment, furniture
1233 and, if applicable, associated software and other applicable



1234 direct costs associated with the acquisition. Any lease-purchase
1235 of equipment which an agency is not required to lease-purchase
1236 under the master lease-purchase program pursuant to Section
1237 31-7-10 and any lease-purchase of equipment which a governing
1238 authority elects to lease-purchase may be acquired by a
1239 lease-purchase agreement under this paragraph (e). Lease-purchase
1240 financing may also be obtained from the vendor or from a
1241 third-party source after having solicited and obtained at least
1242 two (2) written competitive bids, as defined in paragraph (b) of
1243 this section, for such financing without advertising for such
1244 bids. Solicitation for the bids for financing may occur before or
1245 after acceptance of bids for the purchase of such equipment or,
1246 where no such bids for purchase are required, at any time before
1247 the purchase thereof. No such lease-purchase agreement shall be
1248 for an annual rate of interest which is greater than the overall
1249 maximum interest rate to maturity on general obligation
1250 indebtedness permitted under Section 75-17-101, and the term of
1251 such lease-purchase agreement shall not exceed the useful life of
1252 equipment covered thereby as determined according to the upper
1253 limit of the asset depreciation range (ADR) guidelines for the
1254 Class Life Asset Depreciation Range System established by the
1255 Internal Revenue Service pursuant to the United States Internal
1256 Revenue Code and regulations thereunder as in effect on December
1257 31, 1980, or comparable depreciation guidelines with respect to
1258 any equipment not covered by ADR guidelines. Any lease-purchase



1259 agreement entered into pursuant to this paragraph (e) may contain
1260 any of the terms and conditions which a master lease-purchase
1261 agreement may contain under the provisions of Section 31-7-10(5),
1262 and shall contain an annual allocation dependency clause
1263 substantially similar to that set forth in Section 31-7-10(8).
1264 Each agency or governing authority entering into a lease-purchase
1265 transaction pursuant to this paragraph (e) shall maintain with
1266 respect to each such lease-purchase transaction the same
1267 information as required to be maintained by the Department of
1268 Finance and Administration pursuant to Section 31-7-10(13).
1269 However, nothing contained in this section shall be construed to
1270 permit agencies to acquire items of equipment with a total
1271 acquisition cost in the aggregate of less than Ten Thousand
1272 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1273 equipment, and the purchase thereof by any lessor, acquired by
1274 lease-purchase under this paragraph and all lease-purchase
1275 payments with respect thereto shall be exempt from all Mississippi
1276 sales, use and ad valorem taxes. Interest paid on any
1277 lease-purchase agreement under this section shall be exempt from
1278 State of Mississippi income taxation.

1279 (f) **Alternate bid authorization.** When necessary to
1280 ensure ready availability of commodities for public works and the
1281 timely completion of public projects, no more than two (2)
1282 alternate bids may be accepted by a governing authority for
1283 commodities. No purchases may be made through use of such



1284 alternate bids procedure unless the lowest and best bidder cannot
1285 deliver the commodities contained in his bid. In that event,
1286 purchases of such commodities may be made from one (1) of the
1287 bidders whose bid was accepted as an alternate.

1288 (g) **Construction contract change authorization.** In the
1289 event a determination is made by an agency or governing authority
1290 after a construction contract is let that changes or modifications
1291 to the original contract are necessary or would better serve the
1292 purpose of the agency or the governing authority, such agency or
1293 governing authority may, in its discretion, order such changes
1294 pertaining to the construction that are necessary under the
1295 circumstances without the necessity of further public bids;
1296 provided that such change shall be made in a commercially
1297 reasonable manner and shall not be made to circumvent the public
1298 purchasing statutes. In addition to any other authorized person,
1299 the architect or engineer hired by an agency or governing
1300 authority with respect to any public construction contract shall
1301 have the authority, when granted by an agency or governing
1302 authority, to authorize changes or modifications to the original
1303 contract without the necessity of prior approval of the agency or
1304 governing authority when any such change or modification is less
1305 than one percent (1%) of the total contract amount. The agency or
1306 governing authority may limit the number, manner or frequency of
1307 such emergency changes or modifications.



1308 (h) **Petroleum purchase alternative.** In addition to
1309 other methods of purchasing authorized in this chapter, when any
1310 agency or governing authority shall have a need for gas, diesel
1311 fuel, oils and/or other petroleum products in excess of the amount
1312 set forth in paragraph (a) of this section, such agency or
1313 governing authority may purchase the commodity after having
1314 solicited and obtained at least two (2) competitive written bids,
1315 as defined in paragraph (b) of this section. If two (2)
1316 competitive written bids are not obtained, the entity shall comply
1317 with the procedures set forth in paragraph (c) of this section.
1318 In the event any agency or governing authority shall have
1319 advertised for bids for the purchase of gas, diesel fuel, oils and
1320 other petroleum products and coal and no acceptable bids can be
1321 obtained, such agency or governing authority is authorized and
1322 directed to enter into any negotiations necessary to secure the
1323 lowest and best contract available for the purchase of such
1324 commodities.

1325 (i) **Road construction petroleum products price**
1326 **adjustment clause authorization.** Any agency or governing
1327 authority authorized to enter into contracts for the construction,
1328 maintenance, surfacing or repair of highways, roads or streets,
1329 may include in its bid proposal and contract documents a price
1330 adjustment clause with relation to the cost to the contractor,
1331 including taxes, based upon an industry-wide cost index, of
1332 petroleum products including asphalt used in the performance or



1333 execution of the contract or in the production or manufacture of
1334 materials for use in such performance. Such industry-wide index
1335 shall be established and published monthly by the Mississippi
1336 Department of Transportation with a copy thereof to be mailed,
1337 upon request, to the clerks of the governing authority of each
1338 municipality and the clerks of each board of supervisors
1339 throughout the state. The price adjustment clause shall be based
1340 on the cost of such petroleum products only and shall not include
1341 any additional profit or overhead as part of the adjustment. The
1342 bid proposals or document contract shall contain the basis and
1343 methods of adjusting unit prices for the change in the cost of
1344 such petroleum products.

1345 (j) **State agency emergency purchase procedure.** If the
1346 governing board or the executive head, or his designees, of any
1347 agency of the state shall determine that an emergency exists in
1348 regard to the purchase of any commodities or repair contracts, so
1349 that the delay incident to giving opportunity for competitive
1350 bidding would be detrimental to the interests of the state, then
1351 the head of such agency, or his designees, shall file with the
1352 Department of Finance and Administration (i) a statement
1353 explaining the conditions and circumstances of the emergency,
1354 which shall include a detailed description of the events leading
1355 up to the situation and the negative impact to the entity if the
1356 purchase is made following the statutory requirements set forth in
1357 paragraph (a), (b) or (c) of this section, and (ii) a certified



1358 copy of the appropriate minutes of the board of such agency
1359 requesting the emergency purchase, if applicable. Upon receipt of
1360 the statement and applicable board certification, the State Fiscal
1361 Officer, or his designees, may, in writing, authorize the purchase
1362 or repair without having to comply with competitive bidding
1363 requirements.

1364 If the governing board or the executive head, or his
1365 designees, of any agency determines that an emergency exists in
1366 regard to the purchase of any commodities or repair contracts, so
1367 that the delay incident to giving opportunity for competitive
1368 bidding would threaten the health or safety of any person, or the
1369 preservation or protection of property, then the provisions in
1370 this section for competitive bidding shall not apply, and any
1371 officer or agent of the agency having general or specific
1372 authority for making the purchase or repair contract shall approve
1373 the bill presented for payment, and he shall certify in writing
1374 from whom the purchase was made, or with whom the repair contract
1375 was made.

1376 Total purchases made under this paragraph (j) shall only be
1377 for the purpose of meeting needs created by the emergency
1378 situation. Following the emergency purchase, documentation of the
1379 purchase, including a description of the commodity purchased, the
1380 purchase price thereof and the nature of the emergency shall be
1381 filed with the Department of Finance and Administration. Any



1382 contract awarded pursuant to this paragraph (j) shall not exceed a
1383 term of one (1) year.

1384 Purchases under the grant program established under Section
1385 37-68-7 in response to COVID-19 and the directive that school
1386 districts create a distance learning plan and fulfill technology
1387 needs expeditiously shall be deemed an emergency purchase for
1388 purposes of this paragraph (j).

1389 (k) **Governing authority emergency purchase procedure.**

1390 If the governing authority, or the governing authority acting
1391 through its designee, shall determine that an emergency exists in
1392 regard to the purchase of any commodities or repair contracts, so
1393 that the delay incident to giving opportunity for competitive
1394 bidding would be detrimental to the interest of the governing
1395 authority, then the provisions herein for competitive bidding
1396 shall not apply and any officer or agent of such governing
1397 authority having general or special authority therefor in making
1398 such purchase or repair shall approve the bill presented therefor,
1399 and he shall certify in writing thereon from whom such purchase
1400 was made, or with whom such a repair contract was made. At the
1401 board meeting next following the emergency purchase or repair
1402 contract, documentation of the purchase or repair contract,
1403 including a description of the commodity purchased, the price
1404 thereof and the nature of the emergency shall be presented to the
1405 board and shall be placed on the minutes of the board of such
1406 governing authority. Purchases under the grant program



1407 established under Section 37-68-7 in response to COVID-19 and the
1408 directive that school districts create a distance learning plan
1409 and fulfill technology needs expeditiously shall be deemed an
1410 emergency purchase for purposes of this paragraph (k).

1411 (1) **Hospital purchase, lease-purchase and lease**
1412 **authorization.**

1413 (i) The commissioners or board of trustees of any
1414 public hospital may contract with such lowest and best bidder for
1415 the purchase or lease-purchase of any commodity under a contract
1416 of purchase or lease-purchase agreement whose obligatory payment
1417 terms do not exceed five (5) years.

1418 (ii) In addition to the authority granted in
1419 subparagraph (i) of this paragraph (1), the commissioners or board
1420 of trustees is authorized to enter into contracts for the lease of
1421 equipment or services, or both, which it considers necessary for
1422 the proper care of patients if, in its opinion, it is not
1423 financially feasible to purchase the necessary equipment or
1424 services. Any such contract for the lease of equipment or
1425 services executed by the commissioners or board shall not exceed a
1426 maximum of five (5) years' duration and shall include a
1427 cancellation clause based on unavailability of funds. If such
1428 cancellation clause is exercised, there shall be no further
1429 liability on the part of the lessee. Any such contract for the
1430 lease of equipment or services executed on behalf of the
1431 commissioners or board that complies with the provisions of this



1432 subparagraph (ii) shall be excepted from the bid requirements set
1433 forth in this section.

1434 (m) **Exceptions from bidding requirements.** Excepted
1435 from bid requirements are:

1436 (i) **Purchasing agreements approved by department.**
1437 Purchasing agreements, contracts and maximum price regulations
1438 executed or approved by the Department of Finance and
1439 Administration.

1440 (ii) **Outside equipment repairs.** Repairs to
1441 equipment, when such repairs are made by repair facilities in the
1442 private sector; however, engines, transmissions, rear axles and/or
1443 other such components shall not be included in this exemption when
1444 replaced as a complete unit instead of being repaired and the need
1445 for such total component replacement is known before disassembly
1446 of the component; however, invoices identifying the equipment,
1447 specific repairs made, parts identified by number and name,
1448 supplies used in such repairs, and the number of hours of labor
1449 and costs therefor shall be required for the payment for such
1450 repairs.

1451 (iii) **In-house equipment repairs.** Purchases of
1452 parts for repairs to equipment, when such repairs are made by
1453 personnel of the agency or governing authority; however, entire
1454 assemblies, such as engines or transmissions, shall not be
1455 included in this exemption when the entire assembly is being
1456 replaced instead of being repaired.



1457 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1458 of gravel or fill dirt which are to be removed and transported by
1459 the purchaser.

1460 (v) **Governmental equipment auctions.** Motor
1461 vehicles or other equipment purchased from a federal agency or
1462 authority, another governing authority or state agency of the
1463 State of Mississippi, or any governing authority or state agency
1464 of another state at a public auction held for the purpose of
1465 disposing of such vehicles or other equipment. Any purchase by a
1466 governing authority under the exemption authorized by this
1467 subparagraph (v) shall require advance authorization spread upon
1468 the minutes of the governing authority to include the listing of
1469 the item or items authorized to be purchased and the maximum bid
1470 authorized to be paid for each item or items.

1471 (vi) **Intergovernmental sales and transfers.**
1472 Purchases, sales, transfers or trades by governing authorities or
1473 state agencies when such purchases, sales, transfers or trades are
1474 made by a private treaty agreement or through means of
1475 negotiation, from any federal agency or authority, another
1476 governing authority or state agency of the State of Mississippi,
1477 or any state agency or governing authority of another state.
1478 Nothing in this section shall permit such purchases through public
1479 auction except as provided for in subparagraph (v) of this
1480 paragraph (m). It is the intent of this section to allow
1481 governmental entities to dispose of and/or purchase commodities



1482 from other governmental entities at a price that is agreed to by
1483 both parties. This shall allow for purchases and/or sales at
1484 prices which may be determined to be below the market value if the
1485 selling entity determines that the sale at below market value is
1486 in the best interest of the taxpayers of the state. Governing
1487 authorities shall place the terms of the agreement and any
1488 justification on the minutes, and state agencies shall obtain
1489 approval from the Department of Finance and Administration, prior
1490 to releasing or taking possession of the commodities.

1491 (vii) **Perishable supplies or food.** Perishable
1492 supplies or food purchased for use in connection with hospitals,
1493 the school lunch programs, homemaking programs and for the feeding
1494 of county or municipal prisoners.

1495 (viii) **Single-source items.** Noncompetitive items
1496 available from one (1) source only. In connection with the
1497 purchase of noncompetitive items only available from one (1)
1498 source, a certification of the conditions and circumstances
1499 requiring the purchase shall be filed by the agency with the
1500 Department of Finance and Administration and by the governing
1501 authority with the board of the governing authority. Upon receipt
1502 of that certification the Department of Finance and Administration
1503 or the board of the governing authority, as the case may be, may,
1504 in writing, authorize the purchase, which authority shall be noted
1505 on the minutes of the body at the next regular meeting thereafter.
1506 In those situations, a governing authority is not required to



1507 obtain the approval of the Department of Finance and
1508 Administration. Following the purchase, the executive head of the
1509 state agency, or his designees, shall file with the Department of
1510 Finance and Administration, documentation of the purchase,
1511 including a description of the commodity purchased, the purchase
1512 price thereof and the source from whom it was purchased.

1513 (ix) **Waste disposal facility construction**
1514 **contracts.** Construction of incinerators and other facilities for
1515 disposal of solid wastes in which products either generated
1516 therein, such as steam, or recovered therefrom, such as materials
1517 for recycling, are to be sold or otherwise disposed of; however,
1518 in constructing such facilities, a governing authority or agency
1519 shall publicly issue requests for proposals, advertised for in the
1520 same manner as provided herein for seeking bids for public
1521 construction projects, concerning the design, construction,
1522 ownership, operation and/or maintenance of such facilities,
1523 wherein such requests for proposals when issued shall contain
1524 terms and conditions relating to price, financial responsibility,
1525 technology, environmental compatibility, legal responsibilities
1526 and such other matters as are determined by the governing
1527 authority or agency to be appropriate for inclusion; and after
1528 responses to the request for proposals have been duly received,
1529 the governing authority or agency may select the most qualified
1530 proposal or proposals on the basis of price, technology and other
1531 relevant factors and from such proposals, but not limited to the



1532 terms thereof, negotiate and enter contracts with one or more of
1533 the persons or firms submitting proposals.

1534 (x) **Hospital group purchase contracts.** Supplies,
1535 commodities and equipment purchased by hospitals through group
1536 purchase programs pursuant to Section 31-7-38.

1537 (xi) **Information technology products.** Purchases
1538 of information technology products made by governing authorities
1539 under the provisions of purchase schedules, or contracts executed
1540 or approved by the Mississippi Department of Information
1541 Technology Services and designated for use by governing
1542 authorities.

1543 (xii) **Energy efficiency services and equipment.**
1544 Energy efficiency services and equipment acquired by school
1545 districts, community and junior colleges, institutions of higher
1546 learning and state agencies or other applicable governmental
1547 entities on a shared-savings, lease or lease-purchase basis
1548 pursuant to Section 31-7-14.

1549 (xiii) **Municipal electrical utility system fuel.**
1550 Purchases of coal and/or natural gas by municipally owned electric
1551 power generating systems that have the capacity to use both coal
1552 and natural gas for the generation of electric power.

1553 (xiv) **Library books and other reference materials.**
1554 Purchases by libraries or for libraries of books and periodicals;
1555 processed film, videocassette tapes, filmstrips and slides;
1556 recorded audiotapes, cassettes and diskettes; and any such items



1557 as would be used for teaching, research or other information
1558 distribution; however, equipment such as projectors, recorders,
1559 audio or video equipment, and monitor televisions are not exempt
1560 under this subparagraph.

1561 (xv) **Unmarked vehicles.** Purchases of unmarked
1562 vehicles when such purchases are made in accordance with
1563 purchasing regulations adopted by the Department of Finance and
1564 Administration pursuant to Section 31-7-9(2).

1565 (xvi) **Election ballots.** Purchases of ballots
1566 printed pursuant to Section 23-15-351.

1567 (xvii) **Multichannel interactive video systems.**
1568 From and after July 1, 1990, contracts by Mississippi Authority
1569 for Educational Television with any private educational
1570 institution or private nonprofit organization whose purposes are
1571 educational in regard to the construction, purchase, lease or
1572 lease-purchase of facilities and equipment and the employment of
1573 personnel for providing multichannel interactive video systems
1574 (ITSF) in the school districts of this state.

1575 (xviii) **Purchases of prison industry products by**
1576 **the Department of Corrections, regional correctional facilities or**
1577 **privately owned prisons.** Purchases made by the Mississippi
1578 Department of Corrections, regional correctional facilities or
1579 privately owned prisons involving any item that is manufactured,
1580 processed, grown or produced from the state's prison industries.



1581 (xix) **Undercover operations equipment.** Purchases
1582 of surveillance equipment or any other high-tech equipment to be
1583 used by law enforcement agents in undercover operations, provided
1584 that any such purchase shall be in compliance with regulations
1585 established by the Department of Finance and Administration.

1586 (xx) **Junior college books for rent.** Purchases by
1587 community or junior colleges of textbooks which are obtained for
1588 the purpose of renting such books to students as part of a book
1589 service system.

1590 (xxi) **Certain school district purchases.**
1591 Purchases of commodities made by school districts from vendors
1592 with which any levying authority of the school district, as
1593 defined in Section 37-57-1, has contracted through competitive
1594 bidding procedures for purchases of the same commodities.

1595 (xxii) **Garbage, solid waste and sewage contracts.**
1596 Contracts for garbage collection or disposal, contracts for solid
1597 waste collection or disposal and contracts for sewage collection
1598 or disposal.

1599 (xxiii) **Municipal water tank maintenance**
1600 **contracts.** Professional maintenance program contracts for the
1601 repair or maintenance of municipal water tanks, which provide
1602 professional services needed to maintain municipal water storage
1603 tanks for a fixed annual fee for a duration of two (2) or more
1604 years.



1605 (xxiv) **Purchases of Mississippi Industries for the**
1606 **Blind products or services.** Purchases made by state agencies or
1607 governing authorities involving any item that is manufactured,
1608 processed or produced by, or any services provided by, the
1609 Mississippi Industries for the Blind.

1610 (xxv) **Purchases of state-adopted textbooks.**
1611 Purchases of state-adopted textbooks by public school districts.

1612 (xxvi) **Certain purchases under the Mississippi**
1613 **Major Economic Impact Act.** Contracts entered into pursuant to the
1614 provisions of Section 57-75-9(2), (3) and (4).

1615 (xxvii) **Used heavy or specialized machinery or**
1616 **equipment for installation of soil and water conservation**
1617 **practices purchased at auction.** Used heavy or specialized
1618 machinery or equipment used for the installation and
1619 implementation of soil and water conservation practices or
1620 measures purchased subject to the restrictions provided in
1621 Sections 69-27-331 through 69-27-341. Any purchase by the State
1622 Soil and Water Conservation Commission under the exemption
1623 authorized by this subparagraph shall require advance
1624 authorization spread upon the minutes of the commission to include
1625 the listing of the item or items authorized to be purchased and
1626 the maximum bid authorized to be paid for each item or items.

1627 (xxviii) **Hospital lease of equipment or services.**
1628 Leases by hospitals of equipment or services if the leases are in
1629 compliance with paragraph (1)(ii).



1630 (xxix) **Purchases made pursuant to qualified**
1631 **cooperative purchasing agreements.** Purchases made by certified
1632 purchasing offices of state agencies or governing authorities
1633 under cooperative purchasing agreements previously approved by the
1634 Office of Purchasing and Travel and established by or for any
1635 municipality, county, parish or state government or the federal
1636 government, provided that the notification to potential
1637 contractors includes a clause that sets forth the availability of
1638 the cooperative purchasing agreement to other governmental
1639 entities. Such purchases shall only be made if the use of the
1640 cooperative purchasing agreements is determined to be in the best
1641 interest of the governmental entity.

1642 (xxx) **School yearbooks.** Purchases of school
1643 yearbooks by state agencies or governing authorities; * * *
1644 however, * * * state agencies and governing authorities shall use
1645 for these purchases the RFP process as set forth in the
1646 Mississippi Procurement Manual adopted by the Office of Purchasing
1647 and Travel.

1648 (xxxi) **Design-build method of contracting and**
1649 **certain other contracts.** Contracts entered into under the
1650 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1651 (xxxii) **Toll roads and bridge construction**
1652 **projects.** Contracts entered into under the provisions of Section
1653 65-43-1 or 65-43-3.



1654 (xxxiii) **Certain purchases under Section 57-1-221.**
1655 Contracts entered into pursuant to the provisions of Section
1656 57-1-221.

1657 (xxxiv) **Certain transfers made pursuant to the**
1658 **provisions of Section 57-105-1(7).** Transfers of public property
1659 or facilities under Section 57-105-1(7) and construction related
1660 to such public property or facilities.

1661 (xxxv) **Certain purchases or transfers entered into**
1662 **with local electrical power associations.** Contracts or agreements
1663 entered into under the provisions of Section 55-3-33.

1664 (xxxvi) **Certain purchases by an academic medical**
1665 **center or health sciences school.** Purchases by an academic
1666 medical center or health sciences school, as defined in Section
1667 37-115-50, of commodities that are used for clinical purposes and
1668 1. intended for use in the diagnosis of disease or other
1669 conditions or in the cure, mitigation, treatment or prevention of
1670 disease, and 2. medical devices, biological, drugs and
1671 radiation-emitting devices as defined by the United States Food
1672 and Drug Administration.

1673 (xxxvii) **Certain purchases made under the Alyce G.**
1674 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
1675 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1676 Lottery Law.

1677 (xxxviii) **Certain purchases made by the Department**
1678 **of Health and the Department of Revenue.** Purchases made by the



1679 Department of Health * * * and the Department of Revenue solely
1680 for the purpose of fulfilling their respective responsibilities
1681 under the Mississippi Medical Cannabis Act. This subparagraph
1682 shall stand repealed on June 30, * * * 2026.

1683 (n) **Term contract authorization.** All contracts for the
1684 purchase of:

1685 (i) All contracts for the purchase of commodities,
1686 equipment and public construction (including, but not limited to,
1687 repair and maintenance), may be let for periods of not more than
1688 sixty (60) months in advance, subject to applicable statutory
1689 provisions prohibiting the letting of contracts during specified
1690 periods near the end of terms of office. Term contracts for a
1691 period exceeding twenty-four (24) months shall also be subject to
1692 ratification or cancellation by governing authority boards taking
1693 office subsequent to the governing authority board entering the
1694 contract.

1695 (ii) Bid proposals and contracts may include price
1696 adjustment clauses with relation to the cost to the contractor
1697 based upon a nationally published industry-wide or nationally
1698 published and recognized cost index. The cost index used in a
1699 price adjustment clause shall be determined by the Department of
1700 Finance and Administration for the state agencies and by the
1701 governing board for governing authorities. The bid proposal and
1702 contract documents utilizing a price adjustment clause shall
1703 contain the basis and method of adjusting unit prices for the



1704 change in the cost of such commodities, equipment and public
1705 construction.

1706 (o) **Purchase law violation prohibition and vendor**
1707 **penalty.** No contract or purchase as herein authorized shall be
1708 made for the purpose of circumventing the provisions of this
1709 section requiring competitive bids, nor shall it be lawful for any
1710 person or concern to submit individual invoices for amounts within
1711 those authorized for a contract or purchase where the actual value
1712 of the contract or commodity purchased exceeds the authorized
1713 amount and the invoices therefor are split so as to appear to be
1714 authorized as purchases for which competitive bids are not
1715 required. Submission of such invoices shall constitute a
1716 misdemeanor punishable by a fine of not less than Five Hundred
1717 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1718 or by imprisonment for thirty (30) days in the county jail, or
1719 both such fine and imprisonment. In addition, the claim or claims
1720 submitted shall be forfeited.

1721 (p) **Electrical utility petroleum-based equipment**
1722 **purchase procedure.** When in response to a proper advertisement
1723 therefor, no bid firm as to price is submitted to an electric
1724 utility for power transformers, distribution transformers, power
1725 breakers, reclosers or other articles containing a petroleum
1726 product, the electric utility may accept the lowest and best bid
1727 therefor although the price is not firm.



1728 (q) **Fuel management system bidding procedure.** Any
1729 governing authority or agency of the state shall, before
1730 contracting for the services and products of a fuel management or
1731 fuel access system, enter into negotiations with not fewer than
1732 two (2) sellers of fuel management or fuel access systems for
1733 competitive written bids to provide the services and products for
1734 the systems. In the event that the governing authority or agency
1735 cannot locate two (2) sellers of such systems or cannot obtain
1736 bids from two (2) sellers of such systems, it shall show proof
1737 that it made a diligent, good-faith effort to locate and negotiate
1738 with two (2) sellers of such systems. Such proof shall include,
1739 but not be limited to, publications of a request for proposals and
1740 letters soliciting negotiations and bids. For purposes of this
1741 paragraph (q), a fuel management or fuel access system is an
1742 automated system of acquiring fuel for vehicles as well as
1743 management reports detailing fuel use by vehicles and drivers, and
1744 the term "competitive written bid" shall have the meaning as
1745 defined in paragraph (b) of this section. Governing authorities
1746 and agencies shall be exempt from this process when contracting
1747 for the services and products of fuel management or fuel access
1748 systems under the terms of a state contract established by the
1749 Office of Purchasing and Travel.

1750 (r) **Solid waste contract proposal procedure.** Before
1751 entering into any contract for garbage collection or disposal,
1752 contract for solid waste collection or disposal or contract for



1753 sewage collection or disposal, which involves an expenditure of
1754 more than Seventy-five Thousand Dollars (\$75,000.00), a governing
1755 authority or agency shall issue publicly a request for proposals
1756 concerning the specifications for such services which shall be
1757 advertised for in the same manner as provided in this section for
1758 seeking bids for purchases which involve an expenditure of more
1759 than the amount provided in paragraph (c) of this section. Any
1760 request for proposals when issued shall contain terms and
1761 conditions relating to price, financial responsibility,
1762 technology, legal responsibilities and other relevant factors as
1763 are determined by the governing authority or agency to be
1764 appropriate for inclusion; all factors determined relevant by the
1765 governing authority or agency or required by this paragraph (r)
1766 shall be duly included in the advertisement to elicit proposals.
1767 After responses to the request for proposals have been duly
1768 received, the governing authority or agency shall select the most
1769 qualified proposal or proposals on the basis of price, technology
1770 and other relevant factors and from such proposals, but not
1771 limited to the terms thereof, negotiate and enter into contracts
1772 with one or more of the persons or firms submitting proposals. If
1773 the governing authority or agency deems none of the proposals to
1774 be qualified or otherwise acceptable, the request for proposals
1775 process may be reinitiated. Notwithstanding any other provisions
1776 of this paragraph, where a county with at least thirty-five
1777 thousand (35,000) nor more than forty thousand (40,000)



1778 population, according to the 1990 federal decennial census, owns
1779 or operates a solid waste landfill, the governing authorities of
1780 any other county or municipality may contract with the governing
1781 authorities of the county owning or operating the landfill,
1782 pursuant to a resolution duly adopted and spread upon the minutes
1783 of each governing authority involved, for garbage or solid waste
1784 collection or disposal services through contract negotiations.

1785 (s) **Minority set-aside authorization.** Notwithstanding
1786 any provision of this section to the contrary, any agency or
1787 governing authority, by order placed on its minutes, may, in its
1788 discretion, set aside not more than twenty percent (20%) of its
1789 anticipated annual expenditures for the purchase of commodities
1790 from minority businesses; however, all such set-aside purchases
1791 shall comply with all purchasing regulations promulgated by the
1792 Department of Finance and Administration and shall be subject to
1793 bid requirements under this section. Set-aside purchases for
1794 which competitive bids are required shall be made from the lowest
1795 and best minority business bidder. For the purposes of this
1796 paragraph, the term "minority business" means a business which is
1797 owned by a majority of persons who are United States citizens or
1798 permanent resident aliens (as defined by the Immigration and
1799 Naturalization Service) of the United States, and who are Asian,
1800 Black, Hispanic or Native American, according to the following
1801 definitions:



1802 (i) "Asian" means persons having origins in any of
1803 the original people of the Far East, Southeast Asia, the Indian
1804 subcontinent, or the Pacific Islands.

1805 (ii) "Black" means persons having origins in any
1806 black racial group of Africa.

1807 (iii) "Hispanic" means persons of Spanish or
1808 Portuguese culture with origins in Mexico, South or Central
1809 America, or the Caribbean Islands, regardless of race.

1810 (iv) "Native American" means persons having
1811 origins in any of the original people of North America, including
1812 American Indians, Eskimos and Aleuts.

1813 (t) **Construction punch list restriction.** The
1814 architect, engineer or other representative designated by the
1815 agency or governing authority that is contracting for public
1816 construction or renovation may prepare and submit to the
1817 contractor only one (1) preliminary punch list of items that do
1818 not meet the contract requirements at the time of substantial
1819 completion and one (1) final list immediately before final
1820 completion and final payment.

1821 (u) **Procurement of construction services by state**
1822 **institutions of higher learning.** Contracts for privately financed
1823 construction of auxiliary facilities on the campus of a state
1824 institution of higher learning may be awarded by the Board of
1825 Trustees of State Institutions of Higher Learning to the lowest
1826 and best bidder, where sealed bids are solicited, or to the



1827 offeror whose proposal is determined to represent the best value
1828 to the citizens of the State of Mississippi, where requests for
1829 proposals are solicited.

1830 (v) **Insurability of bidders for public construction or**
1831 **other public contracts.** In any solicitation for bids to perform
1832 public construction or other public contracts to which this
1833 section applies, including, but not limited to, contracts for
1834 repair and maintenance, for which the contract will require
1835 insurance coverage in an amount of not less than One Million
1836 Dollars (\$1,000,000.00), bidders shall be permitted to either
1837 submit proof of current insurance coverage in the specified amount
1838 or demonstrate ability to obtain the required coverage amount of
1839 insurance if the contract is awarded to the bidder. Proof of
1840 insurance coverage shall be submitted within five (5) business
1841 days from bid acceptance.

1842 (w) **Purchase authorization clarification.** Nothing in
1843 this section shall be construed as authorizing any purchase not
1844 authorized by law.

1845 **SECTION 7.** This act shall take effect and be in force from
1846 and after July 1, 2023.

